



MARIN COUNTY | NAPA COUNTY | UNINCORPORATED CONTRA COSTA COUNTY | UNINCORPORATED SOLANO COUNTY  
BENICIA | CONCORD | DANVILLE | EL CERRITO | LAFAYETTE | MARTINEZ | MORAGA | OAKLEY | PINOLE  
PITTSBURG | PLEASANT HILL | RICHMOND | SAN PABLO | SAN RAMON | VALLEJO | WALNUT CREEK

## Executive Committee Meeting Friday, May 7, 2021 12:15 P.M.

The Executive Committee Meeting will be conducted pursuant to the provisions of the Governor's [Executive Order](#) N-29-20 (March 17, 2020) which suspends certain requirements of the Ralph M. Brown Act. Executive Committee Members will be teleconferencing into the Executive Committee Meeting.

Members of the public who wish to observe the meeting may do so telephonically via the following teleconference call-in number and meeting ID:

Dial: 1-669-900-9128  
Webinar ID: 869 4588 8046  
Meeting Password: 357808

For Viewing Access Join Zoom Meeting:  
<https://us02web.zoom.us/j/86945888046?pwd=clk2dXFKVEh0bk5Ba2dLUVhxQXg1QT09>

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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 3.5.21 Meeting Minutes
  - C.2 First Amended and Restated Demand FLEXmarket Agreement with Recurve Analytics, Inc.
  - C.3 First Agreement between Apex Analytics, LLC and MCE
  - C.4 First Amendment to First Agreement by and between MCE and K&L Gates

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6. Legislative Update, California Senate Bill SB 617 and Associated California Budget Item (Discussion/Action)
7. Review Draft 5.20.21 Board Agenda (Discussion)
8. Committee Matters & Staff Matters (Discussion)
9. Adjourn

DISABLED ACCOMMODATION: If you are a person with a disability which requires an accommodation, or an alternative format, please contact the Clerk of the Board at (925) 378-6732 as soon as possible to ensure arrangements for accommodation.

**DRAFT****MCE EXECUTIVE COMMITTEE MEETING MINUTES**

Friday, March 5, 2021

12:15 P.M.

The Executive Committee Meeting was conducted pursuant to the provisions of the Governor's [Executive Order](#) N-29-20 (March 17, 2020) which suspends certain requirements of the Ralph M. Brown Act. Committee Members, staff and members of the public were able to participate in the Committee Meeting via teleconference.

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**Present:** Denise Athas, City of Novato  
 Edi Birsan, City of Concord  
 Tom Butt, City of Richmond  
 Barbara Coler, Town of Fairfax  
 Cindy Darling, City of Walnut Creek  
 Ford Greene, Town of San Anselmo  
 Kevin Haroff, City of Larkspur  
 Devin Murphy, City of Pinole  
 Gabriel Quinto, City of El Cerrito  
 Shanelle Scales-Preston, City of Pittsburg  
 Sally Wilkinson, City of Belvedere

**Staff  
& Others:** Jessica Brooks, Assistant Board Clerk  
 Michael Callahan, Senior Policy Council  
 Stephanie Chen, Senior Policy Council  
 Darlene Jackson, Board Clerk  
 Vicken Kasarjian, Chief Operating Officer  
 Justin Marquez, Community Equity Specialist  
 Evelyn Reyes, Administrative Services Assistant  
 Garth Salisbury, Director of Finance  
 Maira Strauss, Finance Manager  
 Enyonam Senyo-Mensah, Administrative Services Associate  
 Dawn Weisz, Chief Executive Officer

**1. Roll Call**

Chair Butt called the regular Executive Committee meeting to order at 12:15 p.m. with quorum established by roll call.

**2. Board Announcements (Discussion)**

There were comments from Directors Butt and Haroff.

**3. Electing Chair of Executive Committee (Discussion/Action)**

**DRAFT**

It was suggested and agreed that this item be moved up to Agenda Item #3 to establish Committee Chair.

Chair Butt, presented the item and facilitated the election process. There were three nominations for Chair of the Executive Committee: Director Coler, Director Green, and Haroff, Director

Chair Butt opened the public comment period and there were no comments.

Action: By majority Committee vote, Director Kevin Haroff was elected Chair of the Executive Committee.

#### **4. Public Open Time (Discussion)**

Chair Haroff opened the public comment period and there were no comments.

#### **5. Report from Chief Executive Officer (Discussion)**

CEO, Dawn Weisz, reported the following:

- San Diego Community Power launched this week. They will be serving the cities of: Chula Vista, Encinitas, Imperial Beach, La Mesa & San Diego.
- There are many contract renewals on our agenda today as we prepare for the start of our new fiscal year on April 1.
- We will soon be exploring and possibly entering into a few transactions including multi-year transactions for PCC1, ACS, Large Hydro and hedge volumes, as well as a Base Resource Contract with WAPA for large hydroelectric energy from the Central Valley Project
- We have begun to enroll customers in the Arrearage Management Program (AMP), and have had huge success so far.
- MCE has been working closely with Napa County to submit an application today to the FEMA Hazard Mitigation Grant Program to install solar-powered energy storage systems that would prevent disruptions of critical services provided by 2 water treatment and pumping facilities in the Berryessa Highlands community. That application was submitted today.
- MCE has been awarded a credit rating of "A" with stable outlook by S&P.

#### **6. Consent Calendar (Discussion/Action)**

- C.1 Approval of 2.5.21 Meeting Minutes
- C.2 Third Agreement with Hall Energy Law PC
- C.3 Ninth Agreement with Braun Blasing Smith Wynne, P.C.
- C.4 Sixth Agreement with Keyes & Fox, LLP
- C.5 Eleventh Agreement with Niemela Pappas & Associates
- C.6 Twelfth Agreement with Maher Accountancy

**DRAFT**

- C.7 Second Agreement with EcoShift Consulting
- C.8 Second Agreement with Freelance Media Buying

Chair Haroff opened the public comment period and there were no comments.

Action: It was M/S/C (Greene/Quinto) to **approve Consent Calendar items C.1 – C.8**. Motion carried by unanimous roll call vote.

**7. Fiscal Year 2021/22 Budget (Discussion/Action)**

Garth Salisbury, Director of Finance and Maira Strauss, Manager of Finance, presented this item and addressed questions from Committee members.

Chair Haroff opened the public comment period and there were comments from member of the public Ken Strong.

Action: It was M/S/C (Coler/Athas) to **recommend approval of the proposed FY 2021/22 Operating Fund, Energy Efficiency Program Fund, Local Renewable Energy and Program Development Fund, and Resiliency Fund Budgets to the MCE Board of Directors**. Motion carried by unanimous roll call vote.

**8. Charles F. McGlashan Advocacy Award Nomination (Discussion/Action)**

Justin Marquez, Community Equity Specialist, presented this item and addressed questions from Committee members.

Chair Haroff opened the public comment period and there were no comments.

Action: It was M/S/C (Athas/Coler) to **approve the 2020 winner(s) of the Charles F. McGlashan Advocacy Award to be presented at a future meeting of the MCE Board of Directors: Marin Center for Independent Living (Marin CIL), Disability Services Living Center (DSLCL), the Independent Living Resources of Solano and Contra Costa (ILRSCC) & Vi Ibarra from the Developmental Disabilities Council of Contra Costa County (Jointly), Deborah Elliott with Napa County, and the Fairfax Climate Action Committee** Motion carried by unanimous roll call vote.

**9. Prepayment, Joint Procurement, and Direct Debt (Discussion)**

COO Vicken Kasarjian, Director of Finance Garth Salisbury, and Senior Policy Counsel Michael Callahan, presented this item and addressed questions from Committee members.

Chair Haroff opened the public comment period and there were no comments.

**DRAFT**

Action: No action required.

**10. Legislative Update (Discussion)**

Stephanie Chen, Senior Policy Council, presented this item and addressed questions from Committee members.

Chair Haroff opened the public comment period and there were no comments.

Action: No action required.

**11. Review Draft 3.18.21 Board Agenda (Discussion)**

CEO Dawn Weisz, presented this item and addressed questions from Committee members.

Chair Haroff opened the public comment period and there were no comments.

Action: No action required.

**12. Committee & Staff Matters (Discussion)**

There were none.

**13. Adjournment**

Chair Haroff adjourned the meeting at 3:22 p.m. to the next scheduled Executive Committee Meeting on April 2, 2021.

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Kevin Haroff, Chair

Attest:

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Dawn Weisz, Secretary



May 7, 2021

TO: MCE Executive Committee

FROM: Alice Havenar-Daughton, Director of Customer Programs  
Joey Lande, Manager of Customer Programs

RE: Proposed First Amended and Restated Demand FLEXmarket Agreement with Recurve Analytics, Inc. (Agenda Item #05 C.2)

ATTACHMENTS: A. Proposed First Amended and Restated Demand FLEXmarket Agreement with Recurve Analytics, Inc.  
B. Demand Flexibility Marketplace Agreement with Recurve Analytics, Inc.

Dear Executive Committee Members:

**SUMMARY:**

The proposed First Amended and Restated Demand FLEXmarket Agreement ("Agreement") with Recurve Analytics, Inc. ("Recurve") is a contract for services in support of MCE's Commercial Efficiency Market Program and the Peak FLEXmarket Program. Both programs are supported by a network of aggregators, who are paid for delivering value to MCE in the form of cost-effective energy efficiency savings, or reducing demand during peak evening hours.

These programs both utilize the Demand FLEXmarket platform – a web-based tool which can screen for customer eligibility, target customers with the greatest potential for savings or demand reduction, and then analyze project portfolios based on meter data-based measurement.

The Demand FLEXmarket platform first launched in support of the Commercial Efficiency Market in December, 2020. The Commercial Efficiency Market – funded from MCE's energy efficiency programs budget allocated by the California Public Utilities Commission ("CPUC") – was conceived as a program for scaling up cost-effective energy efficiency program impacts. Initial funding included a \$100,000 not-to-exceed contract with Recurve, and approximately \$1,000,000 in program incentives. Interest in

the program has quickly exceeded expectations, and as a result, available program funds have been reserved as of April 1, 2021. The Customer Programs Team will be filing an Advice Letter with the CPUC in the coming weeks to request an additional \$4,000,000 in program funding for the remainder of 2021. If approved, this Agreement is intended, in part, to support this second tranche of funding.

The second program MCE aims to run on the Demand FLEXmarket platform is the Peak FLEXmarket Program. The FLEXmarket Program aims to provide value to MCE through load shifting or shedding during the summer evening peak hours. The Peak FLEXmarket Program would pay for both daily load-shifting, and day-ahead signaled demand response. The Peak FLEXmarket Program is funded by MCE procurement funds, and would be run in the summer of 2021 as a pilot to evaluate the effectiveness of the program model, and the value of load shifting and shedding across a broad group of technologies.

The Demand FLEXmarket platform has several innovative features. First, it allows MCE to rapidly scale behind-the-meter impacts. Instead of developing individual contracts with multiple program partners, MCE can offer a technology-agnostic payment for energy efficiency or reduced demand during peak hours, to nearly any provider who can deliver value. The platform would work with service providers who specialize in diverse work areas such as demand response, storage, energy efficiency, managed EV charging, and refrigeration controls. Second, the platform leverages cutting edge measurement and verification, utilizing the only open-source methods approved by the CPUC for meter-based measurement. Lastly, the platform pays vendors based on the value of the energy reductions they provide, at a variable rate which MCE determines. This would bring an important new capability to MCE –to provide a variable price signal for behind-the-meter impacts, and open a market to engage providers.

Project enrollment and tracking is already underway for energy efficiency projects through the Commercial Efficiency Market via the initial Demand Flexibility Marketplace Agreement with Recurve, and, if the Agreement is approved, it will be possible to engage in valuable load-shaping and demand response in the summer of 2021.

The proposed Agreement with Recurve would increase the current not-to-exceed contract value for the Commercial Efficiency Market Program, and would provide new funding to the Peak FLEXmarket Program.

#### **Fiscal Impacts:**

Expenditures related to the proposed First Amended and Restated Demand FLEXmarket Agreement with Recurve would be funded primarily from MCE's energy efficiency programs budget allocated by the CPUC at a value of \$1,275,000, and partially funded from MCE's FY 2021/21 procurement budget at a not-to-exceed value of \$325,000, for a total not-to-exceed value of \$1,600,000.

#### **Recommendation:**

Approve the proposed First Amended and Restated Demand FLEXmarket Agreement.



**FIRST AMENDED AND RESTATED DEMAND  
FLEXMARKET AGREEMENT**  
**BY AND BETWEEN**  
**MARIN CLEAN ENERGY AND RECURVE ANALYTICS, INC.**

**THIS FIRST AMENDED AND RESTATED DEMAND FLEXMARKET AGREEMENT** ("Agreement") is made and entered into this **7th day of May, 2021** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE", and RECURVE ANALYTICS, INC., a Delaware corporation with its principal place of business located at 364 Ridgewood Avenue, Mill Valley, California, 94941, hereinafter referred to as "Recurve" (each a "Party" and together the "Parties"). For the avoidance of doubt, this Agreement is separate from, and not related to, that series of Standard Short Form Contracts between MCE and Recurve pertaining to the Recurve Meter Platform and the RecurveOS Operations.

**RECITALS:**

**WHEREAS**, MCE desires to retain Recurve to administer the Flex Market Program ("FLEXmarket Program", "FLEXmarket", or "Program") with third party project implementers (each, an "Aggregator" and collectively the "Aggregators") who have developed portfolios of Demand Flexibility Projects (each, a "DFP" and collectively the "DFPs"); and

**WHEREAS**, Recurve will administer an Energy Efficiency Program ("EE") and a Peak FLEXmarket Program ("PF") within the FLEXmarket Program, and specifically to provide the services for the EE Program and the PF Program as described in **Exhibit A**; and

**WHEREAS**, Recurve seeks to provide, and warrants that it is qualified and competent to render, the services described in **Exhibit A**.

**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:**

Recurve agrees to provide all of the services described in **Exhibit A**, which is attached hereto and by this reference made a part hereof. "Services" shall mean all of the services described in **Exhibit A**, and any other work performed by Recurve pursuant to the Agreement.

**2. MCE OBLIGATIONS:**

During the term of this Agreement, and in addition to MCE's other obligations under this Agreement, MCE agrees to:

**2.1** Promptly upon request from Recurve, provide Recurve all pertinent data and records necessary for Recurve's delivery of the Services.

**2.2** Regularly and on a timely basis, provide Recurve with data for Recurve's use in calculating MCE's payments to Aggregators under applicable Flexibility Purchase Agreements ("FPA") in the form attached hereto as **Exhibit A-1**.

**2.3** Pay undisputed and verified invoiced amounts to Aggregators within 30 days of receiving invoices and supporting documentation from Recurve.

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

MCE shall compensate Recurve for the Services in accordance with the Fee Schedule attached hereto as **Exhibit B** and by this reference incorporated herein. Recurve shall provide MCE with its Federal Tax I.D. number prior to submitting the first invoice. Recurve is responsible for billing MCE in a timely and accurate manner. Recurve shall email all invoices to MCE on a monthly basis as specified in **Exhibit B** for any Services rendered or expenses incurred hereunder. Fees and expenses related to the EE Program invoiced beyond 240 days will not be reimbursable; fees and invoices related to the PF Program invoiced beyond 90 days will not be reimbursable. The final invoice must be submitted within 90 days of completion of the Services or termination of this Agreement. MCE will process payment for undisputed invoiced amounts within 90 days of receipt of such invoice.

**4. MAXIMUM COST TO MCE:**

In no event will the total cost to MCE for the Services exceed **One Million Six Hundred Thousand Dollars (\$1,600,000.00)**.

**5. TERM OF AGREEMENT:**

This Agreement shall commence on **May 7, 2021**. Recurve may enroll new DFPs under the Program until **October 31, 2022**. This Agreement shall terminate when Recurve has completed the Services on the last DFP enrolled (the "Term"). 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 Recurve.

**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 Recurve's indemnification and defense obligations under Section 16.5 of this Agreement. MCE agrees to timely notify Recurve 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 Recurve for any Services provided during any time that Recurve's insurance was not in effect and until such time as Recurve provides adequate evidence that Recurve has obtained the required coverage.

#### **6.1 GENERAL LIABILITY**

Recurve shall maintain a commercial general liability insurance policy in an amount of no less than two million dollars (\$2,000,000) with a four million dollar (\$4,000,000) 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 RESERVED**

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

Recurve 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 Recurve 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, Recurve must purchase "extended reporting" coverage for a minimum of twelve (12) months after completion of contract work. Recurve 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 Recurve has segregated amounts in a special insurance reserve fund or Recurve'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.

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

Recurve 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. Recurve and/or any permitted subcontractor understands and agrees that Recurve 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:**

Recurve shall not subcontract nor assign any portion of the work required by this Agreement without prior written approval of MCE. For the avoidance of doubt, Aggregators will not be considered subcontractors for purposes of this Agreement. If Recurve hires a subcontractor under this Agreement, Recurve shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Recurve under this Agreement and shall require subcontractor to name Recurve as additional insured under this Agreement. It shall be Recurve's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to MCE evidence of same. Notwithstanding the foregoing, 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 Recurve of any of its duties or obligations under this Agreement. Recurve shall be solely responsible for ensuring its subcontractors' compliance with the terms and conditions of this Agreement. Recurve's obligation to pay its subcontractors is an independent obligation from MCE's obligation to make payments to Recurve. 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 Recurve and may not be transferred or assigned without the express prior written consent of MCE; provided, however, that upon thirty (30) days prior, written notice to MCE, this Agreement may be assigned without MCE's consent to Recurve's successor in interest in (a) the sale of substantially all of Recurve's assets or (b) a merger wherein Recurve is not the surviving entity.

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

Recurve 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 pertaining to this Agreement. Such records shall include, but not be limited to, FPAs, correspondence with Aggregators and records supplied to Recurve by Aggregators, documentation of Program Value (as defined in **Exhibit B**) calculations for each DFP, and documentation of the basis for payments to Aggregators. MCE shall have

the right, during regular business hours, to review and audit all records relating to this Agreement during the Term 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 Recurve's premises or, at MCE's option, Recurve shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MCE. Recurve 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; and MCE shall reimburse Recurve for any deficit in amounts paid to Recurve based on such undisputed audit findings. MCE shall also have the right to review, upon oral or written request to Recurve, any agreement, commitment or subcontract entered into by Recurve pursuant to this Agreement, including, but not limited to, the form of FPA, and any subsequent revisions thereto, and Recurve shall not unreasonably delay in delivering such agreement, commitment or subcontract to MCE.

#### **11. TERMINATION:**

- A. If either Party (the "Defaulting Party") fails to comply with the terms of this Agreement or violates any ordinance, regulation or other law which applies to its performance herein, and does not cure such failure or violation within ten (10) business days after receiving written notice thereof from the other Party, the other Party may terminate this Agreement by giving five (5) business days' written notice to the Defaulting Party. For the avoidance of doubt, this paragraph A shall apply to any failure by MCE to pay an Aggregator in accordance with this Agreement or the FPA.
- B. Either Party shall be excused for failure to perform its obligations herein if such obligations are prevented by acts of God, pandemics, epidemics, strikes, labor disputes or other forces ("Force Majeure") over which the Party claiming Force Majeure has no control and which is not caused by any act or omission of the Party claiming Force Majeure, but only for so long as the Party claiming Force Majeure is actually so prevented from performing, and only provided the Party claiming Force Majeure provides prompt written notice to the other Party.
- C. Either Party hereto may terminate this Agreement for any reason by giving sixty (60) calendar days' written notice to the other party. Notice of termination shall be by written notice to the other Party and shall be sent by email to the email address listed in Section 19 Invoices; Notices.
- D. In the event of termination not the fault of Recurve, Recurve shall be paid for all Services performed to the date of termination in accordance with the terms of this Agreement and so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s), as defined in Section 12 below. Notwithstanding anything contained in this Section 11 in no event shall MCE be liable for lost or anticipated profits or overhead on uncompleted portions of the Services. Recurve shall not enter into any agreement, commitments or subcontracts that would incur significant cancellation or termination costs without prior written approval of MCE, and such written approval shall be a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 11. Also, as a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 11, Recurve shall have delivered to MCE any and all reports, drawings, documents and deliverables prepared for MCE before the effective date of such cancellation or termination.
- E. This Agreement shall be subject to changes, modifications, or termination by order or directive of the California Public Utilities Commission ("CPUC"). The CPUC may from time to time issue an order or directive relating to or affecting any aspect of this Agreement, in which case MCE shall have the right to change, modify or terminate this Agreement in any manner to be consistent with such CPUC order or directive. MCE may also terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.
- F. Upon MCE's termination of this Agreement for any reason, Recurve shall bring the Services to an orderly conclusion as directed by MCE.

#### **12. AMENDMENT:**

This Agreement may be amended or modified only by written agreement of both Parties (an "Amendment"). For the avoidance of doubt, any modification to the form FPA attached here to as **Exhibit A-1**, or the addendum to the form FPA attached hereto as **Exhibit A-2**, shall require advance written approval by both Parties.

#### **13. ASSIGNMENT OF PERSONNEL:**

Recurve shall not substitute any personnel assigned to perform the Services unless personnel with substantially equal or better qualifications and experience are provided, as is evidenced in writing.

#### **14. GOVERNING LAW AND VENUE:**

This Agreement shall be governed by the internal laws of the State of California, with reference to its conflict of laws principles. In the event of any litigation to enforce or interpret any terms of this Agreement, such action shall be brought in a Superior Court of the State of California located in Marin County (or if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in the U.S. District Court for the Northern District of California), and the Parties hereby submit to the exclusive jurisdiction of such courts.

#### **15. 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 Recurve'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 Recurve 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 Recurve cannot reach an agreement within a reasonable period of time (but in no event more than 30 calendar days), MCE and Recurve shall have the right to pursue all rights and remedies that may be available at law or in equity. In particular, Recurve shall have the 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.

## **16. REPRESENTATIONS; WARRANTIES; INDEMNIFICATION:**

**16.1 LICENSING.** At all times during the Term of this Agreement, Recurve represents, warrants and covenants that it has obtained and shall maintain, at its sole cost and expense, all required licenses and registrations required for the operation of its business and the performance of its obligations under this Agreement. Recurve shall promptly provide copies of such licenses and registrations to MCE at the request of MCE.

**16.2 GOOD STANDING.** Recurve represents and warrants that (a) it is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware 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.

MCE represents and warrants that (a) it is duly organized, validly existing, (b) it has full power and authority and all regulatory authorizations required to execute, deliver and perform its obligations under this Agreement and all exhibits and to engage in the business it presently conducts and contemplates conducting, (c) the execution, delivery and performance of this Agreement and all exhibits hereto are within its powers and do not violate the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, (d) this Agreement and each exhibit constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, and (e) it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt.

### **16.3 BACKGROUND CHECKS.**

- (a) Recurve hereby represents, warrants and certifies that any personnel of Recurve having or requiring access to MCE's assets, premises, customer property ("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 Recurve 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, Recurve 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, Recurve shall notify MCE if any of its Covered Personnel is charged with or convicted of a Serious Offense during the term of this Agreement. Recurve will also immediately prevent that employee, representative, or agent from performing any Services.

**16.4 FITNESS FOR DUTY.** Recurve 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. Recurve 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.

### **16.5 INDEMNIFICATION.**

**By Recurve:** Recurve agrees to indemnify, defend, and hold MCE and its employees, officers, contractors, owners and agents, harmless from any and all losses, damages, costs, expenses and liabilities including, but not limited to, litigation and other dispute resolution costs, including reasonable attorney's fees, arising from or in connection with any and all claims and losses to anyone who may be injured or damaged by reason of Recurve's negligence, recklessness or any fraud, willful misconduct, violation of law, or breach of this Agreement in connection with this Agreement. For the avoidance of doubt, Recurve shall have no liability to MCE for any inaccuracy in data or forecasts provided by an Aggregator to Recurve provided that Recurve used commercially reasonable efforts to enforce Section 2.5 of the Flexible Purchase Agreement.

**By MCE:** MCE agrees to indemnify, defend, and hold Recurve and its employees, officers, contractors, owners and agents, harmless from any and all losses, damages, costs, expenses and liabilities including, but not limited to, litigation and other dispute resolution costs, including reasonable attorney's fees, arising from or in connection with any

failure by MCE to pay undisputed amounts of Flexibility Payments (as defined in the FPA) owed by MCE to any Aggregator.

Neither Recurve nor MCE shall be liable for any incidental, special, indirect, punitive or consequential damages relating to or arising from this Agreement.

**17. 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. Recurve 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.

**18. COMPLIANCE WITH APPLICABLE LAWS:**

Recurve and MCE each shall comply with any and all applicable federal, state and local laws, regulations and resolutions (including, but not limited to all CPUC policies and guidance for energy efficiency programs, 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.

**19. 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
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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 Recurve at the following address:

Recurve:	Matt Golden
Address:	364 Ridgewood Avenue
	Mill Valley, CA 94941
Email Address:	admin@recurve.com
Telephone No.:	(415) 841-3425

**20. 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.

	<input checked="" type="checkbox"/>	<u>Check applicable Exhibits</u>	<u>CONTRACTOR'S INITIALS</u>	<u>MCE'S INITIALS</u>
<u>EXHIBIT A.</u>	<input checked="" type="checkbox"/>	Scope of Services		
<u>EXHIBIT A-1.</u>	<input checked="" type="checkbox"/>	Flexibility Purchase Agreement		

<b><u>EXHIBIT A-2.</u></b>	<input checked="" type="checkbox"/>	<b>Addendum to Flexibility Purchase Agreement</b>
<b><u>EXHIBIT 1</u></b>	<input checked="" type="checkbox"/>	<b>LSE Program Terms and Conditions</b>
<b><u>EXHIBIT A-3.</u></b>	<input checked="" type="checkbox"/>	<b>Non-Disclosure Agreement</b>
<b><u>EXHIBIT B</u></b>	<input checked="" type="checkbox"/>	<b>Fees and Payment Schedule</b>

## 21. DATA COLLECTION AND OWNERSHIP REQUIREMENTS:

**21.1. DEFINITION OF “MCE DATA”.** “MCE Data” shall mean all data or information provided by or on behalf of MCE, including but not limited to, customer Personal Information; energy usage data relating to, of, or concerning, provided by or on behalf of any customers; all data or information input, information systems and technology, software, methods, forms, manuals, and designs, transferred, uploaded, migrated, or otherwise sent by or on behalf of MCE to Recurve as MCE may approve of in advance and in writing (in each instance); account numbers, forecasts, and other similar information disclosed to or otherwise made available to Recurve. MCE Data shall also include all data and materials provided by or made available to Recurve by MCE’s licensors, including but not limited to, any and all survey responses, feedback, and reports subject to any limitations or restrictions set forth in the agreements between MCE and their licensors.

“Confidential Information” under this Agreement shall have the same meaning as defined in the Marin Clean Energy Non-Disclosure Agreement between the Parties dated **April 26, 2021**.

**21.2. DEFINITION OF “PERSONAL INFORMATION”.** “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. Each Party shall comply with all applicable laws, rules, and regulations related to the use, collection, storage, and transmission of Personal Information.

**21.3. MCE DATA SECURITY MEASURES.** Prior to Recurve receiving any MCE Data, Recurve shall comply, and at all times thereafter continue to comply, in compliance with MCE’s Data security policies set forth in MCE Policy 009 and MCE’s Advanced Metering Infrastructure (AMI) Data Security and Privacy Policy (“Security Measures”) and pursuant to MCE’s Confidentiality provisions in Section 5 of the Marin Clean Energy Non-Disclosure Agreement between the Parties dated **April 26, 2021**. MCE’s Security Measures and Confidentiality provisions require Recurve to adhere to reasonable administrative, technical, and physical safeguard protocols to protect MCE’s Data from unauthorized handling, access, destruction, use, modification or disclosure.

**21.4. RECURVE DATA SECURITY MEASURES.** Additionally, Recurve 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.

**21.5. RETURN OF MCE DATA.** Promptly after this Agreement terminates or expires (i) Recurve will securely destroy all MCE Data in its possession 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), provided that Recurve’s attorney shall be permitted to retain a copy of such records or materials solely for legal purposes.

### 21.6. OWNERSHIP AND USE RIGHTS.

- a) **MCE Data.** Unless otherwise expressly agreed to by the Parties, MCE shall retain all of its rights, title and interest in the MCE Data.
- b) **Program Intellectual Property owned by MCE.** Unless otherwise expressly agreed to by the Parties, any and all materials, information, or other work product created, prepared, accumulated or developed by Recurve under this Agreement (“Program Intellectual Property”), including, but not limited to, any content for an Implementation Plan or otherwise required by the CPUC for purposes related to the Services contemplated, program value forecasts, dashboards, inventions, processes, templates, documents, drawings, computer programs, designs, calculations of savings impacts, demand flexibility, demand reduction, value, maps, plans, workplans, text, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual materials, data models and samples, including summaries, extracts, analyses and preliminary or draft materials

developed in connection therewith, shall be owned by MCE. MCE shall have the non-exclusive right to use such materials in its sole discretion without further compensation to Recurve or to any other party and hereby grants Recurve an irrevocable, non-exclusive, perpetual, fully paid up, worldwide, royalty-free, unrestricted license to use the Program Intellectual Property for internal development purposes only, such that Recurve may use its learnings from the Program Intellectual Property to enhance the Services and to inform its development of similar services to other Load Serving Entities ("LSE"). Notwithstanding the foregoing, to the extent any MCE Data is embedded in the Program Intellectual Property, MCE shall remain the exclusive owner of such Program Intellectual Property and Recurve shall have no right to its use absent advance written approval by MCE. Recurve shall, at MCE's expense, provide such reports, plans, studies, documents and writings to MCE or any party MCE may designate, upon written request. Recurve may keep file reference copies of all documents prepared for MCE.

- c) **Program Intellectual Property will be owned by MCE upon its creation.** MCE agrees to execute any such other documents or take other actions as MCE may reasonably request to perfect MCE's ownership in the Program Intellectual Property.
- d) **Recurve's Pre-Existing Materials.** If, and to the extent Recurve retains any preexisting ownership rights ("Recurve's Pre-Existing Materials") in any of the materials furnished to be used to create, develop, and prepare the Program Intellectual Property, including but not limited to Recurve's cost-effectiveness tool ("CET"), Recurve hereby grants MCE and the CPUC for governmental and regulatory purposes an irrevocable, assignable, non-exclusive, perpetual, fully paid up, worldwide, royalty-free, unrestricted license to use and sublicense others to use, reproduce, display, prepare and develop derivative works, perform, distribute copies of any intellectual or proprietary property right of Recurve for the sole purpose of using such Program Intellectual Property for the conduct of MCE's business and for disclosure to the CPUC for governmental and regulatory purposes related thereto. Unless otherwise expressly agreed to by the Parties, Recurve shall retain all of its rights, title and interest in Recurve's Pre-Existing Materials. Any and all claims to Recurve's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the Program Intellectual Property must be expressly disclosed to MCE prior to performing any Services under this Agreement. Any such Pre-Existing Material that is modified by work under this Agreement is owned by MCE.

#### **21.7 BILLING, ENERGY USE, AND PROGRAM TRACKING DATA.**

- a) Recurve shall comply with and timely cooperate with all CPUC directives, activities, and requests regarding the Program and DFP evaluation, measurement, and verification ("EM&V"). For the avoidance of doubt, it is the responsibility of Recurve to be aware of all CPUC requirements applicable to the Services of this Agreement.
- b) Recurve shall make available to MCE upon demand, detailed descriptions of the Program, data tracking systems, baseline conditions, and participant data, including financial assistance amounts.
- c) Recurve shall make available to MCE any revisions to Recurve's program theory and logic model ("PTLM") and results from its quality assurance procedures, and comply with all MCE EM&V requirements, including reporting of progress and evaluation metrics.

#### **22. FINANCIAL STATEMENTS:**

Recurve 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 Recurve, except as provided by law and to the extent provision to the CPUC may be required from time to time under confidentiality procedures, where applicable.

#### **23. QUALITY ASSURANCE PROCEDURES**

Recurve shall comply with the following Quality Assurance Procedures: (i) industry standard best practices; and (ii) procedures that ensure Program functionality, customer satisfaction, and that the minimum qualifications are satisfied.

#### **24. COORDINATION WITH OTHER PROGRAM PARTICIPANTS:**

Recurve shall coordinate with other Program participants, including investor-owned utilities and local government agencies authorized by the CPUC to implement CPUC-directed energy efficient programs, administering energy efficiency programs in the same geographic area as MCE. These other Program participants include: Pacific Gas and Electric Company and Bay Area Regional Energy Network. The CPUC may develop further rules related to coordination between Program participant in the same geographic area, and any participant is required to comply with such rules.

#### **25. 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.

#### **26. COMPLETE AGREEMENT:**

This Agreement, together with any attached Exhibits and the MCE Non-Disclosure Agreement, 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.

#### **27. 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.

**28. SURVIVAL:**

The Parties' obligations under Sections 4,10, 11, 14, 15, 16.5, 17, 18, 19, 20, 21 shall survive the Termination of this Agreement.

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

**APPROVED BY**

**Marin Clean Energy:**

**CONTRACTOR:**

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

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

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

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

Chairperson

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

**MODIFICATIONS TO ENERGY EFFICIENCY STANDARD SHORT FORM**

☒ **Standard Short Form Content Has Been Modified**

**List sections affected:** Sections 1, 2, 3, 4, 5, 6, 8, 9, 10; *Standard Form Section 11: Work Product was omitted and shifted numbering for all following sections;* **Section 11: Termination** (previously Section 12 changes throughout), **Section 12: Amendment** (previously 13 – changes throughout); **Section 13: Assignment of Personnel** (previously 14 – changes throughout); **Section 14: Governing Law** (previously 15 – no change); **Section 15: Disputes** (previously 16 – no change); **Section 16: Representations, Warranties, Indemnification** (previously 17 – changes throughout); **Section 17: No Recourse Against Constituent Members** (previously 18 – no change); **Section 18: Compliance with Laws** (previously 19 – no change); **Section 19: Invoices, Notices** (previously 20 – no change); **Section 20: Acknowledgement of Exhibits** (previously 21 – changes throughout); **Section 21: Data Collection and Ownership Rights** (previously 22 – changes throughout); *Standard Form Section 23 Workforce Standards was omitted and further shifted number for all following sections;* **Section 22: Financial Statements** (previously 24 – no change); **Section 23: Quality Assurance** (previously 25 – changes throughout); **Section 24: Coordination with Program Administrators** (previously 26 – change to coordination with Program Participants); *Standard Form Sections 27 and 28 (Access to Customer Sites and Measurement Verification Requirements, respectively) were omitted and further shifted numbering for all following sections;* **Section 25: Severability** (previously 29 – no change); **Section 26: Complete Agreement** (previously 30 – minor change to add NDA); **Section 27: Counterparts** (previously 31 – no change); **Section 28: Survival** was added.

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

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



## **EXHIBIT A**

### **SCOPE OF SERVICES**

Recurve will provide the following Services as requested and directed by MCE Customer Programs staff, up to the maximum fee allowed under this Agreement.

#### **Services related to the EE Program:**

- 1) Recurve shall manage the EE Program;
- 2) Recurve shall provide third-party EE Program management by:
  - a) Contracting with Aggregators who will develop DFPs or portfolios of DFPs pursuant to the terms of the FPA (attached hereto as Exhibit A-1).
  - b) Being responsible for managing operational EE Program functions, including but not limited to:
    - i) Recruiting and qualifying Aggregators, including by ensuring the requirements set forth in Exhibit 1 (attached hereto as Exhibit 1) to the FPA (attached hereto as Exhibit A-1) are met, which Aggregators (and any applicable subcontractors thereto) will deliver DFPs under the requirements of the EE Program;
    - ii) Continuing to provide all necessary content to MCE to include in the Commercial Program Implementation Plan ("CPIP") as applicable;
    - iii) Collecting, storing, and, upon oral or written request by MCE, promptly sharing with MCE all DFP and programmatic data, including but not limited to DFP costs, Energy Savings forecasts ("Energy Savings" defined as the annual/first year reduction in kWh or therms over the baseline year, credited to a specific intervention or set of interventions at a DFM Participant's facility), measure lists, and enrollment dates;
    - iv) Developing and implementing the terms and conditions of EE Program operation, including DFP and end users of DFPs ("DFM Participant") eligibility rules, access to incentive budgets, Measurement & Verification ("M&V") plans, and Quality Assurance ("QA") requirements;
    - v) Completing and enrolling applicable DFPs in the EE Program, aggregating the portfolios of DFPs, calculating EE Program energy savings for each DFP, and collecting all necessary data for EE Program infrastructure;
    - vi) Defining and implementing a process for validating forecasts of first year NMEC savings provided by Aggregators, which validation process shall be described in the applicable section of MCE's CPIP;
    - vii) Establishing coordination protocols for Aggregators when multiple Aggregators are serving the same or similar DFM Participant groups or are otherwise in competition, if necessary;
    - viii) Adhering to MCE branding and marketing requirements when requested by MCE, and consistently incorporating MCE feedback and guidance pertaining to customer relationship management.
  - c) Managing the allocation of incentive budgets among the Aggregators in accordance with the CPIP by ensuring that DFM Participant impacts and delivered benefits are fully optimized within budget availability, and by ensuring that sufficient incentive funds are available for all DFPs enrolled through FPAs.
  - d) Preparing and verifying Aggregator invoices and providing such invoices to MCE on a timely basis and, if requested by MCE, providing MCE with supporting documentation verifying the invoice amount.
- 3) Recurve shall report NMEC savings to MCE by:
  - a) Adhering to the "Rulebook for Programs and DFPs Based on Normalized Metered Energy Consumption, Version 2.0, Release Date: January 7, 2020" ("Rulebook")<sup>1</sup> in the management of MCE's Commercial population-level NMEC Program. Recurve shall be responsible for tracking the publication of any updates or new versions of the Rulebook and shall ensure utilize, and ensure that all Aggregators utilize, the updated or new versions once released.
    - i) As defined in the Rulebook, "Claimable Savings" (or "Claimed Savings", or "Savings Claims") means "the savings reported by Program Administrators to the Commission prior to formal evaluation, measurement, and verification (EM&V)."<sup>2</sup>
    - ii) "Payable savings" as defined in the Rulebook, are "the savings determined via the method and calculation software described in a program's M&V Plan which constitute the basis of payments between the Program Administrator and Implementer(s). Payable savings determinations may differ from claimable savings in that payable savings may account differently for net-to-gross determinations, non-routine events and outliers, and/or other similar considerations."<sup>3</sup>
  - b) With respect to "Claimable Savings," within one year plus 60 days after completion of each DFP, Recurve shall provide verified data, completed NMEC savings assessments, and supporting

<sup>1</sup> Rulebook for Programs and DFPs Based on Normalized Metered Energy Consumption Version 2.0 Release Date: 7 January, 2020 (hereafter, "Rulebook"). Available at: <https://www.cpuc.ca.gov/general.aspx?id=6442456320>.

<sup>2</sup> See Rulebook, page 21.

<sup>3</sup> See Rulebook, page 23.

- materials, including auditable meter-level records of calculations, to MCE for the purposes of supporting MCE's Savings Claims filings with the CPUC and any other governing authorities as may be required. Savings Claim methodology will be specified in the CPIP filed by MCE with the CPUC prior to program launch or in other official documentation.
- c) With respect to payable energy savings Recurve shall:
    - i) Incorporate payable energy savings per the Implementation Plan;
    - ii) Report verifiable payable energy savings to MCE for the purpose of invoicing and paying Aggregators;
    - iii) Create reproducible methodology for assigning payments to Aggregators where deviations from standard methodology may be allowed in a specific M&V plan attached to the FPA and produce such methodology to MCE.
  - 4) Recurve shall provide EE Program administrative support by:
    - a) Contributing, as requested by MCE, to the development and update of MCE's: CPIP; Program M&V plan; and Annual Budget Advice Letter ("ABAL"), each to be submitted to the CPUC;
    - b) Annually providing MCE with cost effectiveness forecasts and budget requests that rely on and incorporate the primary measure load shape from CPUC's Database of Energy Efficiency Resources or approved work papers for the forecasted potential to support MCE's ABAL;
    - c) Providing MCE with a M&V Report, generated at the close of each year, which will demonstrate verifiable consistency with the Program's M&V Plan;
    - d) Supporting MCE's preparation of Savings Claims (quarterly and annually) through the development of blended load shapes post-intervention;
      - i) Specifically, by select measure load shapes that best reflect the actual savings load shape for a project or portfolio of projects;
    - e) Supporting MCE or CPUC-led EM&V studies or program evaluations by collecting and submitting project, DFM Participant, and program-level data;
      - i) Specifically, by providing good faith support and coordination with other Program Administrators that offer or intend to offer population-level NMEC programs within MCE's service area or adjacent service areas;
    - f) Providing MCE and/or the CPUC with access to auditable records for regulatory Savings Claims or evaluations;
    - g) Providing Quality Assurance by providing, at minimum, the following documents and information to MCE:
      - i) Baseline annual consumption amounts for each DFP;
      - ii) Anticipated Energy Savings;
      - iii) Technology measures or other energy efficiency improvements identified for installation.
  - 5) EE Program Scope Assumptions and Understandings:
    - a) MCE is not a party to the FPAs with Aggregators.
    - b) Recurve is authorized to modify the form of FPA used with specific Aggregators only upon MCE's prior written consent to any such modification, including modification to any FPA addendum or exhibit.
    - c) MCE is authorized to review each Measurement and Verification Plan (M&V Plan), Quality Assurance Plan (QA Plan) and Operation and Maintenance Plan (O&M Plan). Modification of any M&V Plan that includes payment terms shall require MCE's prior written consent.
    - d) Unless otherwise agreed to in writing by both Parties, MCE shall be responsible for issuing payments to Aggregators for undisputed invoiced amounts.
    - e) All necessary DFP and DFM Participant data to be collected shall be outlined in the CPIP.
    - f) Parties acknowledge that Recurve is not responsible for submitting MCE's CPIP to the California Energy Data and Reporting System.
    - g) Energy savings and population-level NMEC rules are defined by the Rulebook.
    - h) Updated or new versions of the Rulebook shall apply to this Agreement and be used by MCE and Recurve once released.

**Services related to the PF Program:**

- 1) Recurve shall manage the PF Program;
- 2) Recurve shall provide third-party PF Program management by:
  - a) Contracting with Aggregators who will develop DFPs or portfolios of DFPs pursuant to the terms of the PF FPA Addendum (attached hereto as Exhibit A-2).
  - b) Being responsible for managing operational PF Program functions, including but not limited to:
    - i) Recruiting and qualifying Aggregators, including by ensuring the requirements set forth in PF FPA Addendum (attached hereto as Exhibit A-2) are met, which Aggregators (and any applicable subcontractors thereto) will deliver DFPs under the requirements of the Program;
    - ii) Propose and provide all necessary content to MCE to include in the Demand FLEXmarket Program Plan ("Program Plan") within 30 days of execution of this Agreement;
    - iii) Collecting, storing, and, upon oral or written request by MCE, promptly sharing with MCE

- all DFP and programmatic data, including but not limited to DFP costs, Demand Flexibility forecasts (“Demand Flexibility” defined as the daily reductions in kWh during the Program’s defined peak hours, or the day-ahead signaled demand reduction on event days; “event days” to be defined in the Program Plan) over the measured baseline, credited to a specific intervention or set of interventions at a DFM Participant’s facility), intervention strategies, and enrollment dates;
  - iv) Developing and implementing the terms and conditions of PF Program operations within the Program Plan, including DFP and end users of DFPs (“DFM Participant”) eligibility rules, Program payments to aggregators as outlined in Exhibit B, access to PF Program Funding (as defined in Exhibit B), Measurement & Verification (“M&V”) plans, and Quality Assurance (“QA”) requirements as applicable;
  - v) Completing and enrolling DFPs in the PF Program, aggregating the portfolios of DFPs, calculating PF Program energy savings for each DFP, and collecting all necessary data for Program infrastructure;
  - vi) Establishing coordination protocols for Aggregators when multiple Aggregators are serving the same or similar DFM Participant groups or are otherwise in competition, if necessary;
  - vii) Define a process and protocol within the Program Plan to collect and account for dual participation, provided that data is available;
  - viii) Adhering to MCE branding and marketing requirements when requested by MCE, and consistently incorporating MCE feedback and guidance pertaining to customer relationship management.
  - c) Managing the allocation of incentive budgets among the Aggregators in accordance with the Program Plan by ensuring that DFM Participant impacts and delivered benefits are fully optimized within budget availability, and by ensuring that sufficient incentive funds are available for all DFPs enrolled through FPAs, or that Aggregators are aware of limitations in PF Program Funding as defined in Exhibit B.
    - i) The total budget for PF Aggregators in the summer of 2021 is capped at \$2,000,000. Overall payments made to Aggregators by MCE will be managed by Recurve to ensure commitments do not exceed the total available budget for the PF Program.
  - d) Preparing and verifying Aggregator invoices and providing such invoices to MCE on a timely basis and, if requested by MCE, providing MCE with supporting documentation verifying the invoice amount.
- 3) Recurve shall report NMEC savings to MCE by:
- a) Following the CalTRACK 2.0 hourly methods for the computation of hourly baselines, counterfactuals, and savings;<sup>4</sup>
  - b) Utilizing the OpenEEmeter open source python codebase for the execution of CalTRACK methods;
  - c) Conducting comparison group sampling via the methods described in the DOE report “Comparison Groups for the COVID Era and Beyond”;<sup>5</sup>
  - d) Utilizing GRIDmeter open source code for the execution of comparison group sampling methods
  - e) Conducting the savings adjustment calculations associated with the comparison group in accordance to the percent difference of differences approach detailed in chapter 4 of “Comparison Groups for the COVID Era and Beyond”;<sup>6</sup>

For cases in which demand response savings need to be parsed from EE/load shifting savings due to the presence of a separate program demand response event, the following procedure will be followed:

For both treatment and comparison groups:

1. Develop standard CalTRACK Hourly baseline model;
2. Project this hourly baseline model forward after the program intervention as the “EE counterfactual”;
3. In the reporting period (post program intervention), develop a second hourly model utilizing hourly data from the 45 days before and 15 days after the event.<sup>7</sup> In this “DR Baseline” model, Recurve will blackout (i.e., not include) the hours of any DR events;
4. For non-event hours, load-shifting+efficiency savings are determined by differencing the observed meter readings from the EE counterfactual;
5. For event hours, load-shifting+efficiency savings are determined as the difference between the EE counterfactual and the DR Baseline model;
6. For event hours, demand response savings are determined as the difference between the observed meter readings and the DR Baseline model;
7. Total event period savings are determined as the sum of load-shifting+efficiency and demand response savings;
8. load-shifting+efficiency savings will be automatically assigned as 0 when the EE counterfactual is lower than the DR baseline.

- 4) Recurve shall provide PF Program administrative support by:

<sup>4</sup> The CalTRACK methods are fully specified and publicly available at [www.caltrack.org](http://www.caltrack.org)

<sup>5</sup> Available at: [https://grid.recurve.com/uploads/8/6/5/0/8650231/recurve\\_comparison\\_group\\_methods\\_final\\_report\\_2.pdf](https://grid.recurve.com/uploads/8/6/5/0/8650231/recurve_comparison_group_methods_final_report_2.pdf).

<sup>6</sup> See fn 5.

<sup>7</sup> If empirical testing shows that other baseline time periods are preferable then these measurement periods may be changed. Recurve will present any modifications to MCE for written approval in such cases.

- a) Contributing, as requested by MCE, to the development and update of MCE's Program Plan and Program M&V plan;
  - b) Providing a monthly report of Demand Flexibility impacts, as well as access to a PF Program dashboard that tracks Aggregator enrollment, PF Program DFP enrollment, flexibility impacts, and payments;
  - c) Support communication of a day-ahead signaled prices for Demand Flexibility on event days ("event days" to be defined in Program Plan);
  - d) Providing MCE with a Program Report, generated at the close of each summer (June – September), which will demonstrate verifiable consistency with the PF Program Plan and Program M&V Plan, and summarize performance results and recommendations for program improvement;
  - e) Supporting EM&V studies or program evaluations by collecting or facilitating the collection of project, DFM Participant, and Program-level data;
    - i) Specifically, by providing good faith support and coordination with other PF Program Administrators that offer or intend to offer Demand Flexibility or Demand Reduction programs within MCE's service area or adjacent service areas;
  - f) Providing MCE and/or the CPUC with access to auditable records for regulatory impact claims or evaluations;
  - g) Providing Quality Assurance by providing, at minimum, the following documents and information to MCE:
    - i) Baseline annual consumption amounts for each DFP;
    - ii) Anticipated Flexibility Impacts;
    - iii) To be defined in the Program Plan, technology measures or other flexibility strategies depending upon data availability from aggregator(s).
- 5) PF Program Scope Assumptions and Understandings:
- a) MCE is not a party to the FPAs with Aggregators.
  - b) Recurve is authorized to modify the form of PF FPA used with specific Aggregators only upon MCE's prior written consent to any such modification, including modification to any FPA exhibit or addendum.
  - c) MCE is authorized to review each Measurement and Verification Plan (M&V Plan), Quality Assurance Plan (QA Plan) and Operation and Maintenance Plan (O&M Plan). Modification of any M&V Plan that includes payment terms shall require MCE's prior written consent.
  - d) Unless otherwise agreed to in writing by both Parties, MCE shall be responsible for issuing payments to Aggregators for undisputed invoiced amounts.
  - e) All necessary DFP and DFM Participant data to be collected shall be outlined in the PF Program Plan. Updated or new versions of the Rulebook shall apply to this Agreement and be used by MCE and Recurve once released.

**EXHIBIT A-1**  
**Flexibility Purchase Agreement**

**THIS FLEXIBILITY PURCHASE AGREEMENT** (the "Agreement") is made by and between \_\_\_\_\_ ("Aggregator"), a \_\_\_\_\_ with its principal place of business located at \_\_\_\_\_, and Recurve Analytics, Inc., ("Recurve"), a Delaware corporation with its principal place of business located at 364 Ridgewood Ave., Mill Valley, CA 94941. This Agreement is effective on \_\_\_\_\_ ("Effective Date"). Recurve and Aggregator are each individually referred to herein as a "Party" and collectively as the "Parties."

**RECITALS:**

**WHEREAS**, Aggregator will develop one or more portfolios ("Portfolios") of demand flexibility projects that shape and reduce load (the "DFPs");

**WHEREAS**, Recurve has entered into one or more Demand Flexibility Marketplace Contracts, or similar agreements (each a "DFM Contract") with one or more utilities and/or load serving entities ("LSE"), pursuant to which Recurve has agreed to administer a Demand Flexibility Marketplace (each a "DFM") that complies with all applicable regulations ("Regulations") as set by entities having jurisdiction over LSE ("Regulators"), pursuant to which LSE will deliver gas and/or electricity to end users of the DFPs ("DFM Participant"), and Aggregator will receive payments from LSE (the "Flexibility Payments") for flexibility savings realized by LSE through the DFPs; and

**WHEREAS**, Aggregator and Recurve wish to enter into this Agreement to memorialize the rights and responsibilities of Recurve, on its own behalf and on behalf of LSE, and of Aggregator under each DFM.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following:

**1. Demand Flexibility Marketplace Agreements.** For each DFM in which Aggregator will participate hereunder, Recurve and Aggregator shall adhere to the DFM Standards and Regulations (the "Standards"), as provided in Exhibit 1, and shall develop the following plans, in addition to any other plan required by applicable Regulations, the terms and conditions of which shall comply with all applicable Regulations, and such plans will be specific to the applicable DFM and LSE (each, a "DFM Plan" and collectively, the "DFM Plans");

- 1.1. Measurement and Verification Plan** (the "M&V Plan");
- 1.2. Quality Assurance Plan** (the "QA Plan");
- 1.3. Operation and Maintenance Plan** (the "O&M Plan");
- 1.4. Implementation Plan**;

All DFM Plans shall be subject to LSE review and approval, including all amendments or revisions thereto. In the event of a conflict between the terms of this Agreement and the terms of any DFM Plan, the terms of this Agreement will govern. For each DFM, Recurve and Aggregator will enter into additional DFM Plans, beyond those listed above, if required by the applicable Regulations, by LSE, or by mutual consent of the Parties. One or more of the DFM Plans listed above may be omitted if permissible per the Regulations and with the written consent of both LSE and Recurve.

**2. Aggregator Responsibilities.**

- 2.1.** On a monthly basis, or more frequently as may reasonably be requested by Recurve, Aggregator shall provide to Recurve documentation as necessary for Recurve to validate Aggregator's forecasted future energy savings. Energy savings are defined as the annual (first year) reduction in kWh or therms over the baseline year, credited to a specific intervention or set of interventions at a DFM Participant's facility ("Energy Savings").
- 2.2.** Aggregator shall promptly provide to Recurve or LSE, or as directed by Recurve, any additional information, data, certifications or the like as may be required by LSE and any Regulators, the DFM, or the DFPs, as the case may be.
- 2.3.** Aggregator shall keep and maintain on a current basis full and complete documentation and accounting records pertaining to the DFM and to each DFP (collectively, the "Records") for at least five (5) years from the date of expiration or termination of this Agreement. During the Term of this Agreement (as defined in Section 4) and for the five (5) year period following the Term, Recurve and LSE shall have the right, during regular business hours, to review and audit all Records. Any review or audit may be conducted on Aggregator's premises or, at Recurve's option, Aggregator shall provide to Recurve all Records within fifteen (15) days after receipt of written notice from Recurve. Aggregator 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 LSE based on undisputed audit findings.
- 2.4.** Aggregator shall comply at all times during the Term of this Agreement with the DFM Plans, any and all federal, state and local laws, regulations, orders, ordinances, permitting requirements and resolutions, including without limitation, Regulations, all Regulator policies and guidance for energy efficiency programs applicable to the DFM and the DFPs, all applicable building codes and other requirements of local authorities having jurisdiction. Aggregator shall comply with and timely cooperate with all Regulator directives, activities, and requests regarding the DFM and DFP evaluation, measurement and verification ("EM&V"). For the avoidance of doubt, it is the responsibility of Aggregator to be aware of all Regulator requirements

applicable to the DFM Plans and to ensure Aggregator and Subcontractor compliance. Aggregator shall also comply with all applicable requirements of the applicable LSE, as described in this Agreement, the DFM Plans, or any other attachments.

- 2.5. Aggregator hereby represents and warrants that all data and estimations of forecasted future Energy Savings that are provided by Aggregator to Recurve pursuant to this Agreement or as part of the DFM shall be made in good faith, shall be true and accurate to the best knowledge of Aggregator, and shall be subject to verification at the request of Recurve and/or LSE. Aggregator agrees that Recurve may require any individual employed by or acting as agent or subcontractor to Aggregator who provides such data and estimations to certify in writing as to the accuracy thereof and to provide documentation supporting any such certification to Recurve and/or LSE.
- 2.6. Quality Assurance. Aggregator shall comply with quality assurance procedures including but not limited to: (i) industry standard best practices and (ii) procedures that ensure DFM functionality, DFM Participant satisfaction and that all workforce standards are satisfied.
- 2.7. If Aggregator or any employee, officer, member, agent or subcontractor of Aggregator (each, an "Aggregator Party," and, collectively, the "Aggregator Parties") performs work on the property of a DFM Participant under a DFP, the DFM or this Agreement, such Aggregator Party shall, prior to commencing such Work, obtain and maintain, at its or Aggregator's sole cost and expense and at all times during this Agreement, all bonding requirements of the California Contractors State License Board ("CSLB"), as may be applicable. Each Aggregator Party that performs Work on the property of a DFM Participant shall also maintain any payment and/or performance assurances as may be required by the DFM Plans.
- 2.8. Standard of Performance. Aggregator shall deliver the Work under the DFM in a timely, professional, good and workmanlike and ethical manner and in accordance with best energy industry practices. Aggregator shall follow Aggregator-provided performance specifications and installation requirements.
- 2.9. Permits. Aggregator shall obtain, maintain, and obey any and all permits required by applicable law to install and maintain the DFP. For the avoidance of doubt, the Parties expressly agree that Aggregator will obtain all required permits from the authority having jurisdiction for each DFP.

### 3. Recurve Responsibilities.

- 3.1. Recurve shall use commercially reasonable efforts to confirm the DFM eligibility of Aggregator and the DFPs and shall notify Aggregator of any missing information or issues identified by Recurve; provided, however, that the foregoing shall not relieve or excuse Aggregator of or from any of its obligations under this Agreement, including without limitation its obligations under Section 2 above.
- 3.2. Recurve shall calculate and verify payable Energy Savings in accordance with the M&V Plan and will quantify and verify Flexibility Payments. The calculation of the Flexibility Payment for any DFP will be based on the M&V Plan in place at the time of Project Completion, as defined in the Implementation Plan, for the applicable DFP. Recurve's calculations under this Section 3.2, subject to review and verification by LSE, shall be final and binding upon the Parties.
- 3.3. Recurve will maintain each DFM dashboard summarizing and tracking DFP savings and portfolio savings for each DFM ("Dashboard") and will promptly provide Aggregator and LSE with access to the applicable Dashboard.

### 4. TERM OF AGREEMENT:

This Agreement shall commence on the Effective Date, and shall continue, unless terminated earlier in accordance with the terms of this Agreement, until the first anniversary of the Effective Date (the "Initial Term"). Following the end of the Initial Term, this Agreement will renew for successive one-year periods unless a Party notifies the other in writing of its intent not to renew this Agreement at least 90 days prior to the end of the then-current term (each such renewal term, together with the Initial Term, is referred to herein as the "Term"). Certificate(s) of insurance must be current on the Effective Date and at all times during the Term of this Agreement, and if scheduled to lapse prior to the expiration date of this Agreement, must be automatically updated at least thirty (30) days prior to the expiration of each policy term, at all times as a condition precedent to the making of any Flexibility Payment to Aggregator.

### 5. INSURANCE AND SAFETY:

**5.1 INSURANCE.** For each DFM, 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. The general liability policy shall be endorsed naming each of Recurve and LSE and their employees, officers and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to and verified by Recurve within 15 days after the Effective Date. Each certificate shall provide for thirty (30) days advance written notice to Recurve and LSE 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.

Nothing herein shall be construed as a limitation on Aggregator's obligations under Section 13 of this Agreement to indemnify, defend and hold Recurve and LSE harmless as more particularly set forth therein.

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

Aggregator shall provide and maintain the insurance policies set forth in Exhibit 1 attached hereto.

**5.2 SAFETY.** Aggregator shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the implementation of the DFPs. Aggregator shall monitor the safety of the job site(s) for all projects included in the DFPs to comply with all applicable federal, state, and local laws, and to follow safe work practices.

**5.2.1 BACKGROUND CHECKS.** Aggregator shall ensure that any of its personnel having or requiring access to LSE's assets, data, premises or property ("Covered Personnel") shall have successfully passed background screening on such individual prior to receiving access, which screening may include, among other things to the extent applicable to the Work, 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 DFP.

To the extent required by applicable law, Aggregator shall maintain documentation related to such background and drug screening for all Covered Personnel and make it available to Recurve and/or LSE for audit if required pursuant to the audit provisions of this Agreement.

To the extent required by applicable law, Aggregator shall notify Recurve if any of its Covered Personnel is charged with or convicted of a Serious Offense during the Term of this Agreement. Aggregator will also immediately prevent that employee, representative, or agent from performing any Work.

**5.2.2. FITNESS FOR DUTY.** Aggregator 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. Aggregator shall have policies in place that require its 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.

## **6. NONDISCRIMINATORY EMPLOYMENT:**

Aggregator shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Aggregator and/or any permitted subcontractor understands and agrees that Aggregator 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.

## **7. SUBCONTRACTING:**

If Aggregator hires a subcontractor in connection with this Agreement, the DFM and/or any DFP ("Subcontractor"), Aggregator shall ensure compliance by Subcontractor with all applicable terms and conditions of this Agreement, including, but not limited to the following:

- 7.1. Subcontractor shall comply with and be bound by all Aggregator representations, covenants, warranties and obligations in Sections 1, 2, 5.2, 6, 7, 9.7, 10, 12, 13, 14, 15, 16, 17, 18, 19, and 20 and 23 hereof and Exhibit 1 attached hereto.
- 7.2. Subcontractor shall comply with the terms of Section 5.1 above, including, but not limited to providing and maintaining insurance coverage(s) identical to what is required of Aggregator under this Agreement, excluding privacy and cyber insurance shall name Aggregator, Recurve and LSE as additional insureds under such insurance policies. Aggregator shall collect, maintain, and promptly forward to LSE, current evidence of such insurance provided by its Subcontractor. Such evidence of insurance shall be included in the Records, and is therefore subject to audit as described in section 2.3.
- 7.3. Subcontractor shall provide the representations, warranties and covenants of Aggregator contained in Section 13 hereof as of the date of its entry into a subcontract with Aggregator under this Agreement and at all times during the term of such subcontract.
- 7.4. Subcontractor shall be contractually obligated to indemnify Recurve and LSE pursuant to the terms and conditions of Section 13 hereof.
- 7.5. Subcontractors shall not be permitted to further subcontract any obligations under this Agreement.

Nothing contained in this Agreement or otherwise stated between the Parties shall create any legal or contractual relationship between LSE or Recurve, on the one hand, and any Subcontractor, contractor or agent of Aggregator on the other hand. Aggregator's obligation to pay its Subcontractors is an independent obligation from LSE's obligation to make payments to Aggregator. As a result, neither LSE nor Recurve shall have any obligation to pay or to enforce the payment of any moneys to any Subcontractor, contractor or agent of Aggregator.

## **8. ASSIGNMENT:**

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

## **9. TERMINATION:**

- 9.1. Upon receipt of written notice from Recurve that Aggregator has materially breached any term of this Agreement or violated any ordinance, regulation or other law which applies to Aggregator's performance hereunder, Aggregator shall have ten (10) business days to cure such breach or violation to Recurve's sole satisfaction. If Aggregator fails to timely cure such breach, Recurve may terminate this Agreement by giving five (5) business days' written notice to Aggregator. If Recurve terminates this Agreement pursuant to this Section 9.1, Aggregator shall not be entitled to be paid the Flexibility Payments for Energy Savings for DFPs approved prior to the date of termination; provided, however, if the Aggregator can demonstrate to LSE's reasonable written satisfaction within three months of the date of Recurve's termination that any particular DFP was not adversely affected by Aggregator's breach or violation under this Section 9.1, then Aggregator shall be entitled to be paid the Flexibility Payments for Energy Savings achieved for one year past the project approval date for that DFP pursuant to Exhibit B.
- 9.2. Notwithstanding Section 9.1 above, Aggregator shall be excused for failure to perform its obligations hereunder (other than any obligation to pay money, or with respect to Aggregator's insurance requirements) if it is prevented from doing so by acts of God, strikes, labor disputes, pandemics or epidemics, or other forces over which Aggregator has no control, but only for so

long as Aggregator is actually so prevented from performing, and only provided Aggregator provides prompt written notice to Recurve of same.

- 9.3. Recurve may terminate this Agreement for any reason by giving sixty (60) calendar days' prior written notice to Aggregator. Notice of termination shall be by written notice to Aggregator and shall be sent by registered mail or by email to the email address listed in Section 15 Notices.
- 9.4. In the event of termination not the fault of Aggregator, Aggregator shall be paid the Flexibility Payments for Energy Savings achieved for one year past project approval date for any DFPs approved prior to the date of termination in accordance with the terms of this Agreement and the respective DFM Agreements so long as proof of required insurance is provided for the periods covered in the Agreement. Notwithstanding anything contained in this Section 9 or elsewhere in this Agreement to the contrary, in no event shall Recurve or LSE be liable for lost or anticipated profits or overhead, or for any incidental, special, indirect, punitive or consequential damages relating to or arising from this Agreement.
- 9.5. This Agreement shall be subject to changes, modifications, or termination by order or directive of the Regulators. Regulators may from time to time issue an order or directive relating to or affecting any aspect of this Agreement, in which case Recurve shall have the right to change, modify or terminate this Agreement in any manner to be consistent with such Regulations.
- 9.6. Recurve may terminate this Agreement without notice if funding for this Agreement is reduced or eliminated by LSE, by the third-party funding source, or by a Regulator, or if DFM Contract is terminated for any reason.
- 9.7. Upon termination of this Agreement by either Party, Aggregator shall vacate the worksite and shall leave materials in a safe and orderly manner, but shall not remove any material, plant or equipment thereon without the written approval of Recurve or LSE.

## **10. GOVERNING LAW AND VENUE:**

This Agreement shall be governed by the internal laws of the State of California, with reference to its conflict of laws principles. In the event of any litigation to enforce or interpret any terms of this Agreement, such action shall be brought in a Superior Court of the State of California located in San Francisco County (or if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in the U.S. District Court for the Northern District of California), and the Parties hereby submit to the exclusive jurisdiction of such courts.

## **11. DISPUTES:**

- 11.1. 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 Aggregator's contract representative and Recurve's contract representative by good faith negotiation efforts shall be referred to [ ] of Recurve and an officer of Aggregator 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 Recurve and Aggregator cannot reach an agreement within a reasonable period of time (but in no event more than 30 calendar days from the date notice of the dispute was delivered), Recurve and Aggregator shall have the right to pursue all rights and remedies that may be available at law or in equity.
- 11.2. If either Party institutes any legal suit, action, or proceeding against the other Party to enforce this Agreement (or obtain any other remedy regarding any breach of this Agreement) the prevailing Party in the suit, action or proceeding is entitled to receive, and the non-prevailing Party shall pay, in addition to all other remedies to which the prevailing Party may be entitled, the costs and expenses incurred by the prevailing Party in conducting the suit, action, or proceeding, including reasonable attorneys' fees and expenses, court costs, administrative costs, disbursements, expert witness fees, investigative fees, and the costs of computerized legal research, even if not recoverable by law (including, without limitation, all fees, taxes, costs, and expenses incident to appellate, bankruptcy, and post-judgment proceedings).

## **12. AGGREGATOR REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION:**

**12.1 LICENSING.** At all times during the Term of this Agreement, Aggregator represents, warrants and covenants that it has and shall obtain and maintain, at its sole cost and expense, all required licenses and registrations required for the installation and operation of the DFPs and the performance of its obligations under this Agreement. Aggregator shall promptly provide copies of such licenses, registrations and verifications to Recurve at the request of Recurve and/or LSE.

**12.2 GOOD STANDING.** At all times during the Term of this Agreement, Aggregator represents and warrants that (a) it is a [ ] **[corporation/limited liability company/partnership]** duly organized, validly existing and in good standing under the laws of the State of [ ], (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 (c) it is and will be duly licensed or qualified to do business and in good standing under the laws of 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.

**12.3 SAFETY.** At all times during the Term of this Agreement, Aggregator continuously represents, warrants and covenants that it shall:

- (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) comply with all applicable Regulations;
- (c) abide by LSE's standard safety program contract requirements as may be provided by Recurve on behalf of LSE to Aggregator from time to time;
- (d) provide all necessary training to its employees, contractors, Subcontractors and agents to ensure fitness for duty 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.

(f) comply with the workforce qualifications, certifications, standards and requirements set forth in this Agreement or in any applicable state, federal or local law or regulation.

(g) complete an industry standard criminal history background check and all sound screening practices for all employees, contractors, Subcontractors or agents of Aggregator. Recurve shall have the right to review, at its discretion, the contents of such background check.

(h) have the technical expertise and capacity to provide the necessary services in connection with each DFM and DFP, including, as applicable according to each DFP:

- LSE bill analysis
- Site assessment
- Storage system sizing calculation and modeling to simulate performance
- Project management
- Project installation and commissioning
- Project operation
- Project verification by a program representative
- Financing assistance to refer potential DFM Participants to relevant and applicable financing opportunities

**12.4 INDUSTRY EXPERIENCE.** Aggregator must have been in business for at least two (2) years prior to the date of executing this Agreement, and shall make the following documents available to Recurve upon Recurve's request:

- Certificate of Incorporation.
- Resumes of Key Personnel.
- Three brief written case studies that demonstrate experience with performing the required Work.

**12.5 FINANCIAL STABILITY.** Aggregator represents that it is an established organization capable of long-term relationships. Aggregator shall be a stable, financially sound business or nonprofit organization. Aggregator shall make available its financial statements and other documentation for Recurve to evaluate Aggregator's creditworthiness/financial condition with respect to potential liabilities.

#### **12.6 INDEMNIFICATION.**

i. Aggregator agrees to indemnify, defend, and hold Recurve and LSE, and their respective employees, officers, contractors, owners and agents ("LSE Parties"), harmless from any and all losses, damages, costs, expenses and liabilities including, but not limited to, litigation and other dispute resolution costs, and attorney's fees ("Claims"), arising from or in connection with (a) any act or omission of an Aggregator Party in connection with this Agreement, the DFP or work performed under a DFM; (b) any and all Claims relating to any products installed or services performed during the installation, operation or maintenance of any DFP, or otherwise in connection with any DFP; or (c) any and all fines, penalties, or similar imposed by any governmental authority in connection with any DFP or this Agreement generally.

ii. Recurve agrees to indemnify, defend and hold Aggregator, and Aggregator's employees, officers, contractors, owners and agents ("Aggregator Parties"), harmless from any and all Claims arising from or in connection with any act or omission of any employee, officer, member, agent or subcontractor of Recurve, respectively (a) in connection with this Agreement, the DFP or work performed under a DFM, or (b) resulting in fines, penalties or similar imposed by any governmental authority in connection with any DFP or this Agreement.

**12.7 WORKFORCE DIVERSITY.** Aggregator shall meet or exceed the requirements of LSE's workforce diversity policies.

### **13. LIMITATIONS ON LIABILITY.**

**13.1.** Neither Regulators, Aggregator, Recurve, nor any LSE shall be liable for any incidental, special, indirect, punitive or consequential damages relating to or arising from this Agreement except with respect to any Aggregator liabilities to LSE pursuant to Section 12.6.

**13.2.** Aggregator further agrees to release and hold Recurve harmless from any failure by any LSE to pay the Flexibility Payments. Aggregator acknowledges and agrees that Recurve is entering into this Agreement only on account of its administration of the DFMs on behalf of each respective LSE, and not as a party purchasing flexibility or obligated to make any Flexibility Payments to Aggregator, and that absent any fraud, gross negligence or willful misconduct of Recurve in connection with its performance hereunder, Recurve shall have no liability to Aggregator. For the avoidance of doubt, any and all Flexibility Payments earned by Aggregator shall be paid to Aggregator directly by the applicable LSE pursuant and subject to all applicable terms and conditions of the applicable DFM, and not by Recurve, and Recurve has and shall have no obligation whatsoever to make any Flexibility Payments to Aggregator. Aside from its obligation to pay Flexibility Payments, LSE Parties shall not be liable to Aggregator Parties for Claims arising out of an DFP or the DFM. Aggregator is on notice of, and hereby specifically and expressly waives, the provisions of California Civil Code § 1542, which provides that a "general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

**14. NOTICES:**

All written notices hereunder shall be given to Recurve at the following location:

Contract Manager:

Address:

Email Address:

Telephone No.:

Notices shall be given to Aggregator at the following address:

Aggregator:

Address:

Email Address:

Telephone No.:

**15. DATA COLLECTION AND OWNERSHIP REQUIREMENTS:**

**15.1. DEFINITION OF "RECURVE DATA".** "Recurve Data" shall mean all data or information provided by or on behalf of Recurve, including but not limited to, energy usage data relating to, of, or concerning, provided by or on behalf of any DFM Participants, LSE, or Regulators; all data or information input, information systems and technology, software, methods, forms, manuals and designs, transferred, uploaded, migrated, or otherwise sent by or on behalf of Recurve to Aggregator as Recurve may approve of in advance and in writing (in each instance); account numbers, forecasts, and other similar information disclosed to or otherwise made available to Aggregator.

"Confidential Information" under this Agreement shall have the same meaning as defined in the Non-Disclosure Agreement between the parties dated \_\_\_\_\_.

**15.2. DEFINITION OF "LSE DATA".** "LSE Data" shall mean all data or information provided by or on behalf of LSE, including but not limited to, DFM Participant Personal Information; energy usage data relating to, of, or concerning, provided by or on behalf of any DFM Participant; dashboards; all data or information input, information systems and technology, software, methods, forms, manuals, and designs, transferred, uploaded, migrated, or otherwise sent by or on behalf of LSE to Aggregator as LSE may approve of in advance and in writing (in each instance); account numbers, forecasts, and other similar information disclosed to or otherwise made available to Aggregator. LSE Data shall also include all data and materials provided by or made available to Aggregator by LSE's licensors, including but not limited to, any and all survey responses, feedback, and reports subject to any limitations or restrictions set forth in the agreements between LSE and their licensors.

**15.3. DEFINITION OF "PERSONAL INFORMATION".** "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. Aggregator and Recurve shall comply with all applicable laws, rules, and regulations related to the use, collection, storage, and transmission of Personal Information.

**15.4. LSE DATA SECURITY MEASURES.** Prior to Aggregator receiving any LSE Data, Aggregator shall comply, and at all times thereafter continue to comply, with LSE's applicable data security policies set forth in Exhibit 1. Aggregator must adhere to reasonable administrative, technical, and physical safeguard protocols to protect LSE Data from unauthorized handling, access, destruction, use, modification or disclosure.

**15.5. AGGREGATOR DATA SECURITY MEASURES.** Aggregator 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 Recurve Data and LSE Data against unauthorized or unlawful access, disclosure, alteration, loss, or destruction.

**15.6. RETURN OF DATA.** Within sixty days (60) after this Agreement terminates or expires, and upon Recurve's request, (i) Aggregator will securely destroy all Recurve Data and LSE Data in its possession and certify the secure destruction in writing to Recurve, and (ii) each Party will return (or if requested by the disclosing Party, destroy) all other Confidential Information and property of the other and of LSE (if any), provided that each Party's attorney shall be permitted to retain a copy of such records or materials solely for legal purposes.

**15.7. OWNERSHIP AND USE RIGHTS.**

a) **Ownership of Data.** Unless otherwise expressly agreed to by the Parties, Recurve shall retain all of its rights, title and interest in Recurve Data and LSE shall retain all of its rights, title and interest in the LSE Data.

b) **Definitions:**

1. **Program Intellectual Property.** "Program Intellectual Property" shall mean and include any and all materials, information, analysis or other work product jointly created, prepared, accumulated or developed by Recurve and Aggregator in connection with the DFM, including inventions, processes, templates, documents, drawings, computer applications, designs, calculations, maps, plans, work plans, texts, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual material, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith. Recurve shall retain all right, title and interest, including all related intellectual property rights, in the Program Intellectual Property, and Aggregator shall execute any such documents or take such actions as Recurve may reasonably request to perfect such ownership in the Program Intellectual Property; provided, however, that Recurve shall grant Aggregator an irrevocable, assignable, non-exclusive, fully paid up, worldwide, royalty-free, unrestricted license to use and sublicense others to use, reproduce, display, prepare and develop derivative works, perform, distribute copies of the Program Intellectual Property for the sole purpose of using such Program Intellectual Property for the conduct of Aggregator's business and for disclosure to Regulators for governmental and regulatory purposes related thereto.

2. **Recurve Intellectual Property.** "Recurve Intellectual Property" shall mean and include any and all materials, information, analysis or other work product created, prepared, accumulated or developed solely by Recurve in connection with the DFM, including inventions, processes, templates, documents, drawings, computer applications, designs, calculations, maps, plans, work plans, texts, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual material, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith. As between the Parties, Recurve owns and shall retain all right, title and interest, including all related intellectual property rights, in the Recurve Intellectual Property. Aggregator agrees to execute any such other documents or take other actions as Recurve may reasonably request to perfect Recurve's ownership in the Recurve Intellectual Property.

3. **Aggregator Intellectual Property.** "Aggregator Intellectual Property" shall mean and include any and all materials, information, analysis or other work product created, prepared, accumulated or developed solely by Aggregator in connection with the DFM, including inventions, processes, templates, documents, drawings, computer applications, designs, calculations, maps, plans, work plans, texts, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual material, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith. As between the Parties, Aggregator owns and shall retain all right, title and interest, including all related intellectual property rights, in the Aggregator Intellectual Property. Recurve agrees to execute any such other documents or take other actions as Aggregator may reasonably request to perfect Aggregator's ownership in the Aggregator Intellectual Property.

c) **Aggregator's Pre-Existing Materials.** If, and to the extent Aggregator retains any preexisting ownership rights ("Aggregator's Pre-Existing Materials") in any of the materials furnished to be used to create, develop, and prepare the Program Intellectual Property, Aggregator hereby grants Recurve and LSE, including on behalf of the Regulator for governmental and regulatory purposes, an irrevocable, assignable, non-exclusive, fully paid up, worldwide, royalty-free, unrestricted license to use and sublicense others to use, reproduce, display, prepare and develop derivative works, perform, distribute copies of any intellectual or proprietary property right of Aggregator for the sole purpose of using such Program Intellectual Property for the conduct of Recurve's and LSE's business and for disclosure to Regulators for governmental and regulatory purposes related thereto. The term of such license shall expire upon the expiration or termination of this Agreement. Unless otherwise expressly agreed to by the Parties, Aggregator shall retain all of its rights, title and interest in Aggregator's Pre-Existing Materials. Any and all claims to Aggregator's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the Program Intellectual Property must be expressly disclosed to Recurve on or before the Effective Date.

**15.8. BILLING, ENERGY USE, AND DFP TRACKING DATA.**

a) Aggregator shall comply with and timely cooperate with all Regulations or Recurve directives, activities, and requests regarding the DFM evaluation, measurement, and verification ("EM&V"). For the avoidance of doubt, it is the responsibility of Aggregator to a) be aware of and comply with all Regulations and b) comply with other requirements applicable to DFM as described in this Agreement and all addenda, or as may be reasonably requested by Recurve.

b) Aggregator shall make available to Recurve upon demand, detailed descriptions of the DFM, data tracking systems, baseline conditions, and participant data, including financial assistance amounts.

- c) Aggregator shall make available to LSE any revisions to Aggregator's program theory and logic model ("PTLM") as applicable and results from its quality assurance procedures, and comply with all LSE EM&V requirements, including reporting of progress and evaluation metrics as required by the DFM Plans, or as reasonably requested by the LSE or Recurve.

**16. FINANCIAL STATEMENTS:**

Aggregator shall deliver financial statements on an annual basis or as may be reasonably requested by Recurve and/or LSE 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. Recurve shall keep such information confidential if requested in writing by Aggregator, except as provided by law; additionally, Recurve may provide such information to LSE and to the Regulators under confidentiality procedures, where applicable.

**17. ACCESS TO DFM Participant SITES:**

Aggregator shall be responsible for obtaining any and all access rights from DFM Participants and other third parties to the extent necessary to implement the DFM and to allow for LSE and Regulator employees, representatives, agents, designees and contractors to inspect the DFPs.

**18. PROJECT WARRANTIES:**

Aggregator shall provide standard, best practice installation warranty for the workmanship on each DFP. Aggregator shall provide proof to Recurve that the Aggregator has submitted all warranty registrations for the DFP equipment. Notwithstanding the above, Aggregator shall prosecute manufacturer warranty claims on behalf of the Participant for a period of one year after Project Completion. Any additional warrantied provided by the manufacturer shall be extended to the Participant.

**19. PROJECT COMPLETION:**

Aggregator shall pass all inspections required by any authorities having jurisdiction over the DFP including obtaining all necessary permit, prior to approval by Recurve of Project Completion. Project Completion is defined in the M&V Plan and must be evidenced by receipt of the final invoice provided by the Aggregator to the DFM Participant.

**20. 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.

**21. COMPLETE AGREEMENT; NO WAIVER:**

This Agreement, together with each DFM Agreement entered into between Recurve and Aggregator, and all exhibits and addenda thereto are incorporated herein and constitute the entire agreement between the Parties. No modification or amendment shall be valid unless made in writing and signed by each Party. This Agreement supersedes all prior or contemporaneous negotiations, representations, promises and agreements, whether written or oral, concerning the subject matter hereof. 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.

**22. THIRD PARTY BENEFICIARY:**

Except as set forth in the immediately following sentence, the Parties do not confer any rights or remedies upon any person other than the parties to this Agreement and their respective successors and permitted assigns. The Parties hereby designate LSE as an intended third-party beneficiary of this Agreement, having the right to enforce the provisions of this Agreement in law or equity directly against Aggregator or its Subcontractors the same as if it were a party hereto.

**23. 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.

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

**Recurve Analytics, Inc.:**

**AGGREGATOR:**

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

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

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

**Exhibit A-2**  
**ADDENDUM TO FLEXIBILITY PURCHASE AGREEMENT**

This **Addendum to Flexibility Purchase Agreement**, dated effective as of \_\_\_\_\_, 2021 (the "**Addendum**"), as applicable to the Peak FLEXmarket Program ("PF"), is made by and between \_\_\_\_\_ ("**Aggregator**"), a \_\_\_\_\_ with its principal place of business located at \_\_\_\_\_, and Recurve Analytics, Inc., ("**Recurve**"), a Delaware corporation with its principal place of business located at 364 Ridgewood Avenue, Mill Valley, CA 94941.

**RECITALS:**

**WHEREAS**, Aggregator and Recurve are parties to that certain Flexibility Purchase Agreement dated \_\_\_\_\_ (the "FPA"). Capitalized terms used herein that are not defined will have the meaning given to them in the FPA.

**WHEREAS**, Section 1 of the FPA provides that Recurve and Aggregator shall develop DFM Plans specified in Section 1 (the "Existing DFM Plans"), and Section 1 further provides that Recurve and Aggregator will enter into additional DFM Plans upon mutual consent.

**WHEREAS**, Aggregator and Recurve intend to participate in DFMs that are designed specifically for the Peak DFM, the nature of which requires the Parties to enter into DFM Plans that are different and separate from the DFM Plans currently in place under the FPA (the "DFM Plans").

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Peak DFM Plans**. Aggregator and Recurve shall enter into the Peak DFM Plans attached hereto as Exhibit A, in lieu of the Existing DFM Plans. The Peak DFM Plans will govern all DFMs in which Aggregator and Recurve participate as part of the Peak DFM.
2. **No Other Addendum or Amendment**. This Addendum, including the Peak DFM Plans attached hereto as Exhibit A, together with the FPA, sets forth the entire understanding and agreement of the Parties with respect to the subject matter hereof, and supersedes any and all prior negotiations and agreements between the parties, whether oral or written, with respect to such subject matter. All terms and conditions of the FPA shall remain in full force and effect.

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

**Recurve Analytics, Inc.:**

**AGGREGATOR:**

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

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

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

## **EXHIBIT 1 LSE PROGRAM TERMS AND CONDITIONS**

Where Marin Clean Energy ("MCE") is the applicable LSE, the following additional terms and conditions shall apply to the Agreement:

### **1. Insurance Requirements For Aggregator**

#### **1.1. GENERAL LIABILITY**

Aggregator shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars (\$1,000,000) per occurrence and with a two million dollar (\$2,000,000) aggregate limit. Recurve and LSE each shall be named as an additional insured on the commercial general liability policy, and the Certificate of Insurance shall include an additional endorsement page.

#### **1.2. AUTO LIABILITY**

Where the services to be provided under this Agreement involve or require the use of any type of vehicle by Aggregator in order to perform said services, Aggregator 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).

#### **1.3. WORKERS' COMPENSATION**

Aggregator acknowledges Regulations require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the applicable Labor Code. If Aggregator 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 Recurve within 15 days after the Effective Date.

#### **1.4. PRIVACY AND CYBERSECURITY LIABILITY**

Aggregator shall maintain 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) coverage of at least \$ one million dollars (\$1,000,000) US per occurrence.

### **2. DFM Standards and Regulations**

#### **2.1. Workforce Standards**

**2.1.1.** Aggregator shall comply with the workforce qualifications, certifications, standards and requirements set forth below or established by any applicable law or regulation. Prior to commencement of any Services, once per calendar year, and at any other time as may be requested by MCE or Recurve, Aggregator shall provide, and shall require every Subcontractor to provide all documentation necessary to demonstrate to MCE's or Recurve's reasonable satisfaction that Aggregator Parties have complied with the Workforce Standards.

**2.1.2.** HVAC Standards. For any non-residential project pursuant to this Agreement installing, modifying or maintaining a Heating Ventilation and Air Conditioning ("HVAC") system or component with incentives valued at \$3,000 or more, Aggregator shall ensure that each worker or technician involved in the project, including all of its employees and agents and those of each Subcontractor, meet at least one of the following workforce criteria:

- i. Completed an accredited HVAC apprenticeship;
- ii. Is enrolled in an accredited HVAC apprenticeship;
- iii. Completed at least five years of work experience at the journey level as defined by the California Department of Industrial Relations, Title 8, Section 205, of the California Code of Regulations, passed a practical and written HVAC system installation competency test, and received credentialed training specific to the installation of the technology being installed; or
- iv. Has a C-20 HVAC contractor license issued by the California Contractor's State Licensing Board.

This standard shall not apply where the incentive is paid to any manufacturer, distributor, or retailer of HVAC equipment, unless the manufacturer, distributor, or retailer installs or contracts for the installation of the equipment. For the avoidance of doubt, Aggregator is deemed to be equivalent to manufacturer, distributor or retailer; therefore, the standard shall not apply unless Aggregator installs or contracts for the installation of the equipment.

**2.1.3. Advanced Lighting Controls Standards.** For any non-residential project pursuant to this Agreement involving installation, modification, or maintenance of lighting controls with incentives valued at \$2,000 or more, Aggregator shall ensure that all workers or technicians involved in the project, including those of its Aggregator Parties are certified by the California Advanced Lighting Controls Training Program ("CALTP"). This requirement shall not apply where the incentive is paid to a manufacturer, distributor, or retailer of lighting controls unless the manufacturer, distributor, or retailer installs or contracts for installation of the equipment. For the avoidance of doubt, Aggregator is deemed to be equivalent to manufacturer, distributor or retailer; therefore, the standard shall not apply unless Aggregator installs or contracts for the installation of the equipment.

**2.2. Licensing and/or Certifications.** Each Aggregator represents and warrants that, at all times it is performing the Services, it is properly licensed and/or certified, as required by law, to perform the Work at all times during the term of this Agreement. For avoidance of doubt, any Aggregator Party that is performing work at the property of a DFM Participant shall have and maintain licensure by the California Contractors State License Board ("CSLB"), at all times during the Term of this Agreement. CSLB License numbers must be made available by Aggregator upon request by Recurve or MCE for verification.

**2.3. Quality Assurance.** Aggregator shall comply with Quality Assurance procedures, as they are defined in the CPIP or MCE-Specific Program Plan, including but not limited to: (i) industry standard best practices; and (ii) procedures that ensure DFP functionality, DFM Participant satisfaction, and that Workforce Standards are satisfied. This section is not applicable to DFM's solely in the PEAK DFM (the PF Program).

**2.4. Data Security Measures.** Prior to receiving any MCE Data, and at all times continuing thereafter, Aggregator shall comply with MCE's Data security policies set forth in MCE Policy 009 and MCE's Advanced Metering Infrastructure (AMI) Data Security and Privacy Policy ("Security Measures"). "MCE Data" shall mean all data or information provided by or on behalf of MCE, including but not limited to, DFM Participant Personal Information; energy usage data relating to, of, or concerning, provided by or on behalf of any DFM Participant; all data or information input, information systems and technology, software, methods, forms, manuals, and designs, transferred, uploaded, migrated, or otherwise sent by or on behalf of MCE to Recurve as MCE may approve of in advance and in writing (in each instance); account numbers, forecasts, and other similar information disclosed to or otherwise made available to Recurve. MCE Data shall also include all data and materials provided by or made available to Recurve by MCE's licensors, including but not limited to, any and all survey responses, feedback, and reports subject to any limitations or restrictions set forth in the agreements between MCE and their licensors. MCE's Security Measures and Confidentiality provisions require Aggregator to adhere to reasonable administrative, technical, and physical safeguard protocols to protect MCE's Data from unauthorized handling, access, destruction, use, modification or disclosure.

Additionally, Aggregator shall execute the non-disclosure agreement ("NDA") attached hereto as Exhibit A-3. Subcontractors are not required to execute a NDA but Aggregator shall ensure that any Subcontractor, 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.

Promptly after the FPA terminates or expires (i) Aggregator will securely destroy all MCE Data in its possession and certify the secure destruction in writing to MCE, and (ii) Aggregator will return (or if requested Recurve or MCE, destroy) all other Confidential Information and property of the other (if any), provided that Recurve's attorney shall be permitted to retain a copy of such records or materials solely for legal purposes.

**2.5. Performance Assurance.** Regardless of the specific work provided, Aggregator shall maintain any payment and/or performance assurances as may be requested by Recurve or MCE during the performance of the work.

**2.6. Fitness for Duty.** Aggregator 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. Aggregator shall have, and shall ensure that any Subcontractor shall have, policies in place that require its 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.

- 2.7. Standards of Performance.** Aggregator shall deliver the Work under the DFP in a timely, professional, good and workmanlike and ethical manner as specified in the CPIP.
- 2.8. Attendance at Meetings.** Aggregator's representatives will attend all meetings required by Recurve while the Work, or any part of it, is in progress, or as reasonably requested by Recurve, and will be prepared and authorized to address all matters related to the Work.
- 2.9. No Discrimination; Equal Opportunity Employer.** Aggregator shall be an Equal Employment Opportunity employer committed to the principles of equal employment opportunity. Aggregator shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741-5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Additionally, these regulations require that covered contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, or disability.
- 2.10. Warranties to Participants.** Aggregator shall provide a standard, best practice installation warranty for the workmanship on each DFP. Aggregator shall provide proof to Recurve that the Aggregator has submitted all warranty registrations for the DFP equipment. Aggregator shall prosecute manufacturer warranty claims on behalf of the Participant.
- 2.11. Post-Installation Maintenance and Operation.** Aggregator shall ensure each DFP remains installed, reasonably maintained, and operational, including any and all timely repairs and replacements, for the entire Term. This section is not applicable to Aggregators when Aggregators intend to participate in DFMs that are designed specifically for the PEAK DFM.
- 2.12. Site Access.** Aggregator shall be responsible for obtaining any and all access rights from Participants and other third parties to the extent necessary to perform the Work. Aggregator shall also procure any and all access rights from Participants and other third parties in order for MCE and Recurve employees, representatives, designees, and contractors to access the DFP site and inspect the Work prior to, during, and after installation for the full Term.
- 2.13. Compliance with Laws.** Aggregator shall comply at all times during the Term with any and all federal, state and local laws, regulations, orders, ordinances, permitting requirements and resolutions, including without limitation, 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.
- 2.14. MCE Customer Engagement Protocol.** Aggregators shall comply at all times during the Term with any MCE-provided MCE co-branding and/or customer engagement protocol that provides MCE's expectations for customer interactions by Aggregator. Failure of Aggregator to comply at all times with this section will constitute a material breach pursuant to FPA section 9.1, and may result in the discontinuation of work with MCE at MCE's request.
- 3. Subcontractors.** Aggregator shall be solely responsible for ensuring that each Subcontractor complies with the terms and conditions of this Exhibit 1.
- 4. 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. Aggregator 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.



**EXHIBIT A-3****NON-DISCLOSURE AGREEMENT****Fully Executed Non-Disclosure Agreement Must Be Sent to  
[compliance@mceCleanEnergy.org](mailto:compliance@mceCleanEnergy.org)**

This Non-Disclosure Agreement ("Agreement") is entered into by and between Marin Clean Energy ("MCE") and \_\_\_\_ ("Contractor") as of \_\_\_\_, 202\_\_ ("Effective Date"). As used herein MCE and Contractor may each be referred to individually as a "Party" and collectively as "Parties." The provisions of this Agreement and MCE Policy 001 (Customer Confidentiality) govern the disclosure of MCE's confidential customer information to Contractor ("Disclosure Provisions"). The Parties hereby mutually agree that:

1. Subject to the terms and conditions of this Agreement, current proprietary and confidential information of MCE regarding customers of MCE ("MCE Customers") may be disclosed to Contractor from time to time in connection herewith as provided by the Disclosure Provisions and solely for the purposes set forth on Schedule A. Such disclosure is subject to the following legal continuing representations and warranties by Contractor:
  - (a) Contractor represents and warrants that it has all necessary authority to enter into this Agreement, and that it is a binding enforceable Agreement according to its terms;
  - (b) Contractor represents and warrants that the authorized representative(s) executing this Agreement is authorized to execute this Agreement on behalf of the Contractor; and
  - (c) Contractor confirms its understanding that the information of MCE Customers is of a highly sensitive confidential and proprietary nature, and that such information will be used as contemplated under the Disclosure Provisions solely for the purposes set forth on Schedule A and that any other use of the information is prohibited.
  - (d) Contractor represents and warrants that it will implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure, and prohibits the use of the data for purposes not set forth on Schedule A.
2. The confidential and proprietary information disclosed to Contractor in connection herewith may include, without limitation, the following information about MCE Customers: (a) names; (b) addresses; (c) telephone numbers; (d) service agreement numbers; (e) meter and other identification numbers; (f) MCE-designated account numbers; (g) meter numbers; (h) electricity and gas usage (including monthly usage, monthly maximum demand, electrical or gas consumption as defined in Public Utilities Code Section 8380, HP load, and other data detailing electricity or gas needs and patterns of usage); (i) billing information (including rate schedule, baseline zone, CARE participation, end use code (heat source) service voltage, medical baseline, meter cycle, bill cycle, balanced payment plan and other plans); (j) payment / deposit status; (k) number of units; and (l) other similar information specific to MCE Customers individually or in the aggregate (collectively, "Confidential Information"). Confidential Information shall also include specifically any copies, drafts, revisions, analyses, summaries, extracts, memoranda, reports and other materials prepared by Contractor or its representatives that are derived from or based on Confidential Information disclosed by MCE, regardless of the form of media in which it is prepared, recorded or retained.
3. Except for electric and gas usage information provided to Contractor pursuant to this Agreement, Confidential Information does not include information that Contractor proves
  - (a) was properly in the possession of Contractor at the time of disclosure; (b) is or becomes publicly known through no fault of Contractor, its employees or representatives; or (c) was independently developed by Contractor, its employees or representatives without access to any Confidential Information.
4. From the Effective Date, no portion of the Confidential Information may be disclosed, disseminated or appropriated by Contractor, or used for any purpose other than the purposes set forth on Schedule A.
5. Contractor shall, at all times and in perpetuity, keep the Confidential Information in the strictest confidence and shall take all reasonable measures to prevent unauthorized or improper disclosure or use of Confidential Information. Contractor shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure and prohibits the use of the data for purposes not set forth on Schedule A. Specifically, Contractor shall restrict access to Confidential Information, and to materials prepared in connection therewith, to those employees

or representatives of Contractor who have a "need to know" such Confidential Information in the course of their duties with respect to the Contractor program and who agree to be bound by the nondisclosure and confidentiality obligations of this Agreement. Prior to disclosing any Confidential Information to its employees or representatives, Contractor shall require such employees or representatives to whom Confidential Information is to be disclosed to review this Agreement and to agree to be bound by the terms of this Agreement.

6. Contractor shall be liable for the actions of, or any disclosure or use by, its employees or representatives contrary to this Agreement; however, such liability shall not limit or prevent any actions by MCE directly against such employees or representatives for improper disclosure and/or use. In no event shall Contractor or its employees or representatives take any actions related to Confidential Information that are inconsistent with holding Confidential Information in strict confidence. Contractor shall immediately notify MCE in writing if it becomes aware of the possibility of any misuse or misappropriation of the Confidential Information by Contractor or any of its employees or representatives. However, nothing in this Agreement shall obligate the MCE to monitor or enforce the Contractor's compliance with the terms of this Agreement.
7. Contractor shall comply with the consumer protections concerning subsequent disclosure and use set forth in Attachment B to CPUC Decision No. 12-08-045.
8. Contractor acknowledges that disclosure or misappropriation of any Confidential Information could cause irreparable harm to MCE and/or MCE Customers, the amount of which may be difficult to assess. Accordingly, Contractor hereby confirms that the MCE shall be entitled to apply to a court of competent jurisdiction or the California Public Utilities Commission for an injunction, specific performance or such other relief (without posting bond) as may be appropriate in the event of improper disclosure or misuse of its Confidential Information by Contractor or its employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to the MCE, in law or equity.
9. In addition to all other remedies, Contractor shall indemnify and hold harmless MCE, its officers, employees, or agents from and against all claims, actions, suits, liabilities, damages, losses, expenses and costs (including reasonable attorneys' fees, costs and disbursements) attributable to actions or non-actions of Contractor and/or its employees and/or its representatives in connection with the use or disclosure of Confidential Information.
10. When Contractor fully performs the purposes set forth on Schedule A, or if at any time Contractor ceases performance or MCE requires Contractor cease performance of the purposes set forth on Schedule A, Contractor shall promptly return or destroy (with written notice to MCE itemizing the materials destroyed) all Confidential Information then in its possession at the request of MCE. Notwithstanding the foregoing, the nondisclosure obligations of this Agreement shall survive any termination of this Agreement.
11. This Agreement shall be binding on and inure to the benefit of the successors and permitted assigns of the Parties hereto. This Agreement shall not be assigned, however, without the prior written consent of the non-assigning Party, which consent may be withheld due to the confidential nature of the information, data and materials covered.
12. This Agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof, and supersedes all prior discussions, negotiations, understandings, communications, correspondence and representations, whether oral or written. This Agreement shall not be amended, modified or waived except by an instrument in writing, signed by both Parties, and, specifically, shall not be modified or waived by course of performance, course of dealing or usage of trade. Any waiver of a right under this Agreement shall be in writing, but no such writing shall be deemed a subsequent waiver of that right, or any other right or remedy.
13. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without reference to its principles on conflicts of laws.

**IN WITNESS WHEREOF**, the authorized representatives of the Parties have executed this Agreement as of the Effective Date.

**MARIN CLEAN ENERGY**

BY: \_\_\_\_\_  
(Signature)  
  
\_\_\_\_\_  
(Name, Title)  
  
\_\_\_\_\_  
(Address)

**CONTRACTOR**

BY: \_\_\_\_\_  
(Signature)  
  
\_\_\_\_\_  
(Name, Title)  
  
\_\_\_\_\_  
(Address)

**Fully Executed Non-Disclosure Agreement Must Be Sent to**  
[compliance@mceCleanEnergy.org](mailto:compliance@mceCleanEnergy.org)

**All Contractors Must Complete the Attached Schedule A**

**SCHEDULE A**  
**CONTRACTOR PURPOSES**

**EXHIBIT B**  
**FEES AND PAYMENT SCHEDULE**

**EE PROGRAM**

For EE Program Services provided under this Agreement, MCE shall pay Recurve in accordance with the amount(s) and the payment schedule as specified below:

1. Monthly Invoices. Recurve shall bill MCE monthly by written invoice ("Invoice") for 15% of the Total Program Value of the projects completed (each a "DFP Completion") in the previous month, as defined and further detailed below. DFP Completion shall be defined in the CPIP and evidenced by receipt of the final invoice, as provided by the Aggregator to the DFM Participant.

"Total Program Value" shall be calculated using the forecasted energy savings estimates provided by the Aggregator, the lead measure that will be used to forecast the marginal hourly savings load shape of the project for each hour of the year ("Anchor Measure"), and the associated measure expected useful life ("EUL"), Recurve shall calculate the program value of each installed project ("Program Value"), creating an "enrollment summary" that will be delivered to MCE on a monthly basis. Program value mirrors the calculation of "net benefits" as defined by the CPUC.

MCE shall pay undisputed Invoice amounts equaling 15% of the Total Program Value for all DFPs completed in the previous month.

2. The Parties understand and agree that Recurve's failure to provide MCE with Recurve's verified documentation of the monetary value of the electric and gas net benefits one year plus 60 days after completion of a DFP for any reason, including but not limited to termination of the Agreement whereby Recurve is a Defaulting Party, will damage MCE, including by causing reputational harm to MCE, in an amount that is difficult or incapable of precise estimation. The Parties agree that a liquidated damage amount of twenty percent (20%) of the Total Program Value for each such DFP, represents a fair, reasonable and appropriate estimate of the damages thereof and that such sum bears a reasonable relationship to those anticipated damages.
3. DFP Documentation shall include the following:
  - a. List of Energy Efficiency measures installed;
  - b. Total DFM Participant cost of installing or implementing the Energy Efficiency measures
  - c. Anticipated Energy Savings for the DFP (as they are defined and calculated in the Rulebook);
  - d. The Anchor Measure;
  - e. An EUL of the Energy Efficiency measures installed.

Additional details on required DFP documentation may be included in the CPIP as confirmed in writing by Recurve and MCE.

4. Fee Assumptions and Understandings:
  - a. The Anticipated Energy Savings for the DFP and the Anchor Measure load shape and EUL are the "Key Inputs" required to calculate the monetary benefits of a project using the CPUC's Avoided Cost Calculator.
  - b. These key inputs determine the monetary value of the project, which when divided by the Total Resource Costs, as defined by the CPUC, are the main determinants of program Cost Effectiveness, as defined by the CPUC.
  - c. The values of the Avoided Cost Calculator are in the public domain and have been incorporated into a pricing tool developed by Recurve that will be used to determine the value of the project and thus determine the payment due to Recurve.
  - d. Recurve will share the code behind Recurve's version of the Cost-Effectiveness Tool within two (2) weeks of the effective date of this Agreement.

Express Not to Exceed Amount. In no event shall the total cost to MCE for the EE Services provided herein exceed the maximum sum of **\$1,275,000** for the term of the Agreement, which sum is subject to grant and approval by the CPUC.

**PF PROGRAM**

For PF Program Services provided under this Agreement, MCE shall pay Recurve in accordance with the amount(s) and the payment schedule as specified below:

Item	Notes	Price	Term	Total Price
<b>Demand FLEXMarket Payment Schedule for 2021</b>				
Platform Setup	Initial Market Development and Platform Setup	\$25,000	-	\$25,000
Peak FLEXmarket for Summer 2021	15% of Incentive Payments based on Total Budget of \$2,000,000		4 months	\$300,000 (NTE) ("PF Program Funding")
<b>Total</b>				<b>\$325,000 (NTE)</b>

Recurve Payment Schedule

For the Summer 2021 (June, July, August, September) pilot of PF Program:

- \$25,000 Platform Setup fees – invoiced upon execution of the Agreement.
- \$37,500 per month in June, July, August, and September 2021 for Program administration fixed costs. June's bill shall be invoiced once the PF Program receives its first enrollments of DFMs that are designed specifically for the Peak DFM Program.

Should PF Program performance result in incentive payments to Aggregator of more than \$250,000 in June, July, August, or September, Recurve will be paid 15% of the additional incentive payments – as determined by MCE Customer Programs staff and delivered by Aggregators - in a given month listed.

In no event shall the total cost to MCE for the PF Program provided herein exceed the **maximum sum of \$325,000** for the 4-month term of the PF Program.

**In no event shall the total cost to MCE for all services, including EE and PF, provided herein exceed the maximum sum of \$1,600,000.**

**DEMAND FLEXIBILITY MARKETPLACE AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND RECURVE ANALYTICS, INC.**

**THIS DEMAND FLEXIBILITY MARKETPLACE AGREEMENT** ("Agreement") is made and entered into this **30th day of October 2020** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE," and RECURVE ANALYTICS, INC., a Delaware corporation with its principal place of business located at 364 Ridgewood Ave., Mill Valley, CA 94941, hereinafter referred to as "Recurve" (each a "Party" and together the "Parties"). For the avoidance of doubt, this Agreement is separate from, and not related to, that series of Standard Short Form Contracts between MCE and Recurve pertaining to the Recurve Meter Platform and the RecurveOS Operations.

**RECITALS:**

**WHEREAS**, MCE desires to retain Recurve to administer its Commercial population-level Normalized Metered Energy Consumption ("NMEC") portion of MCE's Commercial Energy Efficiency Program ("Commercial Program Flex Market Program" or "Program") with third party project implementers (each, an "Aggregator" and collectively the "Aggregators") who have developed portfolios of Demand Flexibility Projects (each, a "DFP" and collectively the "DFPs"), and specifically to provide the services described in **Exhibit A**; and

**WHEREAS**, Recurve seeks to provide, and warrants that it is qualified and competent to render, the services described in **Exhibit A**.

**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:**

Recurve agrees to provide all of the services described in **Exhibit A**, which is attached hereto and by this reference made a part hereof. "Services" shall mean all of the services described in **Exhibit A**, and any other work performed by Recurve pursuant to the Agreement.

**2. MCE OBLIGATIONS:**

During the term of this Agreement, and in addition to MCE's other obligations under this Agreement, MCE agrees to:

**2.1** Promptly upon request from Recurve, provide Recurve all pertinent data and records necessary for Recurve's delivery of the Services.

**2.2** Regularly and on a timely basis, provide Recurve with data for Recurve's use in calculating MCE's payments to Aggregators under applicable Flexibility Purchase Agreements ("FPA") in the form attached hereto as **Exhibit A-1**.

**2.3** Pay undisputed and verified invoiced amounts to Aggregators within 30 days of receiving invoices and supporting documentation from Recurve.

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

MCE shall compensate Recurve for the Services in accordance with the Fee Schedule attached hereto as **Exhibit B** and by this reference incorporated herein. Recurve shall provide MCE with its Federal Tax I.D. number prior to submitting the first invoice. Recurve is responsible for billing MCE in a timely and accurate manner. Recurve shall email all invoices to MCE on a monthly basis as specified in **Exhibit B** for any Services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond 240 days will not be reimbursable. The final invoice must be submitted within 90 days of completion of the Services or termination of this Agreement. MCE will process payment for undisputed invoiced amounts within 90 days of receipt of such invoice.

**4. MAXIMUM COST TO MCE:** In no event will the total cost to MCE for the Services exceed **One Hundred Thousand Dollars (\$100,000.00)**.

**5. TERM OF AGREEMENT:**

This Agreement shall commence on **November 1, 2020**. Recurve may enroll new DFPs under the Program until **October 31 2022**. This Agreement shall terminate when Recurve has completed the Services on the last DFP enrolled (the "Term"). 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 Recurve.

**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 Recurve's indemnification and defense obligations under Section 16.5 of this Agreement. MCE agrees to timely notify Recurve 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 Recurve for any Services provided during any time that Recurve's insurance was not in effect and until such time as Recurve provides adequate evidence that Recurve has obtained the required coverage.

#### **6.1 GENERAL LIABILITY**

Recurve 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 RESERVED**

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

Recurve 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 Recurve 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, Recurve must purchase "extended reporting" coverage for a minimum of twelve (12) months after completion of contract work. Recurve 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 Recurve has segregated amounts in a special insurance reserve fund or Recurve'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.

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

Recurve 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. Recurve and/or any permitted subcontractor understands and agrees that Recurve 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:**

Recurve shall not subcontract nor assign any portion of the work required by this Agreement without prior written approval of MCE. For the avoidance of doubt, Aggregators will not be considered subcontractors for purposes of this Agreement. If Recurve hires a subcontractor under this Agreement, Recurve shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Recurve under this Agreement and shall require subcontractor to name Recurve as additional insured under this Agreement. It shall be Recurve's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to MCE evidence of same. Notwithstanding the foregoing, 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 Recurve of any of its duties or obligations under this Agreement. Recurve shall be solely responsible for ensuring its subcontractors' compliance with the terms and conditions of this Agreement. Recurve's obligation to pay its subcontractors is an independent obligation from MCE's obligation to make payments to Recurve. 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 Recurve and may not be transferred or assigned without the express prior written consent of MCE; provided, however, that upon thirty (30) days prior, written notice to MCE, this Agreement may be assigned without MCE's consent to Recurve's successor in interest in (a) the sale of substantially all of Recurve's assets or (b) a merger wherein Recurve is not the surviving entity.

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

Recurve 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 pertaining to this Agreement. Such records shall include, but not be limited to, FPAs, correspondence with Aggregators and records supplied to Recurve by Aggregators, documentation of Program Value (as defined in **Exhibit B**) calculations for each DFP, and documentation of the basis for payments to Aggregators. MCE shall have the right, during regular business hours, to review and audit all records relating to this Agreement during the Term 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 Recurve's premises or, at MCE's option, Recurve shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MCE. Recurve 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; and MCE shall reimburse Recurve for any deficit in amounts paid to Recurve based on such undisputed audit findings. MCE shall also have the right to review, upon oral or written request to Recurve, any agreement, commitment or subcontract entered into by Recurve pursuant to this Agreement, including, but not limited to, the form of FPA, and any subsequent revisions thereto, and Recurve shall not unreasonably delay in delivering such agreement, commitment or subcontract to MCE.

**11. TERMINATION:**

- A. If either Party (the "Defaulting Party") fails to comply with the terms of this Agreement or violates any ordinance, regulation or other law which applies to its performance herein, and does not cure such failure or violation within ten (10) business days after receiving written notice thereof from the other Party, the other Party may terminate this Agreement by giving five (5) business days' written notice to the Defaulting Party. For the avoidance of doubt, this paragraph A shall apply to any failure by MCE to pay an Aggregator in accordance with this Agreement or the FPA.
- B. Either Party shall be excused for failure to perform its obligations herein if such obligations are prevented by acts of God, pandemics, epidemics, strikes, labor disputes or other forces ( "Force Majeure") over which the Party claiming Force Majeure has no control and which is not caused by any act or omission of the Party claiming Force Majeure, but only for so long as the Party claiming Force Majeure is actually so prevented from performing, and only provided the Party claiming Force Majeure provides prompt written notice to the other Party.
- C. Either Party hereto may terminate this Agreement for any reason by giving sixty (60) calendar days' written notice to the other party. Notice of termination shall be by written notice to the other Party and shall be sent by email to the email address listed in Section 19 Invoices; Notices.
- D. In the event of termination not the fault of Recurve, Recurve shall be paid for all Services performed to the date of termination in accordance with the terms of this Agreement and so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s), as defined in Section 12 below. Notwithstanding anything contained in this Section 11 in no event shall MCE be liable for lost or anticipated profits or overhead on uncompleted portions of the Services. Recurve shall not enter into any agreement, commitments or subcontracts that would incur significant cancellation or termination costs without prior written approval of MCE, and such written approval shall be a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 11. Also, as a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 11, Recurve shall have delivered to MCE any and all reports, drawings, documents and deliverables prepared for MCE before the effective date of such cancellation or termination.
- E. This Agreement shall be subject to changes, modifications, or termination by order or directive of the California Public Utilities Commission ("CPUC"). The CPUC may from time to time issue an order or directive relating to or affecting any aspect of this Agreement, in which case MCE shall have the right to change, modify or terminate this Agreement in any manner to be consistent with such CPUC order or directive. MCE may also terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.
- F. Upon MCE's termination of this Agreement for any reason, Recurve shall bring the Services to an orderly conclusion as directed by MCE.

**12. AMENDMENT:**

This Agreement may be amended or modified only by written agreement of both Parties (an "Amendment"). For the avoidance of doubt, any modification to the form FPA attached here to as **Exhibit A-1** shall require advance written approval by both Parties.

**13. ASSIGNMENT OF PERSONNEL:**

Recurve shall not substitute any personnel assigned to perform the Services unless personnel with substantially equal or better qualifications and experience are provided, as is evidenced in writing.

**14. GOVERNING LAW AND VENUE:**

This Agreement shall be governed by the internal laws of the State of California, with reference to its conflict of laws principles. In the event of any litigation to enforce or interpret any terms of this Agreement, such action shall be brought in a Superior Court of the State of California located in Marin County (or if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in the U.S. District Court for the Northern District of California), and the Parties hereby submit to the exclusive jurisdiction of such courts.

**15. 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 Recurve'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 Recurve 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 Recurve cannot reach an agreement within a reasonable period of time (but in no event more than 30 calendar days), MCE and Recurve shall have the right to pursue all rights and remedies that may be available at law or in equity. In particular, Recurve shall have the 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.

**16. REPRESENTATIONS; WARRANTIES; INDEMNIFICATION:**

**16.1 LICENSING.** At all times during the Term of this Agreement, Recurve represents, warrants and covenants that it has obtained and shall maintain, at its sole cost and expense, all required licenses and registrations required for the operation of its business and the performance of its obligations under this Agreement. Recurve shall promptly provide copies of such licenses and registrations to MCE at the request of MCE.

**16.2 GOOD STANDING.** Recurve represents and warrants that (a) it is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware 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.

MCE represents and warrants that (a) it is duly organized, validly existing, (b) it has full power and authority and all regulatory authorizations required to execute, deliver and perform its obligations under this Agreement and all exhibits and to engage in the business it presently conducts and contemplates conducting, (c) the execution, delivery and performance of this Agreement and all exhibits hereto are within its powers and do not violate the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, (d) this Agreement and each exhibit constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, and (e) it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt.

**16.3 BACKGROUND CHECKS.**

- (a) Recurve hereby represents, warrants and certifies that any personnel of Recurve having or requiring access to MCE's assets, premises, customer property ("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 Recurve 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, Recurve 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, Recurve shall notify MCE if any of its Covered Personnel is charged with or convicted of a Serious Offense during the term of this Agreement. Recurve will also immediately prevent that employee, representative, or agent from performing any Services.

**16.4 FITNESS FOR DUTY.** Recurve 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. Recurve 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.

**16.5 INDEMNIFICATION.**

By Recurve: Recurve agrees to indemnify, defend, and hold MCE and its employees, officers, contractors, owners and agents, harmless from any and all losses, damages, costs, expenses and liabilities including, but not limited to, litigation and other dispute resolution costs, including reasonable attorney's fees, arising from or in connection with any and all claims and losses to anyone who may be injured or damaged by reason of Recurve's negligence, recklessness or any fraud, willful misconduct, violation of law, or breach of this Agreement in connection with this Agreement. For the avoidance of doubt, Recurve shall have no liability to MCE for any inaccuracy in data or forecasts provided by an Aggregator to Recurve provided that Recurve used commercially reasonable efforts to enforce Section 2.5 of the Flexible Purchase Agreement.

By MCE: MCE agrees to indemnify, defend, and hold Recurve and its employees, officers, contractors, owners and agents, harmless from any and all losses, damages, costs, expenses and liabilities including, but not limited to, litigation and other dispute resolution costs, including reasonable attorney's fees, arising from or in connection with any failure by MCE to pay undisputed amounts of Flexibility Payments (as defined in the FPA) owed by MCE to any Aggregator.

Neither Recurve nor MCE shall be liable for any incidental, special, indirect, punitive or consequential damages relating to or arising from this Agreement.

**17. 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. Recurve 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.

**18. COMPLIANCE WITH APPLICABLE LAWS:**

Recurve and MCE each shall comply with any and all applicable federal, state and local laws, regulations and resolutions (including, but not limited to all CPUC policies and guidance for energy efficiency programs, 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.

**19. 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 Recurve at the following address:

Recurve: Matt Golden

Address: 364 Ridgewood Ave

Mill Valley, CA 94941

Email Address: admin@recurve.com

Telephone No.: 415-841-3425

**20. 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.

	<input checked="" type="checkbox"/> <u>Check Applicable Exhibits</u>	<u>RECURVE'S INITIALS</u>	<u>MCE'S INITIALS</u>
<u>EXHIBIT A.</u>	<input checked="" type="checkbox"/> Scope of Services	<sup>DS</sup> MG	<sup>DS</sup> DW
<u>EXHIBIT A-1.</u>	<input checked="" type="checkbox"/> Form of Flexibility Purchase Agreement (FPA)	<sup>DS</sup> MG	<sup>DS</sup> DW
<u>EXHIBIT B.</u>	<input checked="" type="checkbox"/> Fees and Payment	<sup>DS</sup> MG	<sup>DS</sup> DW

**21. DATA COLLECTION AND OWNERSHIP REQUIREMENTS:**

**21.1. DEFINITION OF "MCE DATA".** "MCE Data" shall mean all data or information provided by or on behalf of MCE, including but not limited to, customer Personal Information; energy usage data relating to, of, or concerning, provided by or on behalf of any customers; all data or information input, information systems and technology, software, methods, forms, manuals, and designs, transferred, uploaded, migrated, or otherwise sent by or on behalf of MCE to Recurve as MCE may approve of in advance and in writing (in each instance); account numbers, forecasts, and other similar

information disclosed to or otherwise made available to Recurve. MCE Data shall also include all data and materials provided by or made available to Recurve by MCE's licensors, including but not limited to, any and all survey responses, feedback, and reports subject to any limitations or restrictions set forth in the agreements between MCE and their licensors.

"Confidential Information" under this Agreement shall have the same meaning as defined in the Marin Clean Energy Non-Disclosure Agreement between the Parties dated **October 30, 2020**.

**21.2. DEFINITION OF "PERSONAL INFORMATION".** "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. Each Party shall comply with all applicable laws, rules, and regulations related to the use, collection, storage, and transmission of Personal Information.

**21.3. MCE DATA SECURITY MEASURES.** Prior to Recurve receiving any MCE Data, Recurve shall comply, and at all times thereafter continue to comply, in compliance with MCE's Data security policies set forth in MCE Policy 009 and MCE's Advanced Metering Infrastructure (AMI) Data Security and Privacy Policy ("Security Measures") and pursuant to MCE's Confidentiality provisions in Section 5 of the Marin Clean Energy Non-Disclosure Agreement between the Parties dated **October 11, 2018**. MCE's Security Measures and Confidentiality provisions require Recurve to adhere to reasonable administrative, technical, and physical safeguard protocols to protect MCE's Data from unauthorized handling, access, destruction, use, modification or disclosure.

**21.4. RECURVE DATA SECURITY MEASURES.** Additionally, Recurve 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.

**21.5. RETURN OF MCE DATA.** Promptly after this Agreement terminates or expires (i) Recurve will securely destroy all MCE Data in its possession 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), provided that Recurve's attorney shall be permitted to retain a copy of such records or materials solely for legal purposes.

**21.6. OWNERSHIP AND USE RIGHTS.**

- a) **MCE Data.** Unless otherwise expressly agreed to by the Parties, MCE shall retain all of its rights, title and interest in the MCE Data.
- b) **Program Intellectual Property owned by MCE.** Unless otherwise expressly agreed to by the Parties, any and all materials, information, or other work product created, prepared, accumulated or developed by Recurve under this Agreement ("Program Intellectual Property"), including, but not limited to, any content for an Implementation Plan or otherwise required by the CPUC for purposes related to the Services contemplated, program value forecasts, dashboards, inventions, processes, templates, documents, drawings, computer programs, designs, calculations, maps, plans, workplans, text, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual materials, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith, shall be owned by MCE. MCE shall have the non-exclusive right to use such materials in its sole discretion without further compensation to Recurve or to any other party and hereby grants Recurve an irrevocable, non-exclusive, perpetual, fully paid up, worldwide, royalty-free, unrestricted license to use the Program Intellectual Property for internal development purposes only, such that Recurve may use its learnings from the Program Intellectual Property to enhance the Services and to inform its development of similar services to other LSEs. Notwithstanding the foregoing, to the extent any MCE Data is embedded in the Program Intellectual Property, MCE shall remain the exclusive owner of such Program Intellectual Property and Recurve shall have no right to its use absent advance written approval by MCE. Recurve shall, at MCE's expense, provide such reports, plans, studies, documents and writings to MCE or any party MCE may designate, upon written request. Recurve may keep file reference copies of all documents prepared for MCE.
- c) **Program Intellectual Property will be owned by MCE upon its creation.** MCE agrees to execute any such other documents or take other actions as MCE may reasonably request to perfect MCE's ownership in the Program Intellectual Property.
- d) **Recurve's Pre-Existing Materials.** If, and to the extent Recurve retains any preexisting ownership rights ("Recurve's Pre-Existing Materials") in any of the materials furnished to be used to create, develop, and prepare the Program Intellectual Property, including but not limited to Recurve's cost-effectiveness tool ("CET"), Recurve hereby grants MCE and the CPUC for governmental and regulatory purposes an irrevocable, assignable, non-exclusive, perpetual, fully paid up, worldwide, royalty-free, unrestricted license to use and sublicense others to use,

reproduce, display, prepare and develop derivative works, perform, distribute copies of any intellectual or proprietary property right of Recurve for the sole purpose of using such Program Intellectual Property for the conduct of MCE's business and for disclosure to the CPUC for governmental and regulatory purposes related thereto. Unless otherwise expressly agreed to by the Parties, Recurve shall retain all of its rights, title and interest in Recurve's Pre-Existing Materials. Any and all claims to Recurve's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the Program Intellectual Property must be expressly disclosed to MCE prior to performing any Services under this Agreement. Any such Pre-Existing Material that is modified by work under this Agreement is owned by MCE.

#### **21.7 BILLING, ENERGY USE, AND PROGRAM TRACKING DATA.**

- a) Recurve shall comply with and timely cooperate with all CPUC directives, activities, and requests regarding the Program and DFP evaluation, measurement, and verification ("EM&V"). For the avoidance of doubt, it is the responsibility of Recurve to be aware of all CPUC requirements applicable to the Services of this Agreement.
- b) Recurve shall make available to MCE upon demand, detailed descriptions of the Program, data tracking systems, baseline conditions, and participant data, including financial assistance amounts.
- c) Recurve shall make available to MCE any revisions to Recurve's program theory and logic model ("PTLM") and results from its quality assurance procedures, and comply with all MCE EM&V requirements, including reporting of progress and evaluation metrics.

#### **22. FINANCIAL STATEMENTS:**

Recurve 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 Recurve, except as provided by law and to the extent provision to the CPUC may be required from time to time under confidentiality procedures, where applicable.

#### **23. QUALITY ASSURANCE PROCEDURES**

Recurve shall comply with the following Quality Assurance Procedures: (i) industry standard best practices; and (ii) procedures that ensure Program functionality, customer satisfaction, and that the minimum qualifications are satisfied.

#### **24. COORDINATION WITH OTHER PROGRAM PARTICIPANTS:**

Recurve shall coordinate with other Program participants, including investor-owned utilities and local government agencies authorized by the CPUC to implement CPUC-directed energy efficient programs, administering energy efficiency programs in the same geographic area as MCE. These other Program participants include: Pacific Gas and Electric Company and Bay Area Regional Energy Network. The CPUC may develop further rules related to coordination between Program participant in the same geographic area, and any participant is required to comply with such rules.

#### **25. 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.

#### **26. COMPLETE AGREEMENT:**

This Agreement, together with any attached Exhibits and the MCE Non-Disclosure Agreement, 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.

#### **27. 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.

#### **28. SURVIVAL:**

The Parties' obligations under Sections 4,10, 11, 14, 15, 16.5, 17, 18, 19, 20, 21 shall survive the Termination of this Agreement.

*[Signature page follows]*

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

**MARIN CLEAN ENERGY:**

DocuSigned by:  
  
 By: A59878416EBC4E8...  
 Dawn Weisz  
 Name: \_\_\_\_\_  
 Date: 10/30/2020

**RECURVE ANALYTICS, INC.:**

DocuSigned by:  
  
 By: 0C8F4AE0323C4D6...  
 Matt Golden  
 Name: \_\_\_\_\_  
 Date: 10/30/2020

**MODIFICATIONS TO ENERGY EFFICIENCY STANDARD SHORT FORM**

☒ **Standard Short Form Content Has Been Modified**

*List sections affected: Sections 1, 2, 3, 4, 5, 6, 8, 9, 10; Standard Form Section 11: Work Product was omitted and shifted numbering for all following sections; Section 11: Termination (previously Section 12 changes throughout); Section 12: Amendment (previously 13 – changes throughout); Section 13: Assignment of Personnel (previously 14 – changes throughout); Section 14: Governing Law (previously 15 – no change); Section 15: Disputes (previously 16 – no change); Section 16: Representations, Warranties, Indemnification (previously 17 – changes throughout); Section 17: No Recourse Against Constituent Members (previously 18 – no change); Section 18: Compliance with Laws (previously 19 – no change); Section 19: Invoices, Notices (previously 20 – no change); Section 20: Acknowledgement of Exhibits (previously 21 – changes throughout); Section 21: Data Collection and Ownership Rights (previously 22 – changes throughout); Standard Form Section 23 Workforce Standards was omitted and further shifted number for all following sections; Section 22: Financial Statements (previously 24– no change); Section 23: Quality Assurance (previously 25 – changes throughout); Section 24: Coordination with Program Administrators (previously 26 – change to coordination with Program Participants); Standard Form Sections 27 and 28 (Access to Customer Sites and Measurement Verification Requirements, respectively) were omitted and further shifted numbering for all following sections; Section 25: Severability (previously 29 – no change); Section 26: Complete Agreement (previously 30 – minor change to add NDA); Section 27: Counterparts (previously 31 – no change); Section 28: Survival was added.*

Approved by MCE Counsel: DocuSigned by:  
  
0CC3FD724F79482...

Date: 10/30/2020

□

## **EXHIBIT A**

### **SCOPE OF SERVICES**

Recurve will provide the following Services as requested and directed by MCE staff, up to the maximum fee allowed under this Agreement.

- 1) Recurve shall manage the Program;
- 2) Recurve shall provide third-party Program management by:
  - a) Contracting with Aggregators who will develop DFPs or portfolios of DFPs pursuant to the terms of the FPA (attached hereto as Exhibit A-1).
  - b) Being responsible for managing operational Program functions, including but not limited to:
    - i) Recruiting and qualifying Aggregators, including by ensuring the requirements set forth in Exhibit A to the FPA which is attached hereto as Exhibit A-1 are met, which Aggregators (and any applicable subcontractors thereto) will deliver DFPs under the requirements of the Program;
    - ii) Providing all necessary content to MCE to include in the Commercial Program Implementation Plan ("CPIP") within 30 days of execution of this Agreement;
    - iii) Collecting, storing, and, upon oral or written request by MCE, promptly sharing with MCE all DFP and programmatic data, including but not limited to DFP costs, Energy Savings forecasts ("Energy Savings" defined as the annual/first year reduction in kWh or therms over the baseline year, credited to a specific intervention or set of interventions at a DFM Participant's facility), measure lists, and enrollment dates;
    - iv) Developing and implementing the terms and conditions of Program operation, including DFP and end users of DFPs ("DFM Participant") eligibility rules, access to incentive budgets, Measurement & Verification ("M&V") plans, and Quality Assurance ("QA") requirements;
    - v) Completing and enrolling DFPs in the Program, aggregating the portfolios of DFPs, calculating Program energy savings for each DFP, and collecting all necessary data for Program infrastructure;
    - vi) Defining and implementing a process for validating forecasts of first year NMEC savings provided by Aggregators, which validation process shall be described in the applicable section of MCE's CPIP;
    - vii) Establishing coordination protocols for Aggregators when multiple Aggregators are serving the same or similar DFM Participant groups or are otherwise in competition, if necessary;
    - viii) Adhering to MCE branding and marketing requirements when requested by MCE, and consistently incorporating MCE feedback and guidance pertaining to customer relationship management.
  - c) Managing the allocation of incentive budgets among the Aggregators in accordance with the CPIP by ensuring that DFM Participant impacts and delivered benefits are fully optimized within budget availability, and by ensuring that sufficient incentive funds are available for all DFPs enrolled through FPAs.
  - d) Preparing and verifying Aggregator invoices and providing such invoices to MCE on a timely basis and, if requested by MCE, providing MCE with supporting documentation verifying the invoice amount.
- 3) Recurve shall report NMEC savings to MCE by:
  - a) Adhering to the "Rulebook for Programs and DFPs Based on Normalized Metered Energy Consumption, Version 2.0, Release Date: January 7, 2020" ("Rulebook")<sup>1</sup> in the management of MCE's Commercial population-level NMEC Program. Recurve shall be responsible for tracking the publication of any updates or new versions of the Rulebook and shall ensure utilize, and ensure that all Aggregators utilize, the updated or new versions once released.
    - i) As defined in the Rulebook, "Claimable Savings" (or "Claimed Savings", or "Savings Claims") means "the savings reported by Program Administrators to the Commission prior to formal evaluation, measurement, and verification (EM&V)."<sup>2</sup>
    - ii) "Payable savings" as defined in the Rulebook, are "the savings determined via the method and calculation software described in a program's M&V Plan which constitute the basis of payments between the Program Administrator and Implementer(s). Payable savings

<sup>1</sup> Rulebook for Programs and DFPs Based on Normalized Metered Energy Consumption Version 2.0 Release Date: 7 January, 2020 (hereafter, "Rulebook") Available at: <https://www.cpuc.ca.gov/general.aspx?id=6442456320>.

<sup>2</sup> See Rulebook, page 21



determinations may differ from claimable savings in that payable savings may account differently for net-to-gross determinations, non-routine events and outliers, and/or other similar considerations."<sup>3</sup>

- b) With respect to "Claimable Savings," within one year plus 60 days after completion of each DFP, Recurve shall provide verified data, completed NMEC savings assessments, and supporting materials, including auditable meter-level records of calculations, to MCE for the purposes of supporting MCE's Savings Claims filings with the CPUC and any other governing authorities as may be required. Savings Claim methodology will be specified in the CPIP filed by MCE with the CPUC prior to program launch or in other official documentation.
- c) With respect to payable energy savings Recurve shall:
  - i) Incorporate payable energy savings per the Implementation Plan;
  - ii) Report verifiable payable energy savings to MCE for the purpose of invoicing and paying Aggregators;
  - iii) Create reproducible methodology for assigning payments to Aggregators where deviations from standard methodology may be allowed in a specific M&V plan attached to the FPA and produce such methodology to MCE.
- 4) Recurve shall provide Program administrative support by:
  - a) Contributing, as requested by MCE, to the development and update of MCE's: CPIP; Program M&V plan; and Annual Budget Advice Letter ("ABAL"), each to be submitted to the CPUC;
  - b) Annually providing MCE with cost effectiveness forecasts and budget requests that rely on and incorporate the primary measure load shape from CPUC's Database of Energy Efficiency Resources or approved work papers for the forecasted potential to support MCE's ABAL;
  - c) Providing MCE with a M&V Report, generated at the close of each year, which will demonstrate verifiable consistency with the Program's M&V Plan;
  - d) Supporting MCE's preparation of Savings Claims (quarterly and annually) through the development of blended load shapes post-intervention;
    - i) Specifically, by select measure load shapes that best reflect the actual savings load shape for a project or portfolio of projects;
  - e) Supporting MCE or CPUC-led EM&V studies or program evaluations by collecting and submitting project, DFM Participant, and program-level data;
    - i) Specifically, by providing good faith support and coordination with other Program Administrators that offer or intend to offer population-level NMEC programs within MCE's service area or adjacent service areas;
  - f) Providing MCE and/or the CPUC with access to auditable records for regulatory Savings Claims or evaluations;
  - g) Providing Quality Assurance by providing, at minimum, the following documents and information to MCE:
    - i) Baseline annual consumption amounts for each DFP
    - ii) Anticipated Energy Savings
    - iii) Technology measures or other energy efficiency improvements identified for installation.
- 5) Scope Assumptions and Understandings:
  - a) MCE is not a party to the FPAs with Aggregators.
  - b) Recurve is authorized to modify the form of FPA used with specific Aggregators only upon MCE's prior written consent to any such modification, including modification to any FPA exhibit.
  - c) MCE is authorized to review each Measurement and Verification Plan (M&V Plan), Quality Assurance Plan (QA Plan) and Operation and Maintenance Plan (O&M Plan). Modification of any M&V Plan that includes payment terms shall require MCE's prior written consent.
  - d) Unless otherwise agreed to in writing by both Parties, MCE shall be responsible for issuing payments to Aggregators for undisputed invoiced amounts.
  - e) All necessary DFP and DFM Participant data to be collected shall be outlined in the CPIP.
  - f) Parties acknowledge that Recurve is not responsible for submitting MCE's CPIP to the California Energy Data and Reporting System.
  - g) Energy savings and population-level NMEC rules are defined by the Rulebook.
  - h) Updated or new versions of the Rulebook shall apply to this Agreement and be used by MCE and Recurve once released.

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<sup>3</sup> See Rulebook, page 23.

**EXHIBIT A-1****Form of Flexibility Purchase Agreement (FPA)****Flexibility Purchase Agreement**

**THIS FLEXIBILITY PURCHASE AGREEMENT** (the "Agreement") is made by and between \_\_\_\_\_ ("Aggregator"), a \_\_\_\_\_ with its principal place of business located at \_\_\_\_\_, and Recurve Analytics, Inc., ("Recurve"), a Delaware corporation with its principal place of business located at 364 Ridgewood Ave., Mill Valley, CA 94941. This Agreement is effective on \_\_\_\_\_ ("Effective Date"). Recurve and Aggregator are each individually referred to herein as a "Party" and collectively as the "Parties."

**RECITALS:**

**WHEREAS**, Aggregator will develop one or more portfolios ("Portfolios") of demand flexibility projects that shape and reduce load (the "DFPs");

**WHEREAS**, Recurve has entered into one or more Demand Flexibility Marketplace Contracts, or similar agreements (each a "DFM Contract") with one or more utilities and/or load serving entities ("LSE"), pursuant to which Recurve has agreed to administer a Demand Flexibility Marketplace (each a "DFM") that complies with all applicable regulations ("Regulations") as set by entities having jurisdiction over LSE ("Regulators"), pursuant to which LSE will deliver gas and/or electricity to end users of the DFPs ("DFM Participant"), and Aggregator will receive payments from LSE (the "Flexibility Payments") for flexibility savings realized by LSE through the DFPs; and

**WHEREAS**, Aggregator and Recurve wish to enter into this Agreement to memorialize the rights and responsibilities of Recurve, on its own behalf and on behalf of LSE, and of Aggregator under each DFM.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following:

- 1. Demand Flexibility Marketplace Agreements.** For each DFM in which Aggregator will participate hereunder, Recurve and Aggregator shall adhere to the DFM Standards and Regulations (the "Standards"), as provided in Exhibit A, and shall develop the following plans, in addition to any other plan required by applicable Regulations, the terms and conditions of which shall comply with all applicable Regulations, and such plans will be specific to the applicable DFM and LSE (each, a "DFM Plan" and collectively, the "DFM Plans"):

- 1.1. Measurement and Verification Plan** (the "M&V Plan");
- 1.2. Quality Assurance Plan** (the "QA Plan");
- 1.3. Operation and Maintenance Plan** (the "O&M Plan");

All DFM Plans shall be subject to LSE review and approval, including all amendments or revisions thereto. In the event of a conflict between the terms of this Agreement and the terms of any DFM Plan, the terms of this Agreement will govern. For each DFM, Recurve and Aggregator will enter into additional DFM Plans, beyond those listed above, if required by the applicable Regulations, by LSE, or by mutual consent of the Parties. One or more of the DFM Plans listed above may be omitted if permissible per the Regulations and with the written consent of both LSE and Recurve.

**2. Aggregator Responsibilities.**

- 2.1.** On a monthly basis, or more frequently as may reasonably be requested by Recurve, Aggregator shall provide to Recurve documentation as necessary for Recurve to validate Aggregator's forecasted future energy savings. Energy savings are defined as the annual (first year) reduction in kWh or therms over the baseline year, credited to a specific intervention or set of interventions at a DFM Participant's facility ("Energy Savings").
- 2.2.** Aggregator shall promptly provide to Recurve or LSE, or as directed by Recurve, any additional information, data, certifications or the like as may be required by LSE and any Regulators, the DFM, or the DFPs, as the case may be.
- 2.3.** Aggregator shall keep and maintain on a current basis full and complete documentation and accounting records pertaining to the DFM and to each DFP (collectively, the "Records") for at least

five (5) years from the date of expiration or termination of this Agreement. During the Term of this Agreement (as defined in Section 4) and for the five (5) year period following the Term, Recurve and LSE shall have the right, during regular business hours, to review and audit all Records. Any review or audit may be conducted on Aggregator's premises or, at Recurve's option, Aggregator shall provide to Recurve all Records within fifteen (15) days after receipt of written notice from Recurve. Aggregator 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 LSE based on undisputed audit findings.

- 2.4. Aggregator shall comply at all times during the Term of this Agreement with the DFM Plans, any and all federal, state and local laws, regulations, orders, ordinances, permitting requirements and resolutions, including without limitation, Regulations, all Regulator policies and guidance for energy efficiency programs applicable to the DFM and the DFPs, all applicable building codes and other requirements of local authorities having jurisdiction. Aggregator shall comply with and timely cooperate with all Regulator directives, activities, and requests regarding the DFM and DFP evaluation, measurement and verification ("EM&V"). For the avoidance of doubt, it is the responsibility of Aggregator to be aware of all Regulator requirements applicable to the DFM Plans and to ensure Aggregator and Subcontractor compliance. Aggregator shall also comply with all applicable requirements of the applicable distribution utility.
- 2.5. Aggregator hereby represents and warrants that all data and estimations of forecasted future Energy Savings that are provided by Aggregator to Recurve pursuant to this Agreement or as part of the DFM shall be made in good faith, shall be true and accurate to the best knowledge of Aggregator, and shall be subject to verification at the request of Recurve and/or LSE. Aggregator agrees that Recurve may require any individual employed by or acting as agent or subcontractor to Aggregator who provides such data and estimations to certify in writing as to the accuracy thereof and to provide documentation supporting any such certification to Recurve and/or LSE.
- 2.6. Quality Assurance. Aggregator shall comply with quality assurance procedures including but not limited to: (i) industry standard best practices and (ii) procedures that ensure DFM functionality, DFM Participant satisfaction and that all workforce standards are satisfied.
- 2.7. If Aggregator or any employee, officer, member, agent or subcontractor of Aggregator (each, an "Aggregator Party," and, collectively, the "Aggregator Parties") performs work on the property of a DFM Participant under a DFP, the DFM or this Agreement, such Aggregator Party shall, prior to commencing such Work, obtain and maintain, at its or Aggregator's sole cost and expense and at all times during this Agreement, all bonding requirements of the California Contractors State License Board ("CSLB"), as may be applicable. Each Aggregator Party that performs Work on the property of a DFM Participant shall also maintain any payment and/or performance assurances as may be requested by Recurve or LSE during the performance of the Work.
- 2.8. Standard of Performance. Aggregator shall deliver the Work under the DFM in a timely, professional, good and workmanlike and ethical manner and in accordance with best energy industry practices. Aggregator shall follow Aggregator-provided performance specifications and installation requirements.
- 2.9. Permits. Aggregator shall obtain, maintain, and obey any and all permits required by applicable law to install and maintain the DFP. For the avoidance of doubt, the Parties expressly agree that Aggregator will obtain all required permits from the authority having jurisdiction for each DFP.

### **3. Recurve Responsibilities.**

- 3.1. Recurve shall use commercially reasonable efforts to confirm the DFM eligibility of Aggregator and the DFPs and shall notify Aggregator of any missing information or issues identified by Recurve; provided, however, that the foregoing shall not relieve or excuse Aggregator of or from any of its obligations under this Agreement, including without limitation its obligations under Section 2 above.
- 3.2. Recurve shall calculate and verify payable Energy Savings in accordance with the M&V Plan and will quantify and verify Flexibility Payments. Recurve's calculations under this Section 3.2, subject to review and verification by LSE, shall be final and binding upon the Parties.
- 3.3. Recurve will maintain each DFM dashboard summarizing and tracking DFP savings and portfolio savings for each DFM ("Dashboard") and will promptly provide Aggregator and LSE with access to the applicable Dashboard.

### **4. TERM OF AGREEMENT:**

This Agreement shall commence on the Effective Date, and shall continue, unless terminated earlier in accordance with the terms of this Agreement, until the first anniversary of the Effective Date (the "Initial Term"). Following the end of the Initial Term, this Agreement will renew for successive one year periods unless a Party notifies the other in writing of its intent not to renew this Agreement at least 90 days prior to the end of the then-current term (each such renewal term, together with the Initial Term, is referred to herein as the "Term").

Certificate(s) of insurance must be current on the Effective Date and at all times during the Term of this Agreement, and if scheduled to lapse prior to the expiration date of this Agreement, must be automatically updated at least thirty (30) days prior to the expiration of each policy term, at all times as a condition precedent to the making of any Flexibility Payment to Aggregator.

## **5. INSURANCE AND SAFETY:**

**5.1 INSURANCE.** For each DFM, 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. The general liability policy shall be endorsed naming each of Recurve and LSE and their employees, officers and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to and verified by Recurve within 15 days after the Effective Date. Each certificate shall provide for thirty (30) days advance written notice to Recurve and LSE 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.

Nothing herein shall be construed as a limitation on Aggregator's obligations under Section 13 of this Agreement to indemnify, defend and hold Recurve and LSE harmless as more particularly set forth therein.

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

Aggregator shall provide and maintain the insurance policies set forth in Exhibit A attached hereto.

**5.2 SAFETY.** Aggregator shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the implementation of the DFPs. Aggregator shall monitor the safety of the job site(s) for all projects included in the DFPs to comply with all applicable federal, state, and local laws, and to follow safe work practices.

**5.2.1 BACKGROUND CHECKS.** Aggregator shall ensure that any of its personnel having or requiring access to LSE's assets, data, premises or property ("Covered Personnel") shall have successfully passed background screening on such individual prior to receiving access, which screening may include, among other things to the extent applicable to the Work, 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 DFP.

To the extent required by applicable law, Aggregator shall maintain documentation related to such background and drug screening for all Covered Personnel and make it available to Recurve and/or LSE for audit if required pursuant to the audit provisions of this Agreement.

To the extent required by applicable law, Aggregator shall notify Recurve if any of its Covered Personnel is charged with or convicted of a Serious Offense during the Term of this Agreement. Aggregator will also immediately prevent that employee, representative, or agent from performing any Work.

**5.2.2. FITNESS FOR DUTY.** Aggregator 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. Aggregator shall have policies in place that require its 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.

## **6. NONDISCRIMINATORY EMPLOYMENT:**

Aggregator shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Aggregator and/or any permitted subcontractor understands and agrees that Aggregator 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.

**7. SUBCONTRACTING:**

If Aggregator hires a subcontractor in connection with this Agreement, the DFM and/or any DFP ("Subcontractor"), Aggregator shall ensure compliance by Subcontractor with all applicable terms and conditions of this Agreement, including, but not limited to the following:

- 7.1. Subcontractor shall comply with and be bound by all Aggregator representations, covenants, warranties and obligations in Sections 1, 2, 5.2, 6, 7, 9.7, 10, 12, 13, 14, 15, 16, 17, 18, 19, and 20 and 23 hereof and Exhibit A attached hereto.
- 7.2. Subcontractor shall comply with the terms of Section 5.1 above, including, but not limited to providing and maintaining insurance coverage(s) identical to what is required of Aggregator under this Agreement, excluding privacy and cyber insurance shall name Aggregator, Recurve and LSE as additional insureds under such insurance policies. Aggregator shall collect, maintain, and promptly forward to LSE, current evidence of such insurance provided by its Subcontractor. Such evidence of insurance shall be included in the Records, and is therefore subject to audit as described in section 2.3.
- 7.3. Subcontractor shall provide the representations, warranties and covenants of Aggregator contained in Section 13 hereof as of the date of its entry into a subcontract with Aggregator under this Agreement and at all times during the term of such subcontract.
- 7.4. Subcontractor shall be contractually obligated to indemnify Recurve and LSE pursuant to the terms and conditions of Section 13 hereof.
- 7.5. Subcontractors shall not be permitted to further subcontract any obligations under this Agreement.

Nothing contained in this Agreement or otherwise stated between the Parties shall create any legal or contractual relationship between LSE or Recurve, on the one hand, and any Subcontractor, contractor or agent of Aggregator on the other hand. Aggregator's obligation to pay its Subcontractors is an independent obligation from LSE's obligation to make payments to Aggregator. As a result, neither LSE nor Recurve shall have any obligation to pay or to enforce the payment of any moneys to any Subcontractor, contractor or agent of Aggregator.

**8. ASSIGNMENT:**

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

**9. TERMINATION:**

- 9.1. Upon receipt of written notice from Recurve that Aggregator has materially breached any term of this Agreement or violated any ordinance, regulation or other law which applies to Aggregator's performance hereunder, Aggregator shall have ten (10) business days to cure such breach or violation to Recurve's sole satisfaction. If Aggregator fails to timely cure such breach, Recurve may terminate this Agreement by giving five (5) business days' written notice to Aggregator.
- 9.2. Notwithstanding Section 9.1 above, Aggregator shall be excused for failure to perform its obligations hereunder (other than any obligation to pay money, or with respect to Aggregator's insurance requirements) if it is prevented from doing so by acts of God, strikes, labor disputes, pandemics or epidemics, or other forces over which Aggregator has no control, but only for so long as Aggregator is actually so prevented from performing, and only provided Aggregator provides prompt written notice to Recurve of same.
- 9.3. Recurve may terminate this Agreement for any reason by giving sixty (60) calendar days' prior written notice to Aggregator. Notice of termination shall be by written notice to Aggregator and shall be sent by registered mail or by email to the email address listed in Section 15 Notices.
- 9.4. In the event of termination not the fault of Aggregator, Aggregator shall be paid the Flexibility Payments for Energy Savings achieved for one year past project approval date for any DFPs approved prior to the date of termination in accordance with the terms of this Agreement and the respective DFM Agreements so long as proof of required insurance is provided for the periods covered in the Agreement. Notwithstanding anything contained in this Section 9 or elsewhere in this Agreement to the contrary, in no event shall Recurve or LSE be liable for lost or anticipated profits or overhead, or for any incidental, special, indirect, punitive or consequential damages relating to or arising from this Agreement.
- 9.5. This Agreement shall be subject to changes, modifications, or termination by order or directive of the Regulators. Regulators may from time to time issue an order or directive relating to or affecting any aspect of this Agreement, in which case Recurve shall have the right to change, modify or terminate this Agreement in any manner to be consistent with such Regulations.

- 9.6. Recurve may terminate this Agreement without notice if funding for this Agreement is reduced or eliminated by LSE, by the third-party funding source, or by a Regulator, or if DFM Contract is terminated for any reason.
- 9.7. Upon termination of this Agreement by either Party, Aggregator shall vacate the worksite and shall leave materials in a safe and orderly manner, but shall not remove any material, plant or equipment thereon without the written approval of Recurve or LSE.

#### **10. GOVERNING LAW AND VENUE:**

This Agreement shall be governed by the internal laws of the State of California, with reference to its conflict of laws principles. In the event of any litigation to enforce or interpret any terms of this Agreement, such action shall be brought in a Superior Court of the State of California located in San Francisco County (or if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in the U.S. District Court for the Northern District of California), and the Parties hereby submit to the exclusive jurisdiction of such courts.

#### **11. DISPUTES:**

- 11.1. 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 Aggregator's contract representative and Recurve's contract representative by good faith negotiation efforts shall be referred to [ ] of Recurve and an officer of Aggregator 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 Recurve and Aggregator cannot reach an agreement within a reasonable period of time (but in no event more than 30 calendar days from the date notice of the dispute was delivered), Recurve and Aggregator shall have the right to pursue all rights and remedies that may be available at law or in equity.
- 11.2. If either Party institutes any legal suit, action, or proceeding against the other Party to enforce this Agreement (or obtain any other remedy regarding any breach of this Agreement) the prevailing Party in the suit, action or proceeding is entitled to receive, and the non-prevailing Party shall pay, in addition to all other remedies to which the prevailing Party may be entitled, the costs and expenses incurred by the prevailing Party in conducting the suit, action, or proceeding, including reasonable attorneys' fees and expenses, court costs, administrative costs, disbursements, expert witness fees, investigative fees, and the costs of computerized legal research, even if not recoverable by law (including, without limitation, all fees, taxes, costs, and expenses incident to appellate, bankruptcy, and post-judgment proceedings).

#### **12. AGGREGATOR REPRESENTATIONS AND WARRANTIES: INDEMNIFICATION:**

- 12.1 **LICENSING.** At all times during the Term of this Agreement, Aggregator represents, warrants and covenants that it has and shall obtain and maintain, at its sole cost and expense, all required licenses and registrations required for the installation and operation of the DFPs and the performance of its obligations under this Agreement. Aggregator shall promptly provide copies of such licenses, registrations and verifications to Recurve at the request of Recurve and/or LSE.
- 12.2 **GOOD STANDING.** At all times during the Term of this Agreement, Aggregator represents and warrants that (a) it is a [ ] **[corporation/limited liability company/partnership]** duly organized, validly existing and in good standing under the laws of the State of [ ], (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 (c) it is and will be duly licensed or qualified to do business and in good standing under the laws of 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.
- 12.3 **SAFETY.** At all times during the Term of this Agreement, Aggregator continuously represents, warrants and covenants that it shall:
- (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) comply with all applicable Regulations;
  - (c) abide by LSE's standard safety program contract requirements as may be provided by Recurve on behalf of LSE to Aggregator from time to time;

(d) provide all necessary training to its employees, contractors, Subcontractors and agents to ensure fitness for duty 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.

(f) comply with the workforce qualifications, certifications, standards and requirements set forth in this this Agreement or in any applicable state, federal or local law or regulation.

(g) complete an industry standard criminal history background check and all sound screening practices for all employees, contractors, Subcontractors or agents of Aggregator. Recurve shall have the right to review, at its discretion, the contents of such background check.

(h) have the technical expertise and capacity to provide the necessary services in connection with each DFM and DFP, including, as applicable according to each DFP:

- LSE bill analysis
- Site assessment
- Storage system sizing calculation and modeling to simulate performance
- Project management
- Project installation and commissioning
- Project operation
- Project verification by a program representative
- Financing assistance to refer potential DFM Participants to relevant and applicable financing opportunities

**12.4 INDUSTRY EXPERIENCE.** Aggregator must have been in business for at least two (2) years prior to the date of executing this Agreement, and shall make the following documents available to Recurve upon Recurve's request:

- Certificate of Incorporation.
- Resumes of Key Personnel.
- Three brief written case studies that demonstrate experience with performing the required Work.

**12.5 FINANCIAL STABILITY.** Aggregator represents that it is an established organization capable of long-term relationships. Aggregator shall be a stable, financially sound business or nonprofit organization. Aggregator shall make available its financial statements and other documentation for Recurve to evaluate Aggregator's creditworthiness/financial condition with respect to potential liabilities.

**12.6 INDEMNIFICATION.** Aggregator agrees to indemnify, defend, and hold Recurve and LSE, and their respective employees, officers, contractors, owners and agents ("LSE Parties"), harmless from any and all losses, damages, costs, expenses and liabilities including, but not limited to, litigation and other dispute resolution costs, and attorney's fees ("Claims"), arising from or in connection with (a) any act or omission of an Aggregator Party in connection with this Agreement, the DFP or work performed under a DFM; (b) any and all Claims relating to any products installed or services performed during the installation, operation or maintenance of any DFP, or otherwise in connection with any DFP; or (c) any and all fines, penalties, or similar imposed by any governmental authority in connection with any DFP or this Agreement generally.

**12.7 WORKFORCE DIVERSITY.** Aggregator shall meet or exceed the requirements of LSE's workforce diversity policies.

### **13. LIMITATIONS ON LIABILITY.**

**13.1.** Neither Regulators, Recurve, nor any LSE shall be liable for any incidental, special, indirect, punitive or consequential damages relating to or arising from this Agreement.

**13.2.** Aggregator further agrees to release and hold Recurve harmless from any failure by any LSE to pay the Flexibility Payments. Aggregator acknowledges and agrees that Recurve is entering into this Agreement only on account of its administration of the DFMs on behalf of each respective LSE, and not as a party purchasing flexibility or obligated to make any Flexibility Payments to Aggregator, and that absent any fraud, gross negligence or willful misconduct of Recurve in connection with its performance hereunder, Recurve shall have no liability to Aggregator. For the avoidance of doubt, any and all Flexibility Payments earned by

Aggregator shall be paid to Aggregator directly by the applicable LSE pursuant and subject to all applicable terms and conditions of the applicable DFM, and not by Recurve, and Recurve has and shall have no obligation whatsoever to make any Flexibility Payments to Aggregator. Aside from its obligation to pay Flexibility Payments, LSE Parties shall not be liable to Aggregator Parties for Claims arising out of an DFP or the DFM. Aggregator is on notice of, and hereby specifically and expressly waives, the provisions of California Civil Code § 1542, which provides that a “general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

#### **14. NOTICES:**

All written notices hereunder shall be given to Recurve at the following location:

Contract Manager:

Address:

Email Address:

Telephone No.:

Notices shall be given to Aggregator at the following address:

Aggregator:

Address:

Email Address:

Telephone No.:

#### **15. DATA COLLECTION AND OWNERSHIP REQUIREMENTS:**

**15.1. DEFINITION OF “RECURVE DATA”.** “Recurve Data” shall mean all data or information provided by or on behalf of Recurve, including but not limited to, energy usage data relating to, of, or concerning, provided by or on behalf of any DFM Participants, LSE, or Regulators; all data or information input, information systems and technology, software, methods, forms, manuals and designs, transferred, uploaded, migrated, or otherwise sent by or on behalf of Recurve to Aggregator as Recurve may approve of in advance and in writing (in each instance); account numbers, forecasts, and other similar information disclosed to or otherwise made available to Aggregator.

“Confidential Information” under this Agreement shall have the same meaning as defined in the Non-Disclosure Agreement between the parties dated [MONTH YEAR]

**15.2. DEFINITION OF “LSE DATA”.** “LSE Data” shall mean all data or information provided by or on behalf of LSE, including but not limited to, DFM Participant Personal Information; energy usage data relating to, of, or concerning, provided by or on behalf of any DFM Participant; dashboards; all data or information input, information systems and technology, software, methods, forms, manuals, and designs, transferred, uploaded, migrated, or otherwise sent by or on behalf of LSE to Aggregator as LSE may approve of in advance and in writing (in each



instance); account numbers, forecasts, and other similar information disclosed to or otherwise made available to Aggregator. LSE Data shall also include all data and materials provided by or made available to Aggregator by LSE's licensors, including but not limited to, any and all survey responses, feedback, and reports subject to any limitations or restrictions set forth in the agreements between LSE and their licensors.

**15.3. DEFINITION OF "PERSONAL INFORMATION".** "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. Aggregator and Recurve shall comply with all applicable laws, rules, and regulations related to the use, collection, storage, and transmission of Personal Information.

**15.4. LSE DATA SECURITY MEASURES.** Prior to Aggregator receiving any LSE Data, Aggregator shall comply, and at all times thereafter continue to comply, with LSE's applicable data security policies set forth in Exhibit A. Aggregator must adhere to reasonable administrative, technical, and physical safeguard protocols to protect LSE Data from unauthorized handling, access, destruction, use, modification or disclosure.

**15.5. AGGREGATOR DATA SECURITY MEASURES.** Aggregator 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 Recurve Data and LSE Data against unauthorized or unlawful access, disclosure, alteration, loss, or destruction.

**15.6. RETURN OF DATA.** Within sixty days (60) after this Agreement terminates or expires, and upon Recurve's request, (i) Aggregator will securely destroy all Recurve Data and LSE Data in its possession and certify the secure destruction in writing to Recurve, and (ii) each Party will return (or if requested by the disclosing Party, destroy) all other Confidential Information and property of the other and of LSE (if any), provided that each Party's attorney shall be permitted to retain a copy of such records or materials solely for legal purposes.

**15.7. OWNERSHIP AND USE RIGHTS.**

- a) **Ownership of Data.** Unless otherwise expressly agreed to by the Parties, Recurve shall retain all of its rights, title and interest in Recurve Data and LSE shall retain all of its rights, title and interest in the LSE Data.
- b) **Definitions:**

1. **Program Intellectual Property.** "Program Intellectual Property" shall mean and include any and all materials, information, analysis or other work product jointly created, prepared, accumulated or developed by Recurve and Aggregator in connection with the DFM, including inventions, processes, templates, documents, drawings, computer applications, designs, calculations, maps, plans, work plans, texts, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual material, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith. Recurve shall retain all right, title and interest, including all related intellectual property rights, in the Program Intellectual Property, and Aggregator shall execute any such documents or take such actions as Recurve may reasonably request to perfect such ownership in the Program Intellectual Property; provided, however, that Recurve shall grant Aggregator an irrevocable, assignable, non-exclusive, fully paid up, worldwide, royalty-free, unrestricted license to use and sublicense others to use, reproduce, display, prepare and develop derivative works, perform, distribute copies of the Program Intellectual Property for the sole purpose of using such Program Intellectual Property for the conduct of Aggregator's business and for disclosure to Regulators for governmental and regulatory purposes related thereto. The term of such license shall expire upon the expiration or termination of this Agreement.
2. **Recurve Intellectual Property.** "Recurve Intellectual Property" shall mean and include any and all materials, information, analysis or other work product created, prepared, accumulated or developed solely by Recurve in connection with the DFM, including

inventions, processes, templates, documents, drawings, computer applications, designs, calculations, maps, plans, work plans, texts, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual material, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith. As between the Parties, Recurve owns and shall retain all right, title and interest, including all related intellectual property rights, in the Recurve Intellectual Property. Aggregator agrees to execute any such other documents or take other actions as Recurve may reasonably request to perfect Recurve's ownership in the Recurve Intellectual Property.

3. **Aggregator Intellectual Property.** "Aggregator Intellectual Property" shall mean and include any and all materials, information, analysis or other work product created, prepared, accumulated or developed solely by Aggregator in connection with the DFM, including inventions, processes, templates, documents, drawings, computer applications, designs, calculations, maps, plans, work plans, texts, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual material, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith. As between the Parties, Aggregator owns and shall retain all right, title and interest, including all related intellectual property rights, in the Aggregator Intellectual Property. Recurve agrees to execute any such other documents or take other actions as Aggregator may reasonably request to perfect Aggregator's ownership in the Aggregator Intellectual Property.
- c) **Aggregator's Pre-Existing Materials.** If, and to the extent Aggregator retains any preexisting ownership rights ("Aggregator's Pre-Existing Materials") in any of the materials furnished to be used to create, develop, and prepare the Program Intellectual Property, Aggregator hereby grants Recurve and LSE, including on behalf of the Regulator for governmental and regulatory purposes, an irrevocable, assignable, non-exclusive, fully paid up, worldwide, royalty-free, unrestricted license to use and sublicense others to use, reproduce, display, prepare and develop derivative works, perform, distribute copies of any intellectual or proprietary property right of Aggregator for the sole purpose of using such Program Intellectual Property for the conduct of Recurve's and LSE's business and for disclosure to Regulators for governmental and regulatory purposes related thereto. The term of such license shall expire upon the expiration or termination of this Agreement. Unless otherwise expressly agreed to by the Parties, Aggregator shall retain all of its rights, title and interest in Aggregator's Pre-Existing Materials. Any and all claims to Aggregator's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the Program Intellectual Property must be expressly disclosed to Recurve on or before the Effective Date.

#### **15.8. BILLING, ENERGY USE, AND DFP TRACKING DATA.**

- a) Aggregator shall comply with and timely cooperate with all Regulations or Recurve directives, activities, and requests regarding the DFM evaluation, measurement, and verification ("EM&V"). For the avoidance of doubt, it is the responsibility of Aggregator to be aware of and comply with all Regulations and other requirements applicable to DFM.
- b) Aggregator shall make available to Recurve upon demand, detailed descriptions of the DFM, data tracking systems, baseline conditions, and participant data, including financial assistance amounts.
- c) Aggregator shall make available to LSE any revisions to Aggregator's program theory and logic model ("PTLM") and results from its quality assurance procedures, and comply with all LSE EM&V requirements, including reporting of progress and evaluation metrics.

#### **16. FINANCIAL STATEMENTS:**

Aggregator shall deliver financial statements on an annual basis or as may be reasonably requested by Recurve and/or LSE 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. Recurve shall keep such information confidential if requested in writing by Aggregator, except as provided by law; additionally, Recurve may provide such information to LSE and to the Regulators under confidentiality procedures, where applicable.

#### **17. ACCESS TO DFM Participant SITES:**

Aggregator shall be responsible for obtaining any and all access rights from DFM Participants and other third parties to the extent necessary to implement the DFM and to allow for LSE and Regulator employees, representatives, agents, designees and contractors to inspect the DFPs.

**18. PROJECT WARRANTIES:**

Aggregator shall provide standard, best practice installation warranty for the workmanship on each DFP. Aggregator shall provide proof to Recurve that the Aggregator has submitted all warranty registrations for the DFP equipment. Aggregator shall prosecute manufacturer warranty claims on behalf of the Participant.

**19. POST-INSTALLATION MAINTENANCE AND OPERATION:**

Aggregator shall, to the best of its ability, ensure each DFP remains installed, reasonably maintained, and operational, including any and all timely repairs and replacements, for the entire duration of this Agreement.

**20. PROJECT COMPLETION:**

To the extent a permit is required by the authority having jurisdiction for a DFP, prior to approval by Recurve of Project Completion, as defined in the CPIP and evidenced by receipt of the final invoice provided by the Aggregator to the DFM Participant, Aggregator shall pass all inspections required by the authority having jurisdiction over the DFP.

**21. 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.

**22. COMPLETE AGREEMENT; NO WAIVER:**

This Agreement, together with each DFM Agreement entered into between Recurve and Aggregator, and all exhibits and addenda thereto are incorporated herein and constitute the entire agreement between the Parties. No modification or amendment shall be valid unless made in writing and signed by each Party. This Agreement supersedes all prior or contemporaneous negotiations, representations, promises and agreements, whether written or oral, concerning the subject matter hereof. 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.

**23. THIRD PARTY BENEFICIARY:**

Except as set forth in the immediately following sentence, the Parties do not confer any rights or remedies upon any person other than the parties to this Agreement and their respective successors and permitted assigns. The Parties hereby designate LSE as an intended third-party beneficiary of this Agreement, having the right to enforce the provisions of this Agreement in law or equity directly against Aggregator or its Subcontractors the same as if it were a party hereto.

**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.

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

**Recurve Analytics, Inc.:**

**AGGREGATOR:**

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

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

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

## EXHIBIT A

### LSE PROGRAM TERMS AND CONDITIONS

Where Marin Clean Energy ("MCE") is the applicable LSE, the following additional terms and conditions shall apply to the Agreement:

#### 1. Insurance Requirements For Aggregator

##### 1.1. GENERAL LIABILITY

Aggregator shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars (\$1,000,000) per occurrence and with a two million dollar (\$2,000,000) aggregate limit. Recurve and LSE each shall be named as an additional insured on the commercial general liability policy, and the Certificate of Insurance shall include an additional endorsement page.

##### 1.2. AUTO LIABILITY

Where the services to be provided under this Agreement involve or require the use of any type of vehicle by Aggregator in order to perform said services, Aggregator 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).

##### 1.3. WORKERS' COMPENSATION

Aggregator acknowledges Regulations require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the applicable Labor Code. If Aggregator 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 Recurve within 15 days after the Effective Date.

##### 1.4. PRIVACY AND CYBERSECURITY LIABILITY

Aggregator shall maintain 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) coverage of at least \$ one million dollars (\$1,000,000) US per occurrence.

#### 2. DFM Standards and Regulations

##### 2.1. Workforce Standards

2.1.1. Aggregator shall comply with the workforce qualifications, certifications, standards and requirements set forth below or established by any applicable law or regulation. Prior to commencement of any Services, once per calendar year, and at any other time as may be requested by MCE or Recurve, Aggregator shall provide, and shall require every Subcontractor to provide all documentation necessary to demonstrate to MCE's or Recurve's reasonable satisfaction that Aggregator Parties have complied with the Workforce Standards.

2.1.2. HVAC Standards. For any non-residential project pursuant to this Agreement installing, modifying or maintaining a Heating Ventilation and Air Conditioning ("HVAC") system or component with incentives valued at \$3,000 or more, Aggregator shall ensure that each worker or technician involved in the project, including all of its employees and agents and those of each Subcontractor, meet at least one of the following workforce criteria:

- i. Completed an accredited HVAC apprenticeship;
- ii. Is enrolled in an accredited HVAC apprenticeship;
- iii. Completed at least five years of work experience at the journey level as defined by the California Department of Industrial Relations, Title 8, Section 205, of the California Code of Regulations, passed a practical and written HVAC system installation competency test, and received credentialed training specific to the installation of the technology being installed; or
- iv. Has a C-20 HVAC contractor license issued by the California Contractor's State Licensing Board.

This standard shall not apply where the incentive is paid to any manufacturer, distributor, or retailer of HVAC equipment, unless the manufacturer, distributor, or retailer installs or contracts for the installation of the equipment. For the avoidance of doubt, Aggregator is deemed to be equivalent to manufacturer, distributor or retailer; therefore, the standard shall not apply unless Aggregator installs or contracts for the installation of the equipment.

- 2.1.3. Advanced Lighting Controls Standards.** For any non-residential project pursuant to this Agreement involving installation, modification, or maintenance of lighting controls with incentives valued at \$2,000 or more, Aggregator shall ensure that all workers or technicians involved in the project, including those of its Aggregator Parties are certified by the California Advanced Lighting Controls Training Program ("CALTP"). This requirement shall not apply where the incentive is paid to a manufacturer, distributor, or retailer of lighting controls unless the manufacturer, distributor, or retailer installs or contracts for installation of the equipment. For the avoidance of doubt, Aggregator is deemed to be equivalent to manufacturer, distributor or retailer; therefore, the standard shall not apply unless Aggregator installs or contracts for the installation of the equipment.
- 2.2. Licensing and/or Certifications.** Each Aggregator represents and warrants that, at all times it is performing the Services, it is properly licensed and/or certified, as required by law, to perform the Work at all times during the term of this Agreement. For avoidance of doubt, any Aggregator Party that is performing work at the property of a DFM Participant shall have and maintain licensure by the California Contractors State License Board ("CSLB"), at all times during the Term of this Agreement. CSLB License numbers must be made available by Aggregator upon request by Recurve or MCE for verification.
- 2.3. Quality Assurance.** Aggregator shall comply with Quality Assurance procedures, as they are defined in the CPIP, including but not limited to: (i) industry standard best practices; and (ii) procedures that ensure DFP functionality, DFM Participant satisfaction, and that Workforce Standards are satisfied.
- 2.4. Data Security Measures.** Prior to receiving any MCE Data, and at all times continuing thereafter, Aggregator shall comply with MCE's Data security policies set forth in MCE Policy 009 and MCE's Advanced Metering Infrastructure (AMI) Data Security and Privacy Policy ("Security Measures"). "MCE Data" shall mean all data or information provided by or on behalf of MCE, including but not limited to, DFM Participant Personal Information; energy usage data relating to, of, or concerning, provided by or on behalf of any DFM Participant; all data or information input, information systems and technology, software, methods, forms, manuals, and designs, transferred, uploaded, migrated, or otherwise sent by or on behalf of MCE to Recurve as MCE may approve of in advance and in writing (in each instance); account numbers, forecasts, and other similar information disclosed to or otherwise made available to Recurve. MCE Data shall also include all data and materials provided by or made available to Recurve by MCE's licensors, including but not limited to, any and all survey responses, feedback, and reports subject to any limitations or restrictions set forth in the agreements between MCE and their licensors. MCE's Security Measures and Confidentiality provisions require Aggregator to adhere to reasonable administrative, technical, and physical safeguard protocols to protect MCE's Data from unauthorized handling, access, destruction, use, modification or disclosure.

Additionally, Aggregator shall execute the non-disclosure agreement ("NDA") attached hereto as Exhibit A-1. Subcontractors are not required to execute a NDA but Aggregator shall ensure that any Subcontractor, 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.

Promptly after the FPA terminates or expires (i) Aggregator will securely destroy all MCE Data in its possession and certify the secure destruction in writing to MCE, and (ii) Aggregator will return (or if requested Recurve or MCE, destroy) all other Confidential Information and property of the other (if any), provided that Recurve's attorney shall be permitted to retain a copy of such records or materials solely for legal purposes.

- 2.5. Performance Assurance.** Regardless of the specific work provided, Aggregator shall maintain any payment and/or performance assurances as may be requested by Recurve or MCE during the performance of the work.
- 2.6. Fitness for Duty.** Aggregator 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. Aggregator shall have, and shall ensure that any Subcontractor shall have, policies in place that require its 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.

- 2.7. Standards of Performance.** Aggregator shall deliver the Work under the DFP in a timely, professional, good and workmanlike and ethical manner as specified in the CPIP.
- 2.8. Attendance at Meetings.** Aggregator's representatives will attend all meetings required by Recurve while the Work, or any part of it, is in progress, or as reasonably requested by Recurve, and will be prepared and authorized to address all matters related to the Work.
- 2.9. No Discrimination; Equal Opportunity Employer.** Aggregator shall be an Equal Employment Opportunity employer committed to the principles of equal employment opportunity. Aggregator shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741-5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Additionally, these regulations require that covered contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, or disability.
- 2.10. Warranties to Participants.** Aggregator shall provide a standard, best practice installation warranty for the workmanship on each DFP. Aggregator shall provide proof to Recurve that the Aggregator has submitted all warranty registrations for the DFP equipment. Aggregator shall prosecute manufacturer warranty claims on behalf of the Participant.
- 2.11. Post-Installation Maintenance and Operation.** Aggregator shall ensure each DFP remains installed, reasonably maintained, and operational, including any and all timely repairs and replacements, for the entire Term.
- 2.12. Site Access.** Aggregator shall be responsible for obtaining any and all access rights from Participants and other third parties to the extent necessary to perform the Work. Aggregator shall also procure any and all access rights from Participants and other third parties in order for MCE and Recurve employees, representatives, designees, and contractors to access the DFP site and inspect the Work prior to, during, and after installation for the full Term.
- 2.13. Compliance with Laws.** Aggregator shall comply at all times during the Term with any and all federal, state and local laws, regulations, orders, ordinances, permitting requirements and resolutions, including without limitation, 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.
- 3. Subcontractors.** Aggregator shall be solely responsible for ensuring that each Subcontractor complies with the terms and conditions of this Exhibit A.
- 4. 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. Aggregator 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.

**EXHIBIT A-1****NON-DISCLOSURE AGREEMENT****Fully Executed Non-Disclosure Agreement Must Be Sent to  
[compliance@mceCleanEnergy.org](mailto:compliance@mceCleanEnergy.org)**

This Non-Disclosure Agreement (“Agreement”) is entered into by and between Marin Clean Energy (“MCE”) and \_\_\_\_ (“Contractor”) as of \_\_\_\_ \_\_\_, 2020 (“Effective Date”). As used herein MCE and Contractor may each be referred to individually as a “Party” and collectively as “Parties.” The provisions of this Agreement and MCE Policy 001 (Customer Confidentiality) govern the disclosure of MCE’s confidential customer information to Contractor (“Disclosure Provisions”). The Parties hereby mutually agree that:

1. Subject to the terms and conditions of this Agreement, current proprietary and confidential information of MCE regarding customers of MCE (“MCE Customers”) may be disclosed to Contractor from time to time in connection herewith as provided by the Disclosure Provisions and solely for the purposes set forth on Schedule A. Such disclosure is subject to the following legal continuing representations and warranties by Contractor:
  - (a) Contractor represents and warrants that it has all necessary authority to enter into this Agreement, and that it is a binding enforceable Agreement according to its terms;
  - (b) Contractor represents and warrants that the authorized representative(s) executing this Agreement is authorized to execute this Agreement on behalf of the Contractor; and
  - (c) Contractor confirms its understanding that the information of MCE Customers is of a highly sensitive confidential and proprietary nature, and that such information will be used as contemplated under the Disclosure Provisions solely for the purposes set forth on Schedule A and that any other use of the information is prohibited.
  - (d) Contractor represents and warrants that it will implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure, and prohibits the use of the data for purposes not set forth on Schedule A.
2. The confidential and proprietary information disclosed to Contractor in connection herewith may include, without limitation, the following information about MCE Customers: (a) names; (b) addresses; (c) telephone numbers; (d) service agreement numbers; (e) meter and other identification numbers; (f) MCE-designated account numbers; (g) meter numbers; (h) electricity and gas usage (including monthly usage, monthly maximum demand, electrical or gas consumption as defined in Public Utilities Code Section 8380, HP load, and other data detailing electricity or gas needs and patterns of usage); (i) billing information (including rate schedule, baseline zone, CARE participation, end use code (heat source) service voltage, medical baseline, meter cycle, bill cycle, balanced payment plan and other plans); (j) payment / deposit status; (k) number of units; and (l) other similar information specific to MCE Customers individually or in the

aggregate (collectively, "Confidential Information"). Confidential Information shall also include specifically any copies, drafts, revisions, analyses, summaries, extracts, memoranda, reports and other materials prepared by Contractor or its representatives that are derived from or based on Confidential Information disclosed by MCE, regardless of the form of media in which it is prepared, recorded or retained.

3. Except for electric and gas usage information provided to Contractor pursuant to this Agreement, Confidential Information does not include information that Contractor proves (a) was properly in the possession of Contractor at the time of disclosure; (b) is or becomes publicly known through no fault of Contractor, its employees or representatives; or (c) was independently developed by Contractor, its employees or representatives without access to any Confidential Information.
4. From the Effective Date, no portion of the Confidential Information may be disclosed, disseminated or appropriated by Contractor, or used for any purpose other than the purposes set forth on Schedule A.
5. Contractor shall, at all times and in perpetuity, keep the Confidential Information in the strictest confidence and shall take all reasonable measures to prevent unauthorized or improper disclosure or use of Confidential Information. Contractor shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure and prohibits the use of the data for purposes not set forth on Schedule A. Specifically, Contractor shall restrict access to Confidential Information, and to materials prepared in connection therewith, to those employees or representatives of Contractor who have a "need to know" such Confidential Information in the course of their duties with respect to the Contractor program and who agree to be bound by the nondisclosure and confidentiality obligations of this Agreement. Prior to disclosing any Confidential Information to its employees or representatives, Contractor shall require such employees or representatives to whom Confidential Information is to be disclosed to review this Agreement and to agree to be bound by the terms of this Agreement.
6. Contractor shall be liable for the actions of, or any disclosure or use by, its employees or representatives contrary to this Agreement; however, such liability shall not limit or prevent any actions by MCE directly against such employees or representatives for improper disclosure and/or use. In no event shall Contractor or its employees or representatives take any actions related to Confidential Information that are inconsistent with holding Confidential Information in strict confidence. Contractor shall immediately notify MCE in writing if it becomes aware of the possibility of any misuse or misappropriation of the Confidential Information by Contractor or any of its employees or representatives. However, nothing in this Agreement shall obligate the MCE to monitor or enforce the Contractor's compliance with the terms of this Agreement.
7. Contractor shall comply with the consumer protections concerning subsequent disclosure and use set forth in Attachment B to CPUC Decision No. 12-08-045.
8. Contractor acknowledges that disclosure or misappropriation of any Confidential Information could cause irreparable harm to MCE and/or MCE Customers, the amount of which may be difficult to assess. Accordingly, Contractor hereby confirms that the MCE shall be entitled to apply to a court of competent jurisdiction or the California Public Utilities Commission for an injunction, specific performance or such other relief (without



posting bond) as may be appropriate in the event of improper disclosure or misuse of its Confidential Information by Contractor or its employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to the MCE, in law or equity.

9. In addition to all other remedies, Contractor shall indemnify and hold harmless MCE, its officers, employees, or agents from and against all claims, actions, suits, liabilities, damages, losses, expenses and costs (including reasonable attorneys' fees, costs and disbursements) attributable to actions or non-actions of Contractor and/or its employees and/or its representatives in connection with the use or disclosure of Confidential Information.
10. When Contractor fully performs the purposes set forth on Schedule A, or if at any time Contractor ceases performance or MCE requires Contractor cease performance of the purposes set forth on Schedule A, Contractor shall promptly return or destroy (with written notice to MCE itemizing the materials destroyed) all Confidential Information then in its possession at the request of MCE. Notwithstanding the foregoing, the nondisclosure obligations of this Agreement shall survive any termination of this Agreement.
11. This Agreement shall be binding on and inure to the benefit of the successors and permitted assigns of the Parties hereto. This Agreement shall not be assigned, however, without the prior written consent of the non-assigning Party, which consent may be withheld due to the confidential nature of the information, data and materials covered.
12. This Agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof, and supersedes all prior discussions, negotiations, understandings, communications, correspondence and representations, whether oral or written. This Agreement shall not be amended, modified or waived except by an instrument in writing, signed by both Parties, and, specifically, shall not be modified or waived by course of performance, course of dealing or usage of trade. Any waiver of a right under this Agreement shall be in writing, but no such writing shall be deemed a subsequent waiver of that right, or any other right or remedy.
13. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without reference to its principles on conflicts of laws.

**IN WITNESS WHEREOF**, the authorized representatives of the Parties have executed this Agreement as of the Effective Date.

**MARIN CLEAN ENERGY**

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name, Title)

\_\_\_\_\_  
(Address)

**CONTRACTOR**

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name, Title)

\_\_\_\_\_  
(Address)

**Fully Executed Non-Disclosure Agreement Must Be Sent to  
[compliance@mceCleanEnergy.org](mailto:compliance@mceCleanEnergy.org)**

**All Contractors Must Complete the Attached Schedule A**

**SCHEDULE A**  
**CONTRACTOR PURPOSES**

**EXHIBIT B**  
**FEES AND PAYMENT SCHEDULE**

For Services provided under this Agreement, MCE shall pay Recurve in accordance with the amount(s) and the payment schedule as specified below:

1. Monthly Invoices. Recurve shall bill MCE monthly by written invoice ("Invoice") for 15% of the Total Program Value of the projects completed (each a "DFP Completion") in the previous month, as defined and further detailed below. DFP Completion shall be defined in the CPIP and evidenced by receipt of the final invoice, as provided by the Aggregator to the DFM Participant.

"Total Program Value" shall be calculated using the forecasted energy savings estimates provided by the Aggregator, the lead measure that will be used to forecast the marginal hourly savings load shape of the project for each hour of the year ("Anchor Measure"), and the associated measure expected useful life ("EUL"), Recurve shall calculate the program value of each installed project ("Program Value"), creating an "enrollment summary" that will be delivered to MCE on a monthly basis. Program value mirrors the calculation of "net benefits" as defined by the CPUC.

MCE shall pay undisputed Invoice amounts equaling 15% of the Total Program Value for all DFPs completed in the previous month.

2. The Parties understand and agree that Recurve's failure to provide MCE with Recurve's verified documentation of the monetary value of the electric and gas net benefits one year plus 60 days after completion of a DFP for any reason, including but not limited to termination of the Agreement whereby Recurve is a Defaulting Party, will damage MCE, including by causing reputational harm to MCE, in an amount that is difficult or incapable of precise estimation. The Parties agree that a liquidated damages amount of twenty percent (20%) of the Total Program Value for each such DFP, represents a fair, reasonable and appropriate estimate of the damages thereof and that such sum bears a reasonable relationship to those anticipated damages.
3. DFP Documentation shall include the following:
  - a. List of Energy Efficiency measures installed;
  - b. Total DFM Participant cost of installing or implementing the Energy Efficiency measures
  - c. Anticipated Energy Savings for the DFP (as they are defined and calculated in the Rulebook);
  - d. The Anchor Measure;
  - e. An EUL of the Energy Efficiency measures installed

Additional details on required DFP documentation may be included in the CPIP as confirmed in writing by Recurve and MCE.

4. Fee Assumptions and Understandings:
  - a. The Anticipated Energy Savings for the DFP and the Anchor Measure load shape and EUL are the "Key Inputs" required to calculate the monetary benefits of a project using the CPUC's Avoided Cost Calculator.
  - b. These key inputs determine the monetary value of the project, which when divided by the Total Resource Costs, as defined by the CPUC, are the main determinants of program Cost Effectiveness, as defined by the CPUC.
  - c. The values of the Avoided Cost Calculator are in the public domain and have been incorporated into a pricing tool developed by Recurve that will be used to determine the value of the project and thus determine the payment due to Recurve.
  - d. Recurve will share the code behind Recurve's version of the Cost-Effectiveness Tool within two (2) weeks of the effective date of this Agreement

Express Not to Exceed Amount. In no event shall the total cost to MCE for the Services provided herein exceed the maximum sum of **\$100,000** for the term of the Agreement, which sum is subject to grant and approval by the CPUC.



May 07, 2021

TO: MCE Executive Committee

FROM: Alice Havenar-Daughton, Manager of Customer Programs;  
Qua Vallery, Customer Programs Regulatory and Reporting  
Manager

RE: First Agreement Between Apex Analytics, LLC and MCE  
(Agenda Item #05 C.3)

ATTACHMENT: Proposed First Agreement Between Apex Analytics, LLC and  
MCE

Dear Executive Committee Members:

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**SUMMARY:**

If approved, the proposed First Agreement with Apex Analytics, LLC will provide MCE with a market assessment and report that will assist MCE in better understanding opportunities and strategies for overcoming barriers to serving residential customers with energy efficiency. The market assessment and report have been identified as critical in fostering continued improvement for MCE's current energy efficiency portfolio.

**Background:**

In December 2019, the California Public Utilities Commission ("CPUC") approved MCE's 2020 Energy Efficiency Annual Budget Advice Letter, which included \$119,112 for Evaluation, Measurement and Verification ("EM&V") Activities.

MCE's service area is heavily comprised of residential customers. Residential customers are historically among the least cost-effective and most difficult to serve with energy efficiency programs. The market assessment and report provided by Apex is a critical EM&V product needed to set the baseline for strategic design and improvement of MCE's residential energy efficiency portfolio.

MCE's residential energy efficiency portfolio for 2021 includes three residential programs with a funding level of \$2.7M. The programs are designed to help serve customers that often miss out on energy efficiency opportunities, including

renters, low- to moderate-income households, households located in disadvantaged communities, and non-English speaking households.

In February 2021, MCE released a Request for Proposals from qualified organizations to conduct a market assessment and report. MCE selected Apex Analytics, LLC, a team of senior research experts with extensive experience in community-based programs, stakeholder engagement, and equity in clean energy program design and evaluation.

Their services would include:

- Review existing research findings on the residential sector and interviewing key MCE staff and MCE contractors that are integrally involved in program design and delivery;
- Perform demographic and market analysis to identify any gaps in program uptake;
- Establish a community advisory committee to provide input and support research efforts;
- Lead focus groups with multifamily building owners and managers;
- Conduct ride-along observations with subcontractors conducting field outreach, household assessments, or delivering education;
- Conduct a residential customer survey to gather a broad perspective from MCE's customer base;
- Hold working sessions with MCE Customer Programs staff and any other key stakeholders to present findings;
- Draft and finalize a report, including a PowerPoint presentation, of findings and recommendations.

The proposed First Agreement would be active through December 31, 2021, and would not exceed \$114,960.

**Fiscal Impacts:**

The proposed budget would be covered entirely from the energy efficiency program funds allocated by the California Public Utilities Commission ("CPUC").

**Recommendation:**

Approve the proposed First Agreement Between Apex Analytics, LLC and MCE.

**MARIN CLEAN ENERGY  
STANDARD SHORT FORM CONTRACT**

**FIRST AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND APEX ANALYTICS, LLC**

**THIS FIRST AGREEMENT** ("Agreement") is made and entered into on May 7, 2021 by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and **APEX ANALYTICS, LLC**, a **Colorado limited liability company** with principal address at: **2500 30th Street, Boulder, Colorado 80301** (hereinafter referred to as "Contractor") (each, a "Party," and, together, the "Parties").

**RECITALS:**

**WHEREAS**, MCE desires to retain Contractor to provide the services described in **Exhibit A** attached hereto and by this reference made a part hereof ("Services");

**WHEREAS**, Contractor desires to provide the Services to MCE;

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. SCOPE OF SERVICES:**

Contractor agrees to provide all of the Services in accordance with the terms and conditions of this Agreement. "Services" shall also include any other work performed by Contractor pursuant to this Agreement.

**2. 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 ("Term"). Contractor shall provide MCE with Contractor's 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 ninety (90) days will not be reimbursable. The final invoice must be submitted within thirty (30) days of completion of the stated scope of services or termination of this Agreement. MCE will process payment for undisputed invoiced amounts within thirty (30) days.

**3. MAXIMUM COST TO MCE:**

In no event will the cost to MCE for the Services to be provided herein exceed the maximum sum of **\$114,960**.

**4. TERM OF AGREEMENT:**

This Agreement shall commence on **May 7, 2021** ("Effective Date") and shall terminate on **December 31, 2021**, unless earlier terminated pursuant to the terms and conditions set forth in Section 12.

**5. REPRESENTATIONS; WARRANTIES; COVENANTS:**

**5.1. CONTRACTOR REPRESENTATIONS AND WARRANTIES.** Contractor represents, warrants and covenants that (a) it is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Colorado, (b) it has full power and authority and all regulatory authorizations required to execute, deliver and perform its obligations under this Agreement and all exhibits and addenda and to engage in the business it presently conducts and contemplates conducting, (c) it 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, (d) it is qualified and competent to render the Services and possesses the requisite expertise to perform its obligations hereunder, (e) the execution, delivery and performance of this Agreement and all exhibits and addenda hereto are within its powers and do not violate the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, (f) this Agreement and each exhibit and addendum constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, and (g) it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt.

**5.2. COMPLIANCE WITH APPLICABLE LAW:** At all times during the Term and the performance of the Services, Contractor shall comply with all applicable federal, state and local laws, regulations, ordinances and resolutions ("Applicable Law")

**5.3. LICENSING.** At all times during the performance of the Services, Contractor represents, warrants and covenants that it has and shall obtain and maintain, at its sole cost and expense, all required permits, licenses, certificates 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.

**5.4. NONDISCRIMINATORY EMPLOYMENT:** Contractor shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, gender identity, age or condition of disability. Contractor understands and agrees that Contractor is bound by and shall comply with the nondiscrimination mandates of all federal, state, and local statutes, regulations, and ordinances.

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

## **6. INSURANCE:**

At all times during the Term and the performance of the Services, Contractor shall maintain the insurance coverages set forth below. All such insurance coverage 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, directors, officers, and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to MCE prior to commencement of Services. Certificate(s) of insurance must be current as of the Effective Date, and shall remain in full force and effect through the Term. If scheduled to lapse prior to termination date, certificate(s) of insurance must be automatically updated before final payment may be made to Contractor. Each certificate of insurance shall provide for thirty (30) days' advance written notice to MCE of any cancellation or reduction in coverage. Insurance coverages shall be payable on a per occurrence basis only, except those required by Section 6.4 which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing in this Section 6 shall be construed as a limitation on Contractor's indemnification obligations in Section 17 of this Agreement.

Should Contractor fail to provide and maintain the insurance required by this Agreement, in addition to any other available remedies at law or in equity, MCE may suspend payment to the Contractor for any Services provided during any period of time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required insurance 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. "Marin Clean Energy" 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 (REQUIRED IF CHECKED ☒).** 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).

**6.3. WORKERS' COMPENSATION.** The Contractor acknowledges that 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, it shall comply with this requirement and 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 Services.

**6.4. PROFESSIONAL LIABILITY INSURANCE (REQUIRED IF CHECKED ☐.** Contractor shall maintain professional liability insurance with 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 that Contractor's general insurance reserves are adequate to provide the necessary coverage and MCE may conclusively rely thereon. Coverages required by this subsection may be provided on a claims-made basis with a "Retroactive Date" prior to the Effective Date. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond termination of this Agreement. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Effective Date, Contractor must purchase "extended reporting" coverage for a minimum of twelve (12) months after termination of this Agreement.

## **7. RESERVED**



**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 expressly identified herein in Exhibit A. If Contractor hires a subcontractor under this Agreement (a "Subcontractor"), Subcontractor shall be bound by all applicable terms and conditions of this Agreement, and Contractor shall ensure the following:

- 8.1.** Subcontractor shall comply with the following terms of this Agreement: Sections 9, 10, Exhibit A.
- 8.2.** Subcontractor shall provide, maintain and be bound by the representations, warranties and covenants of Contractor contained in Section 5 hereof (as may be modified to be applicable to Subcontractor with respect to Section 5.1(a) hereof) at all times during the Term of such subcontract and its provision of Services.
- 8.3.** Subcontractor shall comply with the terms of Section 6 above, including, but not limited to providing and maintaining insurance coverage(s) identical to what is required of Contractor under this Agreement, and shall name MCE as an additional insured under such policies. Contractor shall collect, maintain, and promptly forward to MCE current evidence of such insurance provided by its Subcontractor. Such evidence of insurance shall be included in the records and is therefore subject to audit as described in Section 9 hereof.
- 8.4.** Subcontractor shall be contractually obligated to indemnify the MCE Parties (as defined in Section 17 hereof) pursuant to the terms and conditions of Section 17 hereof.
- 8.5.** Subcontractors shall not be permitted to further subcontract any obligations under this Agreement.

Contractor shall be solely responsible for ensuring its Subcontractors' compliance with the terms and conditions of this Agreement made applicable above and to collect and maintain all documentation and current evidence of such compliance. Upon request by MCE, Contractor shall promptly 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'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 monies to any Subcontractor.

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

Contractor shall keep and maintain on a current basis full and complete records and documentation pertaining to this Agreement and the Services, whether stored electronically or otherwise, including, but not limited to, valuation records, accounting records, documents supporting all invoices, employees' time sheets, receipts and expenses, and all customer documentation and correspondence (the "Records"). MCE shall have the right, during regular business hours, to review and audit all Records during the Term 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 request 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.

**10. DATA, CONFIDENTIALITY AND INTELLECTUAL PROPERTY:****10.1. OWNERSHIP AND USE RIGHTS.**

- a) **MCE Data.** Unless otherwise expressly agreed to in writing by the Parties, MCE shall retain all of its rights, title and interest in MCE's Data. "MCE Data" shall mean all data or information provided by or on behalf of MCE, including but not limited to, customer Personal Information; energy usage data relating to, of, or concerning, provided by or on behalf of any customers; all data or information input, information systems and technology, software, methods, forms, manuals, and designs, transferred, uploaded, migrated, or otherwise sent by or on behalf of MCE to Contractor as MCE may approve of in advance and in writing (in each instance); account numbers, forecasts, and other similar information disclosed to or otherwise made available to Contractor. MCE Data shall also include all data and materials provided by or made available to Contractor by MCE's licensors, including but not limited to, any and all survey responses, feedback, and reports subject to any limitations or restrictions set forth in the agreements between MCE and their licensors.
- b) **Intellectual Property.** Unless otherwise expressly agreed to in writing by the Parties, any and all materials, information, or other intellectual property created, prepared, accumulated or developed by Contractor or any Contractor Party under this Agreement ("Intellectual Property"), including finished and unfinished inventions, processes, templates, documents, drawings, computer programs, designs, calculations, valuations, maps, plans, workplans, text, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual materials, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith, shall be owned by MCE on behalf and for the benefit of MCE's respective customers. MCE shall have the exclusive right to

use Intellectual Property in its sole discretion and without further compensation to Contractor or to any other party. Contractor shall, at MCE's expense, provide Intellectual Property to MCE or to any party MCE may designate upon written request. Contractor may keep one file reference copy of Intellectual Property prepared for MCE solely for legal purposes and if otherwise agreed to in writing by MCE. In addition, Contractor may keep one copy of Intellectual Property if otherwise agreed to in writing by MCE.

- c) **Intellectual Property shall be owned by MCE upon its creation.** Contractor agrees to execute any such other documents or take other actions as MCE may reasonably request to perfect MCE's ownership in the Intellectual Property.
- d) **Contractor's Pre-Existing Materials.** If, and to the extent Contractor retains any preexisting ownership rights ("Contractor's Pre-Existing Materials") in any of the materials furnished to be used to create, develop, and prepare the Intellectual Property, Contractor hereby grants MCE on behalf of its customers and the CPUC for governmental and regulatory purposes an irrevocable, assignable, non-exclusive, perpetual, fully paid up, worldwide, royalty-free, unrestricted license to use and sublicense others to use, reproduce, display, prepare and develop derivative works, perform, distribute copies of any intellectual or proprietary property right of Contractor or any Contractor Party for the sole purpose of using such Intellectual Property for the conduct of MCE's business and for disclosure to the CPUC for governmental and regulatory purposes related thereto. Unless otherwise expressly agreed to by the Parties, Contractor shall retain all of its rights, title and interest in Contractor's Pre-Existing Materials. Any and all claims to Contractor's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the Intellectual Property must be expressly disclosed to MCE prior to performing any Services under this Agreement. Any such Pre-Existing Material that is modified by work under this Agreement is owned by MCE.

**10.2. EQUITABLE RELIEF.** Each Party acknowledges that a breach of this Section 10 would cause irreparable harm and significant damages to the other Party, the degree of which may be difficult to ascertain. Accordingly, each Party agrees that MCE shall have the right to obtain immediate equitable relief to enjoin any unauthorized use or disclosure of MCE Data, in addition to any other rights and remedies that it may have at law or otherwise; and Contractor shall have the right to obtain immediate equitable relief to enjoin any unauthorized use or disclosure of Contractor's Pre-Existing Materials, in addition to any other rights and remedies that it may have at law or otherwise.

## **11. FORCE MAJEURE:**

A Party shall be excused for failure to perform its obligations under this Agreement if such obligations are prevented by an event of Force Majeure (as defined below), but only for so long as and to the extent that the Party claiming Force Majeure ("Claiming Party") is actually so prevented from performing and provided that (a) the Claiming Party gives written notice and full particulars of such Force Majeure to the other Party (the "Affected Party") promptly after the occurrence of the event relied on, (b) such notice includes an estimate of the expected duration and probable impact on the performance of the Claiming Party's obligations under this Agreement, (c) the Claiming Party furnishes timely regular reports regarding the status of the Force Majeure, including updates with respect to the data included in Section 10 above during the continuation of the delay in the Claiming Party's performance, (d) the suspension of such obligations sought by Claiming Party is of no greater scope and of no longer duration than is required by the Force Majeure, (e) no obligation or liability of either Party which became due or arose before the occurrence of the event causing the suspension of performance shall be excused as a result of the Force Majeure; (f) the Claiming Party shall exercise commercially reasonable efforts to mitigate or limit the interference, impairment and losses to the Affected Party; (g) when the Claiming Party is able to resume performance of the affected obligations under this Agreement, the Claiming Party shall give the Affected Party written notice to that effect and promptly shall resume performance under this Agreement. "Force Majeure" shall mean acts of God such as floods, earthquakes, fires, orders or decrees by a governmental authority, civil or military disturbances, wars, riots, terrorism or threats of terrorism, utility power shutoffs, strikes, labor disputes, pandemic, or other forces over which the responsible Party has no control and which are not caused by an act or omission of such Party.

## **12. TERMINATION:**

**12.1.** If the Contractor fails to provide in any manner the Services required under this Agreement, otherwise fails to comply with the terms of this Agreement, violates any Applicable Law, makes an assignment of any general arrangement for the benefit of creditors, 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, otherwise becomes bankrupt or insolvent (however evidenced), or becomes unable to pay its debts as they fall due, then MCE may terminate this Agreement by giving five (5) business days' written notice to Contractor.

**12.2.** Either Party hereto may terminate this Agreement for any reason by giving thirty (30) calendar days' written notice to the other Party. Notice of termination shall be by written notice to the other Party and be sent by registered mail or by email to the email address listed in Section 19.

**12.3.** In the event of termination not the fault of the Contractor, the Contractor shall be paid for Services performed up 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). Notwithstanding anything contained in this Section 12, in no event shall MCE be liable for lost or anticipated profits or overhead on uncompleted portions of the Agreement. Contractor shall not enter into any

agreement, commitments or subcontracts that would incur significant cancellation or termination costs without prior written approval of MCE, and such written approval shall be a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12. Also, as a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12, Contractor shall have delivered to MCE any and all Intellectual Property (as defined in Section 10.1(b)) prepared for MCE before the effective date of such termination.

- 12.4. MCE may terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.
- 12.5. Without limiting the foregoing, if either Party's activities hereunder become subject to law or regulation of any kind, which renders the activity illegal, unenforceable, or which imposes additional costs on such Party for which the parties cannot mutually agree upon an acceptable price modification, then such Party shall at such time have the right to terminate this Agreement upon written notice to the other Party with respect to the illegal, unenforceable, or uneconomic provisions only, and the remaining provisions will remain in full force and effect.
- 12.6. Upon termination of this Agreement for any reason, Contractor shall and shall cause each Contractor Party to bring the Services to an orderly conclusion as directed by MCE and shall return all MCE Data (as defined in Section 10.1(a) above) and Intellectual Property to MCE.
- 12.7. Notwithstanding the foregoing, this Agreement shall be subject to changes, modifications, or termination by order or directive of the California Public Utilities Commission ("CPUC"). The CPUC may from time to time issue an order or directive relating to or affecting any aspect of this Agreement, in which case MCE shall have the right to change, modify or terminate this Agreement in any manner to be consistent with such order or directive.
- 12.8. Notwithstanding any provision herein to the contrary, Sections 2, 3, 8.4, 9, 10, 12, 15, 16, 17, 18, 19, 20, 21, 22, 24, and Exhibit B of this Agreement shall survive the termination or expiration of this Agreement.

### **13. 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.

### **14. AMENDMENT; NO WAIVER:**

This Agreement may be amended or modified only by written agreement of the Parties. 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.

### **15. 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. 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.

### **16. 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.

### **17. INDEMNIFICATION:**

To the fullest extent permitted by Applicable Law, Contractor shall indemnify, defend, and hold MCE and its employees, officers, directors, representatives, and agents ("MCE Parties"), harmless from and against any and all actions, claims, liabilities, losses, costs, damages, and expenses (including, but not limited to, litigation costs, attorney's fees and costs, physical damage to or loss of tangible property, and injury or death of any person) arising out of, resulting from, or caused by: a) the negligence, recklessness, intentional misconduct, fraud of all Contractor Parties; b) the failure of a Contractor Party to comply with the provisions of this Agreement or Applicable Law; or c) any defect in design, workmanship, or materials carried out or employed by any Contractor Party.

### **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 MCE's Joint Powers Agreement, MCE 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. No Contractor Party shall have rights and nor shall any Contractor Party make any claims, take any actions, or assert any remedies against any of MCE's constituent members in connection with this Agreement.

**19. 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
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All other notices shall be given to MCE at the following location:

Contract Manager:	Troy Nordquist
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MCE Address:	1125 Tamalpais Avenue
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San Rafael, CA 94901
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Email Address:	contracts@mcecleanenergy.org
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Telephone No.:	(925) 378-6767
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Notices shall be given to Contractor at the following address:

Contractor:	Joe Van Clock
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Address:	2500 30th Street, Suite 207
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Boulder, CO 80301
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Email Address:	joevc@apexanalyticsllc.com
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Telephone No.:	(303) 590-9888 ext. 107
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**20. ENTIRE AGREEMENT; ACKNOWLEDGMENT OF EXHIBITS:**

This Agreement along with the attached Exhibits marked below constitutes the entire Agreement between the Parties. 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 shall govern.

	<input checked="" type="checkbox"/>	<u>Check applicable Exhibits</u>	<u>CONTRACTOR'S INITIALS</u>	<u>MCE'S INITIALS</u>
<u>EXHIBIT A.</u>	<input checked="" type="checkbox"/>	Scope of Services		
<u>EXHIBIT B.</u>	<input checked="" type="checkbox"/>	Fees and Payment		

**21. 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.

**22. INDEPENDENT CONTRACTOR:**

Contractor is an independent contractor to MCE hereunder. Nothing in this Agreement shall establish any relationship of partnership, joint venture, employment or franchise between MCE and any Contractor Party. Neither MCE nor any Contractor Party will have the

power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided for herein.

**23. TIME:**

Time is of the essence in this Agreement and each and all of its provisions.

**24. THIRD PARTY BENEFICIARIES:**

The Parties agree that there are no third-party beneficiaries to this Agreement either express or implied.

**25. FURTHER ACTIONS:**

The Parties agree to take all such further actions and to execute such additional documents as may be reasonably necessary to effectuate the purposes of this Agreement.

**26. 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.

**27. 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.

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

**APPROVED BY**

**Marin Clean Energy:**

**CONTRACTOR:**

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

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

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

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

Chairperson

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

Contractor will provide the following Evaluation, Measurement, and Verification (“EM&V”) services as requested and directed by MCE Regulatory & Reporting Manager, up to the maximum time/fees allowed under this Agreement.

Contractor will provide a market assessment study and report for residential energy efficiency (“EE”) offerings in MCE’s service area (“Project” or “Project Report”).

### Task 1: Project Initiation

**Estimated 38 Total Hours**

**Estimated Completion Date: June 2021**

Contractor will conduct a kick-off meeting at the start of the Project to discuss the scope and objectives of the Project.

- First, Contractor will:
  - Develop a detailed work plan (“Work Plan”) to complete the Project that includes, at a minimum:
    - 1) Description of the evaluation and assessment activities that will be undertaken;
    - 2) Presentation of tasks and sub-tasks;
    - 3) Project schedule and milestones;
    - 4) Necessary resources, personnel, and budget; and
    - 5) Task deliverables.
- Second, after approval by MCE Regulatory & Reporting Manager, Contractor will:
  - Share the Work Plan with the California Public Utilities Commission (“CPUC”) by posting the Work Plan to the Public Documents Area (“PDA”), for a two-week public comment period;
  - Present the Work Plan to the EM&V Peer Coordination Group (“PCG”) meeting, if requested by MCE Regulatory & Reporting Manager.
- Third, Contractor will answer questions and resolve comments and/or issues raised via PDA by MCE staff, CPUC Energy Division staff, and other interested external stakeholders on scopes of work, project descriptions, and Work Plan for the Project.

*Deliverables: Kick off-meeting; draft and final Project Work Plan.*

### Task 2: Initial Market Characterization

**Estimated 178 Total Hours**

**Estimated Completion Date: August 2021**

#### Task 2a: Document Review and Staff Interviews

Contractor will review existing research findings or evaluation reports on the residential sector and interview key staff to better understand the market.

- Review any relevant residential reports, including PG&E and statewide reports covering the areas that MCE serves;
- Review key Program materials, including program manuals, implementation plans, and MCE’s EE Business Plan to gain an understanding of MCE’s residential sector activities;
- Interview key MCE staff and any MCE contractors integrally involved in Program design and delivery.

#### Task 2b: Demographic and Market Analysis

Contractor will combine analyses of broader demographic data with analyses of MCE’s residential program participation data to identify any gaps in Program uptake.

- Analyze U.S. Census Bureau, CALEnviroScreen, Solar for All, and other sources for data to identify census tracts with the highest concentrations of renters, low-to-moderate income households, households located in disadvantaged communities,<sup>1</sup> and non-English speaking households;
- Review most recent EE potential studies including research available to identify areas of EE opportunity across demographics or housing types;
- Use MCE Program data to assess Program participation in the areas with the greatest opportunity relative to the territory as a whole.

#### Task 2c: Establish Community Advisory Committee

Contractor will convene an advisory committee of community organizations (“Committee”) to provide input and support research efforts.

- Identify and recruit community organizations to participate in the Committee.
- Convene four meetings with the Committee, including:
  - Introductory meeting;

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<sup>1</sup> Defined by the CPUC at: <https://www.cpuc.ca.gov/discom/>

- Meeting to discuss findings from analysis of participation and demographic data and gather feedback on gaps in Program coverage;
- Meeting to gather feedback on primary data collection objectives, approaches, and plans;
- Meeting to present and gather feedback on preliminary research findings and conclusions.
- Consult with MCE Regulatory & Reporting Manager in developing Committee guidance and feedback.

#### Task 2d: Market Characterization Findings Working Session

Contractor will hold a working session with MCE Customer Programs staff and any other key stakeholders to present findings from Tasks 2a, 2b, and 2c.

- Discuss initial findings and implications to inform subsequent targeted market research activities.

*Deliverables: Comprehensive interview guide; Early findings and status updates from Tasks 2a-2c activities; PowerPoint Presentation on Phase I findings and recommendations.*

### Task 3: Targeted Market Research

**Estimated 264 Total Hours**

**Estimated Completion Date: October 2021**

#### Task 3a: Multifamily Building Owner/Manager Focus Groups

Contractor will lead two 90-minute focus groups with multifamily building owners and managers.

- Work with Committee members to recruit participants and segment focus groups as well as provide input on a discussion guide;
- Develop screening questionnaire and discussion guide.

#### Task 3b: Single Family Direct Install Ride-Along

Contractor will conduct ride-along observations with subcontractors conducting field outreach, household assessments, and/or delivering energy education for the Single-Family Direct Install program.

- Develop an observation guide to structure the ride-along observations;
- Collect and analyze data gained from ride-alongs.

#### Task 3c: Residential Customer Survey

Contractor will gather a broad perspective from MCE's customer base by doing a customer survey.

- Work with MCE Customer Programs staff and Committee members to determine the best approach to deliver the customer survey and identify the best methodologies to reach MCE residential customers;
- Develop a data collection plan prior to launching the survey for MCE's review;
- Determine survey sampling plan based on initial market assessment;
- Develop survey instrument with input from the Committee members and MCE Customer Programs staff.
- Review and testing of survey instrument.

*Deliverables: Focus group screening questionnaire and discussion guide; Single Family ride-along observation guide; Residential customer survey data collection plan and survey instrument.*

### Task 4: Reporting

**Estimated 110 Total Hours**

**Estimated Completion Date: December 2021**

Contractor will develop a report synthesizing findings from all research activities and identify actionable recommendations.

- Prepare a draft report for MCE staff review that includes:
  - 1) An executive summary that is easily understandable and written in plain language for a nontechnical audience;
  - 2) Approach and methodology for the Program;
  - 3) Data source, data collection, and data findings;
  - 4) Program conclusions; and
  - 5) Program recommendations.
- Prepare a final Project Report that incorporates comments from MCE staff on the draft report.
- After approval by MCE Customer Programs staff, Contractor will share the final Project Report with the CPUC and post the final Project Report to the PDA for a two-week public comment period.
- Present Project Report findings and recommendations to MCE staff, CPUC Energy Division staff, Investor-Owned Utility/Regional Energy Network/Community Choice Aggregator Program Administrators, and other external stakeholders.
- Address and resolve comments and/or issues raised by MCE staff, CPUC Energy Division staff, and other interested external stakeholders.

*Deliverables: Draft and finalize Project Report; PowerPoint presentation of findings and recommendations*

## EXHIBIT B FEES AND PAYMENT SCHEDULE

For services provided under this Agreement, MCE shall pay Contractor in accordance with the amount(s) and the payment schedule as specified below:

### 2021 Hourly Rate Schedule

Employee	Position	Hourly Rate
Lauren Gage	Principal	\$230
Marti Frank	Principal	\$200
Joe Van Clock	Associate	\$180
Caitie Nelson	Senior Analyst	\$135

<b>Task 1: Project Initiation</b>	<b>Not to exceed \$6,890</b> For expenses and hourly work performed at an average rate of \$181.32 per hour
<b>Task 2: Initial Market Characterization</b>	<b>Not to exceed \$33,320</b> For expenses and hourly work performed at an average rate of \$187.19 per hour
<b>Task 3: Targeted Market Research</b>	<b>Not to exceed \$56,110</b> For expenses and hourly work performed at an average rate of \$212.54 per hour
<b>Task 4: Reporting</b>	<b>Not to exceed \$18,640</b> For expenses and hourly work performed at an average rate of \$169.45 per hour

Upon written request of the Contractor, and written approval of MCE Regulatory & Reporting Manager, funds may shift between Tasks or utilize remaining contract funds to accomplish the scope of services outlined in this Agreement.

Contractor shall bill MCE monthly for all hours worked the month prior. In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of **\$114,960** for the term of the Agreement.





May 7, 2021

TO: MCE Executive Committee

FROM: Garth Salisbury, Director of Finance and Treasurer  
Mike Callahan, Senior Policy

RE: First Amendment to First Agreement by and between MCE  
and K&L Gates (Agenda Item #05 C.4)

ATTACHMENT: A. Proposed First Amendment to First Agreement by and  
between MCE and K&L Gates  
B. First Agreement by and between MCE and K&L Gates

Dear Executive Committee Members:

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**SUMMARY:** K&L Gates provides legal counsel for matters related to MCE's direct debt/bonds initiative and energy contracts. The proposed First Amendment to the First Agreement by and between MCE and K&L Gates increasing the maximum amount under the contract from \$100,000 to 180,000 will allow K&L Gates to provide follow-up work on MCE's Debt Policy in 2021, draft and revise the Master Bond Indenture and provide general legal advice on contract and other matters including advice on clean hydrogen energy projects. The amendment would also extend the term of the Agreement from December 31 2021 to March 31, 2022.

**Fiscal Impacts:** Costs related to the referenced amendment are included in the FY 2021/22 Operating Fund Budget.

**Recommendation:** Approve the First Amendment to the First Agreement by and between MCE and K&L Gates.

## FIRST AMENDMENT TO FIRST AGREEMENT BY AND BETWEEN MARIN CLEAN ENERGY AND K&L GATES LLP

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This FIRST AMENDMENT is made and entered into on April 15, 2021, by and between MARIN CLEAN ENERGY, (hereinafter referred to as "MCE") and K&L GATES LLP, (hereinafter referred to as "Contractor").

### RECITALS

WHEREAS, MCE and Contractor entered into an agreement on December 3, 2020, to provide legal counsel for MCE-issued bond and related legal matters("Agreement"); and

WHEREAS, Section 4 and Exhibit B to the Agreement 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 amend the Agreement to increase the contract amount by \$80,000 for total consideration not to exceed \$180,000; and

WHEREAS, Section 5 of the Agreement stated the Agreement shall terminate on December 31, 2021; and

WHEREAS the parties desire to further amend the Agreement to extend the time of the Agreement; and

WHEREAS, Exhibit A to the Agreement specified the tasks Contractor will complete for the legal services as described in the scope therein; and

WHEREAS the parties desire to amend the Agreement to add to the scope of work of the Agreement; and

WHEREAS, Exhibit B to the Agreement specified the fee and payment schedule MCE would use to pay Contractor for the legal services described in the scope therein; and

WHEREAS the parties desire to amend the Agreement to modify the fee and payment schedule of the agreement.

NOW, THEREFORE, the parties agree to modify Sections 4 and 5 and Exhibits A and 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 **\$180,000.**

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

**TERM OF AGREEMENT:**

This Agreement shall commence on **December 3, 2020**, and shall terminate on **March 31, 2022**. 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.

3. Item 2 of Exhibit A is hereby modified to read as follows:

(2) Create bond master indenture document ("Bond Master Indenture") and Debt Policy follow up and integration – (approximately 60-80 hours)

- Contractor will:

- Provide first draft of Bond Master Indenture for MCE's review;
- Actively participate in MCE's review of Bond Master Indenture by providing input based on MCE's review;
- Present and discuss the Bond Master Indenture at the subsequently scheduled Ad Hoc Committee Meeting;
- Present and discuss Bond Master Indenture at next regularly scheduled MCE Board meeting;
- Review and finalize Bond Master Indenture for potential adoption at subsequent regularly scheduled MCE Board meeting;
  - May require presenting Bond Master Indenture at multiple Board meetings for Board approval;
- Provide follow-up Debt Policy work in calendar year 2021, revising and amending as necessary or as required for the indenture; and
- Review and revise the indenture and Debt Policy for any necessary integration work or to conform with implementation procedures at MCE.

4. The following bullets are hereby added to after item 4 of Exhibit A:

(5) Contractor will provide task-specific legal services and assistance as requested and directed by MCE General Counsel or Senior Policy Counsel.

5. Exhibit B is hereby removed and replaced in its entirety to read as follows:

For services provided under this Agreement, MCE shall pay Contractor in accordance with the amount(s) and the payment schedule as specified below:

<b>Task Category</b>	<b>Approximate Hours</b>	<b>Maximum Sum</b>
Debt Policy	8-10	\$3,000
Bonds and Master Indenture and Debt Policy Follow up and Integration	60-80	\$40,000
Selection of Municipal Advisor	2-3	\$1,000

For services under Task 4 and 5, Contractor will bill at an hourly rate of \$595 per hour, unless a flat fee is negotiated.

For additional services, Contractor will bill at an hourly rate, according to the table below:

<b>Name</b>	<b>Title</b>	<b>Location</b>	<b>Hourly Rate (includes 15% discount)</b>
David Bournazian	Partner	Orange County	\$765
Cynthia Weed	Partner	Seattle	\$490
Rob Starin	Partner	Seattle	\$650
Bill Holmes	Partner	Portland	\$715
Rikki Sapolich-Krol	Partner	San Francisco	\$695
Elizabeth Crouse	Partner	Seattle	\$680
Ken Kecskes	Partner	San Francisco	\$605
Buck Endemann	Partner	San Francisco	\$580
Theresa Hill	Partner	Seattle	\$580
Scott McJannet	Partner	Seattle	\$420
Lana Le Hir	Associate	Orange County	\$530
Amy Wong	Associate	Orange County	\$495
Olivia Mora	Associate	Houston	\$370
Kaitlyn Sikora	Associate	San Francisco	\$365

This Exhibit B may be modified by the mutual agreement of Contractor and MCE's General Counsel.

Contractor shall bill monthly for services rendered the month prior. In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of **\$180,000** for the term of the Agreement.

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

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

MARIN CLEAN ENERGY:

CONTRACTOR:

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

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

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

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

**MARIN CLEAN ENERGY  
STANDARD SHORT FORM CONTRACT**

**FIRST AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND K&L GATES LLP**

**THIS FIRST AGREEMENT** ("Agreement") is made and entered into this day **December 3, 2020** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and K&L GATES LLP, hereinafter referred to as "Contractor."

**RECITALS:**

**WHEREAS**, MCE desires to retain a person or firm to provide the following services: legal counsel for MCE-issued bond and related legal matters;

**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** 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 **\$100,000**.

**5. TIME OF AGREEMENT:**

This Agreement shall commence on **December 3, 2020**, and shall terminate on **December 31, 2021**. 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 16 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.

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 applicable 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, MCE will be notified immediately and the Parties will address their respective rights and obligations as to any subcontractors on a case-by-case basis..

**9. ASSIGNMENT:**

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

**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. 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. Contractor may keep file reference copies of all documents prepared for MCE and shall have the right, subject to its duty to maintain confidentiality, to use any such work product, once the work product is de-identified and anonymized so that it is unassociated with MCE, for internal instructional and other purposes (including as an anonymized template for subsequent work product for MCE or other clients).

**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, pandemics, 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.

**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. INDEMNIFICATION:**

Contractor shall indemnify, defend, and hold MCE, its employees, and officers, harmless from liabilities, claims, and any other damages incurred by MCE arising solely from Contractor's own acts, omissions or negligence from the performance of its services. ..

**17. 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.

**18. 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.

**19. 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.: (925) 378-6767

Notices shall be given to Contractor at the following address:

Contractor: Buck Endemann

Address: 4 Embarcadero Center, Suite 1200

San Francisco, CA 94111

Email Address: Buck.endemann@klgates.com

Telephone No.: (415) 882-8016

**20. 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.

	<input checked="" type="checkbox"/>	<u>Check applicable Exhibits</u>	<u>CONTRACTOR'S INITIALS</u>
<u>EXHIBIT A.</u>	<input checked="" type="checkbox"/>	Scope of Services	<sup>DS</sup> BE
<u>EXHIBIT B.</u>	<input checked="" type="checkbox"/>	Fees and Payment	<sup>DS</sup> BE
<u>EXHIBIT C.</u>	<input checked="" type="checkbox"/>	Letter Re: Confirmation of Engagement	<sup>DS</sup> BE

**21. 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.

**22. 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.



### 23. 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.

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

#### APPROVED BY

Marin Clean Energy:

DocuSigned by:  
By: Dawn Weisz  
A59878416EBC4F8...  
Title: CEO  
Date: 12/8/2020

#### CONTRACTOR:

DocuSigned by:  
By: Buck Endemann  
D7FF2808D0EC49F...  
Name: Buck Endemann  
Date: 12/8/2020

#### MODIFICATIONS TO STANDARD SHORT FORM

☒ Standard Short Form Content Has Been Modified

List sections affected: Section 8, Section 9, Section 10, Section 11, Section 12(B), Section 16,

Approved by MCE Counsel:

DocuSigned by:  
Michael Callahan  
B1AE6120798543E...

Date: 12/3/2020

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

Contractor will provide legal services related to MCE-issued bonds, energy contracts, and related legal matters as requested and directed by MCE's General Counsel, up to the maximum time/fees allowed under this Agreement.

Legal services will include, but are not limited to:

- (1) Create debt policy document ("Debt Policy") – (approximately 8-10 hours)
  - MCE will create a first draft outline of Debt Policy;
  - After receiving MCE's first draft outline of Debt Policy, Contractor will:
    - Provide input and revisions to MCE's first draft outline of Debt Policy;
    - Present and discuss the Debt Policy at the subsequently scheduled MCE Ad Hoc Committee Meeting;
    - Review and finalize Debt Policy for potential adoption at next regularly scheduled MCE Board meeting;
      - May require presenting Debt Policy at multiple Board meetings for Board approval.
- (2) Create bond master indenture document ("Bond Master Indenture") – (approximately 30-40 hours)
  - Contractor will:
    - Provide first draft of Bond Master Indenture for MCE's review;
    - Actively participate in MCE's review of Bond Master Indenture by providing input based on MCE's review;
    - Present and discuss the Bond Master Indenture at the subsequently scheduled Ad Hoc Committee Meeting;
    - Present and discuss Bond Master Indenture at next regularly scheduled MCE Board meeting;
    - Review and finalize Bond Master Indenture for potential adoption at subsequent regularly scheduled MCE Board meeting;
      - May require presenting Bond Master Indenture at multiple Board meetings for Board approval.
- (3) Assist with selection of Municipal Advisor ("MA") for MCE-issued bonds – (approximately 2-3 hours)
  - Contractor will:
    - Provide scope language for MCE to include in MCE's draft RFO for MA;
    - Review MCE's draft RFO for MA;
    - Assist MCE with finalizing RFO for distribution to MAs;
    - Provide input on offers submitted in response to RFO for MA.
- (4) Assist with the creation of energy contracts – (as needed and requested by MCE)
  - Contractor will:
    - Represent MCE in negotiating and drafting renewable, carbon-free, and conventional energy contracts using various structures including Power Purchase Agreements, Edison Electric Institute, and Western Systems Power Pool;
    - Assist MCE with performance security and credit issues arising in connection with renewable, carbon-free, and conventional energy agreements;

Optional tasks subject to hourly rates in Exhibit B that may be addressed prior to bond issuance (but are not required):

- Advising upon MCE's Investment Policy;
- Assisting with post-issuance compliance policy (specifically the Continuing Disclosure Undertaking document);
- Assisting with building the official statement.

This Exhibit A may be modified by the mutual agreement of Contractor and MCE's General Counsel.

**EXHIBIT B****FEES AND PAYMENT SCHEDULE**

For services provided under this Agreement, MCE shall pay Contractor in accordance with the amount(s) and the payment schedule as specified below:

<b>Task Category</b>	<b>Approximate Hours</b>	<b>Maximum Sum</b>
Debt Policy	8-10	\$3,000
Bond Master Indenture	30-40	\$15,000
Selection of Municipal Advisor	2-3	\$1,000

For services under Task 4, Contractor will bill at an hourly rate of \$595 per hour, unless a flat fee is negotiated.

For additional services, Contractor will bill at an hourly rate, according to the table below:

<b>Name</b>	<b>Title</b>	<b>Location</b>	<b>Hourly Rate (includes 15% discount)</b>
David Bournazian	Partner	Orange County	\$765
Cynthia Weed	Partner	Seattle	\$730
Rob Starin	Partner	Seattle	\$725
Bill Holmes	Partner	Portland	\$715
Rikki Sapolich-Krol	Partner	San Francisco	\$695
Elizabeth Crouse	Partner	Seattle	\$680
Ken Kecskes	Partner	San Francisco	\$605
Buck Endemann	Partner	San Francisco	\$580
Theresa Hill	Partner	Seattle	\$580
Scott McJannet	Partner	Seattle	\$580
Lana Le Hir	Associate	Orange County	\$530
Amy Wong	Associate	Orange County	\$495
Olivia Mora	Associate	Houston	\$370
Kaitlyn Sikora	Associate	San Francisco	\$365

This Exhibit B may be modified by the mutual agreement of Contractor and MCE's General Counsel.

Contractor shall bill monthly for services rendered the month prior. In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of **\$100,000** for the term of the Agreement.

**LETTER RE: CONFIRMATION OF ENGAGEMENT**

Except as modified in writing by the accompanying Agreement or in another agreement signed by MCE and Contractor, the following provisions shall apply to the relationship between Contractor (hereinafter referred to as "K&L Gates", the "Firm", "our", "us" and "we") and MCE (hereinafter referred to as "you", "your", or the "Client"). If any terms in this Exhibit C conflict with the terms set forth in the terms of the Agreement, the terms in the Agreement control.

**EXHIBIT C**

September 1, 2020

Buck B. Endemann  
Buck.Endemann@klgates.com

T 415 882-8016

Dawn Weisz  
Marin Clean Energy  
1125 Tamalpais Ave  
San Rafael, CA 94901  
[dweisz@mcecleanenergy.org](mailto:dweisz@mcecleanenergy.org)

**Re: Confirmation of Engagement**

Dear Dawn:

Thank you for asking K&L Gates LLP (the “Firm” or “K&L Gates”) to represent Marin Clean Energy (“MCE”). We welcome this opportunity and look forward to working with you on this engagement.

I enclose our Terms of Engagement for Legal Services (the “Terms”) which supplement this letter and include additional information regarding our legal services, our relations with our clients, our billing and payment arrangements, potential conflicts, and other matters. These Terms will apply to all matters on which we may represent you, except as you and we may otherwise expressly agree.

Please review this letter and the Terms carefully. If they are not consistent with your understanding of our engagement in any respect or if you have any questions concerning the nature and terms of our engagement, please contact me as soon as possible so that we can promptly address your concerns.

**The Scope of Our Engagement**

The Firm is being engaged to act as counsel solely for MCE and not for any affiliated entity (including parents and subsidiaries), shareholder, partner, member, manager, director, officer or employee not specifically identified herein.

We understand that we are to provide bond finance advice, and to address those additional matters for which the Firm expressly agrees to provide representation.

K&L Gates will only provide legal services. We have not been retained, and expressly disclaim any obligation, to provide business or investment advice.

**EXHIBIT C**

**Our Charges**

Our statements for professional services will be substantially based upon the amount of time spent by lawyers, paralegals, and other professionals who perform services on your behalf and their respective hourly rates as then in effect, accounting for the discounts described in Attachment D of our pitch materials. Those hourly rates vary by office across the Firm, take into account the timekeepers' experience in particular areas, and are adjusted periodically. In some instances, we anticipate agreeing with you on flat fee or not-to-exceed amounts for particular types of legal work. Our charges for fees, disbursements, and other charges and the basis for our invoices are addressed in more detail in the enclosed Terms.

**Our Billing and Payment Arrangements**

We will generally render statements for professional services and related charges on a monthly basis and expect payment to be made within 30 days of your receipt of our statement, without regard to the consummation or outcome of the matter for which we have been engaged. In the event our statements are not timely paid, we reserve the right to suspend our services until satisfactory payment arrangements are made or to terminate our services if such arrangements are not made and if such termination is otherwise appropriate. You may, of course, terminate our services at any time.

**Our Staffing of Your Engagement and Communications with You**

I will be your principal contact with respect to the Firm's representation of MCE. My discounted hourly rate for this matter (as reflected in Attachment D of our pitch materials) is \$580.

Our representation of you will be staffed by other partners, associates and other professional staff as may be appropriate under the circumstances. We will endeavor to keep you apprised of significant developments in the course of our engagement, to consult with you about our work on an ongoing basis and to obtain your direction on critical issues.

You should contact me with any questions you may have about our work or any other aspect of our representation of you. You can reach me at the office (415-882-8016) or on cell (619-894-5551) at your convenience.

**Conflicts of Interest**

We have searched the Firm's conflicts database and have disclosed to you any ethical conflicts of interest, as defined by the applicable rules of professional conduct, that existed at the time. Such conflicts, if any, have been resolved to your and to our satisfaction. With respect to conflicts of interest that may arise in the future during our engagement by you, the Terms includes a Conflict of Interest section in which you agree to a limited, prospective waiver. This means that, if all the conditions set forth therein are met, and provided that the matter is not substantially related to the matters we handled or are handling for you, the Firm 1) may represent another

**EXHIBIT C**


client in a matter in which its interests are adverse to your interests, and 2) may represent as a client any individual or entity that is or has been adverse to you. Please review this section, as well as all other sections of the Terms, in detail.

**Our Agreement**

In providing legal services to you, absent timely advice from you to the contrary, we will act in reliance upon the understanding that this letter and the enclosed Terms constitute our mutual understanding with respect to the terms of our retention. If you proceed with the use of our services, please sign and return to me the enclosed copy of this letter in order that we each have a fully-executed copy for our files.

On behalf of K&L Gates, I thank you for the opportunity to represent MCE. We look forward to serving you.


Very truly yours,

DocuSigned by:  
  
D7FF2808D0EC49F...  
Buck B. Endemann

Enclosure: Terms of Engagement for Legal Services

We confirm our engagement of K&L Gates LLP as set forth herein and in the enclosed Terms of Engagement.

**Marin Clean Energy**

DocuSigned by:  
  
A59878416EBC4F8...  
Dawn Weisz, CEO

Date: 9/1/2020

**EXHIBIT C****K&L GATES LLP****TERMS OF ENGAGEMENT FOR LEGAL SERVICES**

Thank you for selecting K&L Gates LLP ("K&L Gates") to represent you and to provide legal services as described in our engagement letter. These Terms of Engagement for Legal Services (the "Terms"), together with our engagement letter and any standard form agreement signed with MCE ("Form Agreement"), set forth the basis upon which K&L Gates will provide legal services to you. Absent a contrary agreement between us, we will understand that our engagement letter and these Terms supersede any prior oral understandings between us and together form the contract ("Engagement Contract") for our initial engagement and any subsequent assignments upon which you and we may mutually agree.

We believe it is important to establish clearly the basic terms of our engagement at the outset. Accordingly, if you have any questions concerning these Terms, please contact the lawyer responsible for your engagement so that your questions or concerns may be addressed and resolved promptly.

**INTRODUCTION**

K&L Gates comprises multiple affiliated entities: a limited liability partnership named K&L Gates LLP organized under the laws of Delaware ("K&L Gates-US," the "Firm," or "we" or "us" as the context requires) and maintaining offices in certain states throughout the United States and in a number of international multiple affiliated entities.<sup>1</sup>

**OTHER K&L GATES ENTITIES**

You agree that, as your agent, we may engage other K&L Gates entities to assist us in carrying out our engagement, where appropriate and with notice to you.

Numerous countries in which our offices are located have enacted Anti-Money Laundering ("AML") laws. If K&L Gates lawyers in any of these offices are engaged to assist you in matters within the scope of our engagement, it will be necessary to comply with the applicable AML laws. In connection therewith, we or lawyers from the appropriate office may be required to

obtain additional, specific evidence of client identity from you and/or to report certain transactions to the authorities. If these AML requirements are applicable, you will be informed of the details needed for compliance.

**OUR LAWYER-CLIENT RELATIONSHIP**

The Firm has been engaged to represent only the client(s) named in our engagement letter ("you" or the "Client"), even if someone other than you, including an insurer, is responsible for paying, or has agreed to pay, our statements. Accordingly, absent a specific, separate engagement to represent such other persons or entities, (1) if our Client is an individual, the Firm has not agreed to represent, and is not representing, any other person or any affiliated entity; (2) if our Client is a corporation, partnership, joint venture or other entity, the Firm has not agreed to represent, and is not representing, any of your constituents, including directors, officers, employees, managing agents, partners, members, shareholders, affiliates (including parents and subsidiaries) or other persons associated with you; and, (3) if our Client is a trade association or other member organization, the Firm has not agreed to represent, and is not representing, any director, officer, member of or other entity represented by you or any of your other constituents.

In addition, the Firm's engagement to represent you is limited to the matter(s) described in our engagement letter and to any additional matters for which the Firm expressly agrees to provide legal representation.

You acknowledge that the Firm has not provided you with legal advice concerning the terms and conditions of our Engagement Contract.

**OUR CHARGES FOR LEGAL SERVICES****A. Legal Fees**

Our statements for professional services will be substantially based upon the time spent by professionals, including lawyers, paralegals and other

<sup>1</sup> K&L Gates comprises multiple affiliated entities: a limited liability partnership named K&L Gates LLP organized under the laws of Delaware ("K&L Gates-US," the "Firm," or "we" or "us" as the context requires) and maintaining offices in certain states throughout the United States and in Beijing ("K&L Gates LLP Beijing Representative Office"), Berlin, Doha, Dubai, Frankfurt, Munich, Seoul ("K&L Gates LLP Seoul Foreign Legal Consultant Office"), and Shanghai ("K&L Gates LLP Shanghai Representative Office"); an Australian multi-disciplinary partnership maintaining offices in Brisbane, Melbourne, Perth and Sydney ("K&L Gates-AUS"); a limited liability partnership (also named K&L Gates LLP); incorporated in England and Wales and maintaining offices in London and Paris ("K&L Gates-UK"); a Delaware

general partnership ("K&L Gates Belgium") maintaining an office in Brussels; a Hong Kong general partnership ("K&L Gates, Solicitors") maintaining an office in Hong Kong; a professional association established and organized under the laws of Italy named Studio Legale Associato with an office in Milan; a general partnership organized under the laws of Brazil named K&L Gates LLP – Consultores em Direito Estrangeiro/Direito Norte-Americano, with an office in São Paulo; a Taiwan general partnership ("K&L Gates") maintaining an office in Taipei; a joint enterprise formed in accordance with Japanese regulations ("K&L Gates Gaikokuho Joint Enterprise") maintaining an office in Tokyo; and a limited liability company organized under the laws of Singapore ("K&L Gates Straits Law LLC").



**EXHIBIT C**

staff members operating under the supervision of lawyers, who perform services on your behalf. The hourly rates for those individuals are based upon their experience and vary by office across the Firm. Time spent on your matters will include meetings with you and others; traveling; considering, preparing and working on documents, pleadings and other papers; written and electronic correspondence; and, making and receiving telephone calls. Whether or not a matter proceeds to completion, our statements will include all work done and all expenses incurred, unless otherwise agreed.

Our hourly rates are periodically reviewed and adjusted. In preparing our statements for professional services, we will use our hourly rates in effect when our services were rendered.

Information regarding standard hourly rates and other charges established by the Firm is proprietary to the Firm. You agree not to disclose such information to third parties without the Firm's prior written consent. In the event that you are served with a demand or legal process that you believe requires you to disclose such information, you agree to notify the Firm immediately of such demand or process, and to reasonably cooperate with the Firm in protecting the Firm's proprietary information from disclosure without the Firm's consent.

Where requested, we may provide you an estimate of the overall costs that may be incurred in connection with a particular engagement. Any such estimate is necessarily based on a number of uncertain factors and future developments and may be influenced by your decisions and by the actions of third parties. Accordingly, any estimate we provide shall not constitute a promise or agreement that we will render the necessary services within a specific time or for a specific amount. The Firm's statements for professional services will be based on the Firm's billing policies, as set forth herein, and the charges reflected in such statements may vary from any estimates previously given.

**B. Disbursements**

You will be billed for disbursements and other charges relating to our professional services. With respect to disbursements incurred on your behalf to vendors and other third parties for incidental expenses (such as filing fees and travel expenses), you will be billed at our invoiced cost. With respect to internally-generated and other charges (such as photocopying and facsimile transmissions), you will be billed in accordance with our Schedule of Standard Charges in effect when the charge is incurred. Our current Schedule is attached to these Terms. Where the nature of our engagement requires the retention of third parties (e.g., expert witnesses, accountants, actuaries or other consultants, mediators or

arbitrators), we will obtain your approval for such retention, and we will forward their statements for services and expenses directly to you for payment.

**C. Other K&L Gates Entities Charges**

Where, with notice to you, we have engaged another K&L Gates entity to assist us in our representation of you, we will include their charges in our statement for professional services unless you ask us to arrange for the other K&L Gates entity to invoice you separately.

**OUR BILLING AND PAYMENT ARRANGEMENTS****A. Billing**

It is our general practice to render statements for professional services and related charges on a monthly basis. We will send a final statement after completion of our work.

**B. Payment**

We will expect payment to be made within thirty days after your receipt of our statement, without regard to the consummation of any proposed transaction or the outcome of any matter. Payment should be made by you in the full amount of our statement and you will be responsible also for any withholding tax or other deduction that may be chargeable to you by the relevant taxing authorities or by a governmental entity. In the event our statements are not paid in a timely manner, we reserve the right to defer further work on your account and, where such arrearage is not resolved after notice of delinquency is given to you, to terminate our representation of you. Under such circumstances, you agree to consent to, and not oppose, such termination and to sign a substitution of counsel and/or such other document as may be reasonably necessary to effect the Firm's termination of our lawyer-client relationship, including the Firm's withdrawal of its prior appearance in any court or other litigated proceeding. The termination of our lawyer-client relationship shall not affect your ongoing responsibility for any fees or other charges incurred as of the date of our notice of termination.

**C. Intentionally Omitted.****D. Third Party Payment Responsibility**

If a third party (including an insurer) undertakes to pay any portion of the Firm's bills, 1) you will remain responsible for payment of any amounts billed by the Firm and not paid by that third party, 2) you hereby consent to the application of those funds to the outstanding balance of your account with the Firm and waive any right you might otherwise have to direct us to pay or apply those funds in any other fashion, and 3) to the extent any such third party makes payment to

**EXHIBIT C**

us on your behalf accompanied by directions as to what portion of outstanding fees and expenses are to be covered by such payment, you hereby consent to us adhering to those directions and waive any right you might otherwise have to direct us to pay or apply those funds in any other fashion. If you are awarded legal fees or costs by a court or other party, you will remain responsible for payment of the Firm's billed fees and other charges, even if the award to you is less than the amounts we have billed you. Where we have agreed to represent multiple clients in a matter, each client will be jointly and severally responsible for payment of the Firm's statements.

**E. Questions**

If you have any questions about any statement that we submit to you, you should contact the lawyer responsible for your engagement as soon as you receive it so that we may understand and address your concerns promptly.

**TERMINATION****A. Your Right to Terminate**

You may terminate our engagement on any or all matters at any time, with or without cause. Your termination of our services will not affect your responsibility to pay for billed and unbilled legal services rendered or other charges incurred as of the date of termination and, where appropriate, for such expenses as we may incur in effecting an orderly transition to successor lawyers of your choice.

**B. Our Right to Terminate**

Subject to any applicable ethical rule or legal requirement, the Firm reserves the right to terminate its representation of you, subject to such permission from any court or tribunal as may be required under the circumstances. In such event, we will provide you with reasonable notice of our decision to terminate and afford you a reasonable opportunity to arrange for successor lawyers, and we will assist you and your successor lawyers in effecting a transition of the engagement. Reasons for the Firm's termination may include your breach of our Engagement Contract including, without limitation, failure to pay outstanding statements in a timely manner as set forth above, the risk that continued representation may result in our violation of applicable rules of professional conduct or legal standards or of our obligations to any tribunal or third parties, your failure to give us clear or proper direction as to how we are to proceed or to cooperate in our representation of your interests, or other good cause.

**C. Termination Upon Conclusion**

Unless it is previously terminated, our representation of you, and our lawyer-client relationship with you, will be deemed to have been terminated upon the conclusion of our services and our delivery of our final statement for the services described in our engagement letter and any additional matters for which the Firm has expressly agreed to provide representation.

**D. Post-Engagement Matters**

After the conclusion or termination of our representation of you as described in our engagement letter, Form Agreement, and these Terms, changes in relevant laws, regulations or decisional authorities may affect your rights and obligations. Unless you engage the Firm to provide future services and to advise you with respect to any issues that may arise in the future as a result of such changes, we will have no continuing obligation to advise you with respect to future legal developments.

**OUR COMMUNICATIONS WITH CLIENTS**

The Firm's lawyers strive to keep our clients reasonably informed about the status of our engagements and promptly to comply with reasonable requests for information. To enable us to provide effective representation, you agree to be truthful and to cooperate with us in the course of the engagement and to keep us reasonably informed of material developments.

If there are particular limitations on how you would like us to communicate with you, please advise us in advance about your preferences. Unless you advise us to the contrary, however, we will assume that communication by e-mail and fax is acceptable to you. Absent special arrangements, we do not employ encryption technologies in our electronic communications.

**CONFIDENTIALITY****A. Confidentiality and Disclosure**

We owe a duty of confidentiality to all our clients. Accordingly, you acknowledge that we will not be required to disclose to you, or use on your behalf, any documents or information in our possession with respect to which we owe a duty of confidentiality to another client or former client.

**B. Disclosure to Certain Third Parties**

You agree that we may, when required by our insurers, auditors or other advisers, provide details to

**EXHIBIT C**

them of any matter or matters on which we have represented you.

**C. Disclosure to Other K&L Gates Entities**

You agree that we may disclose confidential information relating to you, or any matters on which we are representing you, to other K&L Gates entities. The other K&L Gates entities shall keep the disclosed information confidential.

**D. Disclosure of Representation**

You agree that, in Firm brochures, attorney biographies, and other materials or information about our practice, we may indicate the general nature of our representation of you, your identity as a Firm client, and examples of engagements handled on your behalf. Consistent with our ethical obligations, we will not disclose any confidential information. If you do not wish to have your name mentioned in our materials, please so inform us in writing.

**E. Data Protection**

Any information, including personal data, that K&L Gates collects in our global legal practice may be controlled, stored and processed in, and transferred among, any of our offices and with such contractors as we engage to assist us in our practice, and may be transferred to and through any country, including countries that may not have privacy (data protection) legislation and regulations comparable, for example, to countries in the European Economic area. The location of our offices and of such contractors may change from time to time, and we may acquire offices and engage contractors in other countries at any time. We understand that, in engaging the Firm, you expressly consent to all such control, storage, processing and transfers.

**CONFLICTS OF INTEREST**

The Firm's lawyers, acting in a variety of practice areas and in multiple jurisdictions, provide and will provide legal services to thousands of current clients and future clients. Those clients may be competitors, customers, suppliers or have other business dealings and relationships inter se. As a result, those clients may have matters in which their interests are actually or potentially adverse to one another.

In these circumstances, the Firm's ability 1) to represent you in any matter involving, directly or indirectly, another client, and 2) to represent as a client any individual or entity that is or has been adverse to you will be governed exclusively by applicable rules of professional conduct, unless otherwise agreed to by you and the Firm and, as appropriate, any other Firm client. To allow the Firm to represent both you and other current and future clients in pending or future

matters to the fullest extent consistent with applicable ethical restrictions, we request our clients to agree to a limited waiver of certain actual or potential conflicts of interest.

Specifically, by this engagement, (1) you agree that the Firm can represent other clients whose interests are actually or potentially adverse to you and can represent as a client any individual or entity that is or has been adverse to you, provided that: (a) the matter is not substantially related to any current or concluded matter in which the Firm has represented you; (b) in carrying out any such other representation, the Firm shall not violate the duty of confidentiality that we owe to you; and, (c) prior to undertaking the other representation, the Firm has reasonably concluded, in the existing circumstances, including this consent, that the Firm can provide competent and diligent representation to you and each other affected client and that the other representation complies with applicable ethical standards; and, (2) you agree that you will not seek to disqualify us from representing other clients with respect to any matters where such provisos are satisfied.

You further agree that, if you choose to withdraw your consent to the Firm's representation of another client in any such other representation, you will, at our request, engage other counsel, and, after any brief and reasonably necessary transition period (for which we will not bill you), you will permit us to terminate our representation of you unless any rule or statute or tribunal with jurisdiction precludes us from doing so.

We have a large and diverse transactional patent practice. You agree that no conflict of interest is presented when, on behalf of other Firm clients, we render patentability, infringement and validity opinions regarding, and advance patentability arguments over, patents and/or patent applications owned, licensed or controlled by you, but not handled by our law firm. In order to avoid any misunderstanding, we request that our clients, by accepting our engagement letter and these Terms, confirm that they do not think it is a conflict of interest (or that any conflict of interest is waived) when we opine for one client with respect to a patent owned by another client of the firm or distinguish same during prosecution of a patent application.

We also have a large and diverse transactional trademark practice. You agree that no conflict of interest is presented when, on behalf of other Firm clients, we render registrability, infringement and validity opinions regarding, and advance registrability arguments over, registered or unregistered trademarks and/or trademark registration applications owned, licensed or controlled by you, but not handled by our law firm. In order to avoid any misunderstanding, we request that our clients, by accepting our engagement letter and these Terms, confirm that they do not think it is a conflict of interest (or that any conflict of interest is

**EXHIBIT C**

waived) when we opine for one client with respect to a trademark owned by another client of the firm or distinguish same during prosecution of a trademark application.

The Firm represents various third party funders ("TPFs") that provide financing for, without limitation, court based litigation, arbitration proceedings, and court judgment and arbitral award enforcement proceedings in various countries around the world (collectively, "Financing Activities"). There may be situations (known or unknown to the Firm) in which a client of the Firm (which we do not represent in relation to its Financing Activities) is providing or has provided financing to the adverse party in a matter in which the Firm is representing you. The Firm has determined that it would be able to provide competent and diligent representation to both the TPF and you in such a situation and that our representation of each will not be materially limited by our responsibilities to the other. As a condition of this engagement, you consent to the Firm's representation of you and TPFs (in matters unrelated to our work for you). In the event you seek funding or related services (known or unknown to the Firm), from TPFs, you agree that the Firm will not consider the TPF to be a client of the Firm solely as a result of the TPF providing funding and related services to you. Furthermore, you agree the Firm is in no way precluded from representing other clients in any matters adverse to TPFs that have provided or are currently providing financing or related services to you.

Finally, you agree that, for the purposes of determining whether any conflict may exist, only the client(s) identified in our engagement letter, and not any affiliated entity or person, shall be considered our client.

**OPPOSING LAWYERS**

In addition to our representation of business and not-for-profit entities as well as individuals, we also regularly serve as legal counsel to lawyers and law firms. From time to time, we engage other lawyers and law firms to represent us. As a result, opposing lawyers in a matter may be a lawyer or law firm that we represent now or may represent in the future. Likewise, opposing lawyers in a matter may represent us now or in the future. Further, we have professional and personal relationships with many other lawyers, often because of our participation in professional organizations. Collectively, these situations are common in the legal field. We believe that these relationships with other lawyers will not adversely affect our ability to represent you.

**DOCUMENT RETENTION**

Your original hard copy documents and property, described further below, will be returned to you upon conclusion of our representation of you on a particular

matter (unless they are relevant to another matter on which we continue to represent you) and, upon our receipt of payment for outstanding fees and other charges, subject to applicable Rules of Professional Conduct. At that time, you will also have the opportunity to accept the remainder of your entire client file, including lawyer work product. Some K&L Gates offices maintain files in a digital image format. If you request your file from any of those offices, we will provide it in an electronic format on a CD, DVD or other medium. Should you decide not to accept your remaining file at that time, you authorize us to destroy your files at our discretion. If you do not request the return of your file at the time your matter is concluded, we may retain or destroy the file without further notice to you.

Original documents and property, if not returned to you for any reason, will be designated for permanent retention and will not be destroyed without your prior approval. Such items include, but are not limited to, money orders, travelers checks, stocks and bonds, final executed releases, settlement agreements, contracts and sale or purchase agreements, judgments, deeds, titles, easements, wills and trusts, powers of attorney and all other dispositive estate planning documents.

You agree that our drafts of documents, notes, internal working papers, internal e-mail and electronic databases shall be and remain the property of K&L Gates LLP and shall not be considered part of your client file.

The Firm retains the right to make copies of your file, at our expense, for our own information and retention purposes.

**FIRM LAWYERS' PRIVILEGE**

We believe it is in your interest as well as the Firm's interest that, in the event ethical or other legal issues arise during our representation of you, including conflict of interest issues or potential disputes between us, the Firm lawyers working on your behalf are able to receive informed, confidential advice regarding their obligations. Accordingly, if we determine in our discretion that it is necessary or advisable for Firm lawyers to consult with our internal or outside counsel, you agree that they may do so and that you recognize the Firm has a lawyer-client privilege protecting the communications between the Firm lawyers working on your behalf and the Firm's internal or outside counsel.

**NEW YORK FEE DISPUTE PROCESS**

If any of our New York licensed lawyers work on this matter and if a material portion of the legal services we provide to you takes place in New York, you may have an option to invoke arbitration should a fee dispute arise between you and us during or at the conclusion of this engagement. Specifically, in any civil matter

## EXHIBIT C

where the fee dispute involves a sum of up to \$50,000, you may have a right to compel resolution by binding arbitration. In addition, whether or not binding arbitration is available, both you and we are encouraged to seek resolution of lawyer-client disputes, including fee disputes, through mediation, and the New York Courts and Bar have established a program for mediation of such disputes by an impartial mediator. In the event that any fee dispute should arise in this engagement which is not promptly and satisfactorily resolved between us, we shall furnish you with further details concerning the procedures and effects of arbitration and mediation, so that you can make an informed decision as to how to proceed in the circumstances.

### **CLIENT RESPONSIBILITIES**

It is possible that you may have insurance policies relating to the matter that is the subject of our engagement. You should carefully check the insurance policies you have purchased and, if coverage may be available, you should provide notice to all insurers that may provide such coverage as soon as possible. Although we will be pleased to assist you in assessing the potential for coverage under any policies you may have, our engagement will not include advising you with respect to the existence or availability of insurance coverage for matters within the scope of our engagement unless you supply us with copies of your insurance policies and expressly request our advice on the potential coverage available under such policies.

### **SEVERANCE OF TERMS**

If all or any part of our Engagement Contract is or becomes illegal, invalid or unenforceable in any respect, then the remainder will remain valid and enforceable.

### **THIRD PARTY RIGHTS**

No provision of our Engagement Contract is intended to be enforceable by any third party. Accordingly, no third party shall have any right to enforce or rely on any provision of our Engagement Contract.

### **ASSIGNMENT**

#### **A. Permitted Assignment**

We may assign the benefit of our Engagement Contract to any partnership or corporate entity that carries on the business of K&L Gates-US in succession to us and you will accept the performance by such assignee of the Engagement Contract in substitution for our performance. References in these Terms (other than in this paragraph) and in any relevant engagement letter to the Firm or to K&L Gates-US shall include any such assignee.

#### **B. Other Assignment**

Subject to the foregoing paragraph, neither you nor we shall have the right to assign or transfer the benefit or burden of our Engagement Contract without the written consent of the other party.

### **DEFINITIONS**

In these Terms a reference to a “**matter**” is to a transaction, case or other matter as to which at any time you have engaged us to represent you; and, any reference to “**our services**” is to the legal services to be provided by us to you as described in our engagement letter and any other legal services provided by us to you at any time in relation to a matter.

### **INCONSISTENCIES**

In the event of any inconsistency between our engagement letter, Form Agreement, and these Terms, the engagement letter shall prevail.

### **RESOLVING PROBLEMS AND DISPUTES**

If you have any complaints or concerns about our work for you, please raise these in the first instance with the lawyer responsible for your engagement or with the Firm’s Chairman or Global Managing Partner. We will investigate your complaint promptly and carefully and do what we reasonably can to resolve the difficulties to your satisfaction.

### **APPLICATION OF TERMS**

These Terms supersede any earlier terms of business we may have agreed with you and, in the absence of express agreement to the contrary, will apply to the services referred to in any engagement letter or Form Agreement, accompanying these Terms and all subsequent legal services we provide to you.

**EXHIBIT C****K&L GATES LLP****SCHEDULE OF STANDARD CHARGES****2020**

DESCRIPTION OF CHARGE: =====	STANDARD CHARGE =====	UNIT BASIS =====
Photocopying/Image Printing	\$0.20	Each copy
Color Copying/Printing	\$1.00	Each copy
Facsimile/eFax	\$0.75	Each outgoing transmitted page, plus cost of telephone line usage
Media Duplication	\$25.00	Per CD/DVD

Legal Research: The Firm pays for Lexis and Westlaw under monthly fixed fee contracts. The actual, monthly fixed fee is allocated to all users of the database each month, and client charges for such usage are directly proportional to the actual research conducted on their behalf.

Long Distance Telephone and Conference Calls: The charge for long distance and conference calls is based on the actual time length of the call placed at rates that reasonably approximate our costs.

Secretarial Overtime: As required by client specific circumstances, secretarial overtime will be charged at the Firm's average hourly rate for secretarial overtime.

The following are examples of items that will be charged at their out-of-pocket cost to K&L Gates:

Courier (Federal Express, UPS, etc.)

Business Meals

Off-site Storage Retrieval



May 7, 2021

TO: MCE Executive Committee

FROM: Stephanie Chen, Senior Policy Counsel

RE: Legislative Update, California Senate Bill 617 and Associated California Budget Item (Agenda Item #06)

Dear Executive Committee Members:

**SUMMARY:**

Senate Bill (SB) 617 (Wiener) would require cities and counties with populations over 10,000 to provide real-time, online permitting for simple, standard solar and solar-plus-storage systems. It would also create a program at the California Energy Commission that would provide technical assistance and implementation grants to impacted jurisdictions. An associated funding request to support the grant program, totaling \$20 million, is going through the California budget process, which is separate from the process SB 617 is going through.

The cities of Los Angeles and San Jose have been using custom-built online permitting systems of this kind since 2014 and 2015, respectively. Recently, the National Renewable Energy Laboratory (NREL) has created SolarAPP, a free automated permitting platform. The platform was developed in collaboration with the National Fire Protection Association (NFPA), International Code Council (ICC), International Association of Electrical Inspectors (IAEI), and Underwriters Laboratories (UL). SolarAPP is available at no cost to local governments. Through conversations with several California cities and counties, SB 617's sponsors (SPUR and Environment California) estimate that SolarAPP would cost a local government \$10,000 - \$15,000 to implement. Once implemented, it would save hundreds of hours of staff time, and associated costs, by reducing the processing burden associated with permits of this kind.

As of the drafting of this Staff Report, the grant program SB 617 would create would be funded with \$20 million from excess funds from the New Solar Homes Partnership (NSHP) Program. The Senate Energy, Utilities and Communications Committee, which heard the bill on April 26<sup>th</sup>, recommended amendments regarding funding that would remove the reference to NSHP and instead rely on a future allocation of funding from the Legislature. However, no such amendments are yet in print.

Because SB 617 would impact local governments, MCE staff will not take a position on it unless directed to do so by the Executive Committee.

**Fiscal Impacts:**

None.

**Recommendation:**

Because staff seeks the Executive Committee's direction on a course of action regarding SB 617, we include two options for your consideration:

Option A: Direct staff to take a support position on SB 617.

Option B: Direct staff to monitor SB 617 but take no position.





# Legislative Update and California SB 617

MCE Executive Committee – May 7, 2021

# Brief Legislative Update

## MCE Supports:

- AB 21 (Bauer-Kahan) – PSPS
- AB 427 (Bauer-Kahan) – Demand Response
- AB 525 (Chiu) – Offshore Wind
- **AB 843 (Aguilar-Curry) – Bioenergy**
- AB 1087 (Chiu) – EJ Community Resilience Hubs
- AB 1395 (Muratsuchi, C.Garcia) – Carbon Neutral CA
- SB 18 (Skinner) – Green Hydrogen
- SB 30 (Cortese) – Carbon Neutral State Buildings
- SB 99 (Dodd) – Community Energy Resilience Plans
- SB 345 (Becker) – Non-Energy Benefits
- **SB 612 (Portantino + 22) – PCIA Reform**

# Board-Approved Policy Guidelines

- Support CCA in California
- Reduce GHG Emissions
- Promote Local Economic and Workforce Benefits
- Advocate on Behalf of CCA Customers

# SB 617 (Wiener)

Sponsored by SPUR & Environment CA

1. Instant online permitting for simple solar and solar-plus-storage systems
2. CEC technical assistance and grant program

# Automated Permitting

- Automated permitting
  - LA (2014), San Jose (2015)
- SolarAPP+ developed by
  - National Renewable Energy Laboratories (NREL)
  - National Fire Protection Association (NFPA)
  - International Code Council (ICC)
  - International Association of Electrical Inspectors (IAEI)
  - Underwriters Laboratories (UL)

# Grants and Technical Assistance

- Estimated cost to implement = \$10k - \$15k
- Grant program funding request = \$20m
  - From New Solar Homes Partnership program excess funds

# Recommendation

Option A: Direct staff to support SB 617

Option B: Direct staff to monitor SB 617

# Discussion



# Thank You

Stephanie Chen, Senior Policy Counsel  
[schen@mcecleanenergy.org](mailto:schen@mcecleanenergy.org)





MARIN COUNTY | NAPA COUNTY | UNINCORPORATED CONTRA COSTA COUNTY | UNINCORPORATED SOLANO COUNTY  
BENICIA | CONCORD | DANVILLE | EL CERRITO | LAFAYETTE | MARTINEZ | MORAGA | OAKLEY | PINOLE  
PITTSBURG | PLEASANT HILL | RICHMOND | SAN PABLO | SAN RAMON | VALLEJO | WALNUT CREEK

**DRAFT**

**Board of Directors Meeting  
Thursday, May 20, 2021  
7:00 P.M.**

The Board of Directors Meeting will be conducted pursuant to the provisions of the Governor's [Executive Order](#) N-29-20 (March 17, 2020) which suspends certain requirements of the Ralph M. Brown Act. Board of Director Members will be teleconferencing into the Board of Directors Meeting.

Members of the public who wish to observe the meeting may do so telephonically via the following teleconference call-in number and meeting ID:

For Viewing Access Join Zoom Meeting:

<https://us02web.zoom.us/j/84781591169?pwd=d2R4dFRqZzFaOFU3RGlhUDFBWUFuUT09>

Dial-in:(669)900-9128  
Webinar ID: 847 8159 1169  
Passcode: 376527

**Agenda Page 1 of 2**

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 4.15.21 Meeting Minutes
  - C.2 Approved Contracts for Energy Update
6. Addition of Board Members to Committees (Discussion/Action)
7. Proposed Racial Equity Resolution (Discussion/Action)

## Agenda Page 2 of 2

8. Proposed Amendments to MCE Policy 015 – Energy Risk Management Policy (Discussion/Action)
9. MCE Youth Engagement and Workforce Development (Discussion)
10. Board Matters & Staff Matters (Discussion)
11. Adjourn

DISABLED ACCOMMODATION: If you are a person with a disability which requires an accommodation, or an alternative format, please contact the Clerk of the Board at (925) 378-6732 as soon as possible to ensure arrangements for accommodation.