

ADDITIONAL TERMS AND CONDITIONS & NON-DISCLOSURE AGREEMENT FOR FLEXIBILITY PURCHASE AGREEMENT

Where Marin Clean Energy ("MCE") is the applicable Load Serving Entity ("LSE"), the following additional terms, conditions and non-disclosure agreement are incorporated into the Flexibility Purchase Agreement executed by _____ [Name] ("Aggregator") and Recurve Analytics, Inc. ("Recurve") dated _____ ("Agreement"). Any terms not defined herein have the meaning as defined in the Agreement:

ADDITIONAL TERMS AND CONDITIONS

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 MCE 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:

- Completed an accredited HVAC apprenticeship;

- Is enrolled in an accredited HVAC apprenticeship;
- 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
- Has a C-20 HVAC Aggregator 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 agree to the terms in the non-disclosure agreement ("NDA"), included below. Subcontractors are not required to execute an 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 without renewal (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. **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.
- 2.6. **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.
- 2.7. **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.
- 2.8. **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.
- 2.9. **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. 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 warranties provided by the manufacturer shall be extended to the Participant.
- 2.10. **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 terms.

- 2.11. **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 these Additional Terms and Conditions and Non-Disclosure Agreement.
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.

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement ("Agreement") is entered into by Aggregator as of _____ ("Effective Date"). As used herein, MCE and Aggregator 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 Aggregator ("Disclosure Provisions"). For participation in the Demand FLEXmarket, Aggregator may use MCE Customer data only as necessary according to the following terms:

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 Aggregator from time to time in connection herewith as provided by the Disclosure Provisions and solely for participation in the Demand FLEXmarket. Such disclosure is subject to the following legal continuing representations and warranties by Contractor:
 - 1.1. Aggregator 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;
 - 1.2. Aggregator represents and warrants that the authorized representative(s) executing this Agreement is authorized to execute this Agreement on behalf of the Aggregator;
 - 1.3. Aggregator 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 participation in the Demand FLEXmarket and that any other use of the information is prohibited; and
 - 1.4. Aggregator 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 other than for participation in the Demand FLEXmarket.
2. The confidential and proprietary information disclosed to Aggregator 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 Aggregator 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 Aggregator pursuant to this Agreement, Confidential Information does not include information that Aggregator proves was (a) properly in the possession of Aggregator at the time of disclosure; (b) is or becomes publicly known through no fault of Aggregator, its employees or representatives; or (c) was independently developed by Aggregator, 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 Aggregator, or used for any purpose other than for participation in the Demand FLEXmarket.
5. Aggregator 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. Aggregator 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 other than participation in the Demand FLEXmarket. Specifically, Aggregator shall restrict access to Confidential Information, and to materials prepared in connection therewith, to those employees or representatives of Aggregator who have a "need to know" such Confidential Information in the course of their duties with respect to the Demand FLEXmarket 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, Aggregator 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 Aggregator or its employees or representatives take any actions related to Confidential Information that are inconsistent with holding Confidential Information in strict confidence. Aggregator shall immediately notify MCE in writing if it becomes aware of the possibility of any misuse or misappropriation of the Confidential Information by Aggregator or any of its employees or representatives. However, nothing in this Agreement shall obligate the MCE to monitor or enforce the Aggregator's compliance with the terms of this Agreement.
7. Aggregator shall comply with the consumer protections concerning subsequent disclosure and use set forth in Attachment B to CPUC Decision No. 12-08-045.
8. Aggregator 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, Aggregator 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 Aggregator or its employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to MCE, in law or equity.

9. In addition to all other remedies, Aggregator 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 Aggregator and/or its employees and/or its representatives in connection with the use or disclosure of Confidential Information.
10. When Aggregator fully performs the participation in the Demand FLEXmarket, or if at any time Aggregator ceases participation in the Demand FLEXmarket, or MCE requires Aggregator cease participation in the Demand FLEXmarket, Aggregator 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 Aggregator has executed this Agreement on the date below.

Aggregator Name: _____

By: _____

Name: _____

Title: _____

Date: _____