

**SUPPLEMENTAL AGREEMENT & TERMS AND CONDITIONS
TO FLEXIBILITY PURCHASE AGREEMENT**

This SUPPLEMENTAL AGREEMENT & TERMS AND CONDITIONS TO FLEXIBILITY PURCHASE AGREEMENT ("Supplemental Agreement") is entered into on or about [Insert Date] by and between Sonoma Clean Power Authority ("SCP") and _____ ("Aggregator"). SCP and Aggregator may be individually referred to as a "Party," or collectively as the "Parties".

RECITALS:

WHEREAS, on or about _____, Aggregator and Recurve Analytics, Inc. ("Recurve") entered into a Flexibility Purchase Agreement ("FPA") whereby Aggregator agreed to certain terms and conditions to submit projects to the FLEXmarket(s) (as defined in the FPA) operated by SCP; and

WHEREAS, SCP has additional terms and conditions for participation in the FLEXmarkets set forth in this Supplemental Agreement that it requires Aggregator to abide by as a condition of participation in the FLEXmarket(s), and the Parties desires to enter into this Supplemental Agreement to memorialize Aggregator's agreement to abide by such supplemental terms and conditions, including, without limitation, SCP's Supplemental Terms & Conditions attached hereto as Attachment A and incorporated herein by reference ("Terms and Conditions") and the Non-Disclosure Agreement, and associated schedules, attached hereto as Attachment B and incorporated herein by reference ("NDA").

AGREEMENT

NOW, THEREFORE, in light of the foregoing facts and in further consideration of the promises and agreements of the Parties set forth herein below and Aggregator's participation in the FLEXmarket(s), it is mutually agreed as follows:

1. INCORPORATION OF FPA, ORDER OF PRECEDENCE, & DEFINITIONS

- 1.1 Incorporation of FPA & Interpretation. The Parties agree that the FPA is incorporated herein by reference as though fully set forth herein. This Supplemental Agreement is intended to supplement, and shall be read and interpreted collectively with, the FPA.
- 1.2 Defined Terms & Order of Priority. All capitalized terms not herein specifically defined shall have the same meaning given in the FPA. Any conflict between the terms of the FPA and this Supplemental Agreement on a subject matter specifically covered by this Supplemental Agreement shall be resolved in favor of the terms of this Supplemental Agreement.
- 1.3 Work. The term "Work" shall refer to any and all work performed by Aggregator and its Subcontractors (as defined below) on any Project in the for a Customer arising from or related to the FLEXmarket(s), including, without limitation, professional design and engineering, surveying, construction, commissioning, and maintenance services.
- 1.4 Counterparty. The parties acknowledge that the term "Counterparty" in the FPA shall be read as referring to SCP.

2. TERM OF SUPPLEMENTAL AGREEMENT & CONDITION PRECEDENT TO PARTICIPATION IN FLEXMARKET(S)

2.1 The "Term" of this Supplemental Agreement shall be consistent with the Term of the FPA and shall be deemed renewed and extended if Aggregator and Recurve extend the Term on the terms set forth in the FPA.

2.2 Aggregator acknowledges and agrees that it must sign this Supplemental Agreement before participating in, or performing Work on, any Project.

3. SUBCONTRACTOR COMPLIANCE

Aggregator agrees to include a provision in any subcontract with a subcontractor of any tier performing Work on a Project ("Subcontractor") binding Subcontractor to all applicable terms of this Supplemental Agreement.

4. FLEXMARKET(S) STANDARDS AND REGULATIONS

Aggregator, Subcontractors, and agents and employees of each, agree, to the extent applicable, to comply with the Terms and Conditions (Attachment A) during participation in, or performance of any Work on, a Project.

5. DATA SECURITY MEASURES

5.1 SCP Data.

5.1.1 "SCP Data" shall mean all data or information provided by, or on behalf of SCP, including but not limited to, Confidential Information (as defined in Attachment B); Customer personal information; energy usage data relating to, of, or

concerning, provided by or on behalf of any Customer; 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 SCP to Recurve as SCP may provide prior written approval in its sole discretion; account numbers, forecasts, and other similar information disclosed to or otherwise made available to Recurve.

5.1.2 "SCP Data" shall also include all data and materials provided by or made available to Recurve by SCP'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 SCP and their licensors.

5.2 Agreement to NDA. Aggregator has read the NDA (Attachment B) and agrees to be bound, and shall abide, by the NDA (Attachment B), at all times that this Supplemental Agreement and the FPA are in effect.

5.3 Subcontractor Applicability. Subcontractors are not required to expressly abide by the NDA; provided, however, that Aggregator shall ensure that any Subcontractor, at its own expense, adopts and continuously implements, maintains and enforces reasonable technical and organizational measures, consistent with the sensitivity of personal information and Confidential Information (as defined in the NDA), including, but not limited to, measures designed to:

- 5.3.1 Prevent unauthorized access to, and otherwise physically and electronically protect, the personal information and Confidential Information; and
- 5.3.2 Protect SCP content and data against unauthorized or unlawful access, disclosure, alteration, loss, or destruction.
- 5.4 Obligations on Termination. Promptly after the expiration or early termination of the FPA, Aggregator will:
 - 5.4.1 Securely destroy all SCP Data in its possession and certify the secure destruction in writing to SCP; and
 - 5.4.2 Return (or if requested by Recurve or SCP, destroy) all other Confidential Information and property of the Recurve or SCP (if any), provided that Recurve's attorney shall be permitted to retain a copy of such records or materials solely for legal purposes.

6. TERMINATION

This Supplemental Agreement shall expire and/or terminate upon the expiration or early termination of the FPA.

7. NOTICES

- 7.1 Notices and communications between the Parties may be sent to the following addresses:

<p><u>SCP:</u> Sonoma Clean Power Authority _____ CA Attn: _____ Email: _____</p>	<p><u>Aggregator:</u> [Insert Name of Aggregator] _____ CA Attn: _____ Email: _____</p>
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- 7.2 Any notice shall be given personally or by overnight delivery; provided, however, that either Party may provide a courtesy notice at the email address provided above. Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the day after delivery.

8. MISCELLANEOUS PROVISIONS

- 8.1 Assignment. The obligations and liabilities of Aggregator pursuant to this Supplemental Agreement shall not be assigned voluntarily by the Aggregator nor assigned by operation of law, without express written consent of SCP.
- 8.2 Binding Contract. This Supplemental Agreement shall be binding upon the Parties hereto and upon their successors and assigns and shall inure to the benefit of the Parties and their successors and assigns.
- 8.3 No Rights in Third Parties. This Supplemental Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

- 8.4 Integration/Entire Agreement of Parties & Modification.
- 8.4.1 This Supplemental Agreement is a completely integrated agreement that constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written, of any kind. No extrinsic evidence whatsoever shall be admissible to interpret, supplement, add to, vary, or contradict the terms of this completely integrated written agreement.
- 8.4.2 This Supplemental Agreement may only be amended or modified by a written instrument executed by both Parties.
- 8.5 California Law. This Supplemental Agreement is entered into in California and shall be governed by and the rights, duties and obligations of the Parties, and shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Supplemental Agreement shall be maintained in the county in Sonoma County, California. Aggregator waives any claim or right to remove an action related to or arising from this Supplemental Agreement to federal court.
- 8.6 Waiver. The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of the term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
- 8.7 Severability. If any term, condition or provision of this Supplemental Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
- 8.8 Authority to Bind Parties. Neither Party in the performance of any and all duties under this Agreement, except as otherwise provided in this Supplemental Agreement, has any authority to bind the other to any agreements or undertakings.
- 8.9 Attorney Fees/Costs. Should litigation be necessary to enforce any terms or provisions of this Supplemental Agreement, then each Party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
- 8.10 Captions and Interpretations. Paragraph headings in this Supplemental Agreement are used solely for convenience and shall be wholly disregarded in the construction of this Supplemental Agreement. No provision of this Supplemental Agreement shall be interpreted for or against a Party because that Party or its legal representative drafted the provision, and this Supplemental Agreement shall be construed as if jointly prepared by the Parties.
- 8.11 Calculation of Time. For the purposes of this Supplemental Agreement, "day(s)" refers to calendar days unless otherwise specified.
- 8.12 Signature Authority. Each Party has the full power and authority to enter into and perform this Supplemental Agreement, and the person signing this Supplemental Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.

- 8.13 Counterparts. This Supplemental Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
- 8.14 Incorporation of Recitals and Attachments. The Recitals and any and all attachments attached hereto are hereby incorporated herein by reference.
- 8.15 Provisions Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this Supplemental Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included herein.

IN WITNESS WHEREOF, the Parties hereto have executed this Supplemental Agreement on the date indicated below.

Sonoma Clean Power Authority

Aggregator

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

ATTACHMENT A

TERMS & CONDITIONS OF SUPPLEMENTAL
AGREEMENT

1. WORKFORCE STANDARDS

- 1.1 Aggregator shall comply with the workforce qualifications, certifications, standards and requirements set forth below or established by any applicable law or regulation ("Workforce Standards"). Prior to commencement of any Work, once per calendar year, and at any other time as may be requested by SCP or Recurve, Aggregator shall provide, and shall require every Subcontractor to provide all documentation necessary to demonstrate to SCP's or Recurve's reasonable satisfaction that Aggregator and its Subcontractors have complied with these Workforce Standards.
- 1.2 HVAC Standards.
- 1.2.1 For any non-residential Project involving installation, modification, or maintenance of 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 (1) of the following workforce criteria:
- 1.2.1.1 Completed an accredited HVAC apprenticeship;
- 1.2.1.2 Is enrolled in an accredited HVAC apprenticeship;
- 1.2.1.3 Completed at least five (5) years of work experience at the journey person level as defined by the California Department of Industrial Relations ("DIR"), Title 8, Section 205, of the California Code of Regulations, has passed a practical and written HVAC system installation competency test, *and* received credentialed training specific to the installation of the technology being installed; *or*
- 1.2.1.4 Maintains a valid C-20 HVAC contractor's license issued by the California Contractor's State Licensing Board ("CSLB") and is in good standing with the CSLB.
- 1.2.2 This standard shall not apply where an 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 with a Subcontractor.
- 1.3 Advanced Lighting Controls Standards. For any non-residential Project 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 all of its employees and agents and those of each Subcontractor, 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 with a Subcontractor.

2. PERFORMANCE STANDARDS

- 2.1 Licensing and/or Certifications. Aggregator represents and warrants that, at all times it is performing Work, it is properly licensed and/or certified, as required by law, to perform the Work at all times during the Term of the FPA and the Supplemental Agreement. For avoidance of doubt, when Aggregator is performing Work at the property of a Customer, Aggregator shall at all times have and maintain all licenses required by the CSLB applicable to the scope of Work being performed. CSLB License numbers must be made available by Aggregator upon request by Recurve or SCP. Aggregator shall be fully responsible for identifying and obtaining all necessary licenses and permits for the timely prosecution of the Work and the requirements of any authority having jurisdiction over the Work or Project.
- 2.2 Originality of Services. Except as to standard generic details, Aggregator agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the SCP and/or used in connection with a Project and this Supplemental Agreement, shall be wholly original to Aggregator and shall not be copied in whole or in part from any other source, except that submitted to Aggregator by SCP as a basis for the services.
- 2.3 Copyright/Trademark/Patent. Aggregator understands and agrees that all matters produced subject to this Supplemental Agreement shall become the property of SCP and cannot be used without SCP's express written permission. SCP shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the SCP. Aggregator consents to use of Aggregator's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
- 2.4 Quality Assurance. Aggregator shall comply with Quality Assurance procedures, as those are defined in the FLEXmarket Implementation Plan, including but not limited to: (i) industry standard best practices; and (ii) procedures that ensure FLEXmarket(s) functionality, Customer satisfaction, and compliance with the Workforce Standards herein.
- 2.5 Performance Assurance. Regardless of the specific Work performed, Aggregator shall maintain any payment and/or performance assurances as may be requested by Recurve or SCP during the performance of the Work in each of their sole discretion.
- 2.6 Fitness for Duty. Aggregator shall ensure that all personnel performing Work report fit for their job. Such 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.

- 2.7 Background Checks. Aggregator shall conduct appropriate background checks as required by rules and standards as set forth in the FLEXmarket(s) plans, to the extent legally permissible, on all personnel.
- 2.8 Standards of Performance.
- 2.8.1 Quality of Work. Aggregator shall deliver all Projects in a timely, professional, good and workmanlike and ethical manner as specified in the FLEXmarket Implementation Plan.
- 2.8.2 Standard of Care.
- 2.8.2.1 Aggregator represents that Aggregator has the qualifications and ability to perform Work in a professional manner, without the advice, control or supervision of SCP. Aggregator's Work will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California public entities during similar energy projects. Aggregator's Work will be performed with due care and in accordance with applicable law, code, rule, regulation, and/or ordinance.
- 2.8.2.2 Aggregator hereby represents that it possesses the necessary professional capabilities, qualifications, licenses, skilled personnel, experience, expertise, and financial resources, and it has available and will provide the necessary equipment, materials, tools, and facilities to perform the Work in an efficient, professional, and timely manner in accordance with the terms and conditions of the FPA and Supplemental Agreement.
- 2.8.2.3 Aggregator shall be responsible for the professional quality, technical accuracy, completeness, and coordination of the Work, and Aggregator understands that the SCP and Customer rely upon the professional quality, accuracy, completeness, and coordination by Aggregator in performing the Work.
- 2.8.2.4 Aggregator shall ensure that any individual performing Work on a Project requiring a license shall possess the appropriate license required by the State of California. All personnel shall have sufficient skill and experience to perform the Work assigned to them.
- 2.9 Warranties to Participants. Aggregator shall provide a standard, commercially reasonable, best practice installation warranty for the workmanship on each Project. Aggregator shall provide proof to Recurve that the Aggregator has submitted all warranty registrations for the Project's equipment. Aggregator shall prosecute manufacturer warranty claims on behalf of the Customer.
- 2.10 Post-Installation Maintenance and Operation. Aggregator shall ensure each Project remains installed, reasonably maintained, and operational, including any and all timely repairs and replacements, for the Term of the FPA and this Supplemental Agreement.

- 2.11 Site Access. Aggregator shall be responsible for obtaining any and all access rights from Customers and other third parties to the extent necessary to perform the Work. Aggregator shall also procure any and all access rights from Customers and other third parties in order for SCP and Recurve employees, representatives, designees, and contractors to access the Project site and inspect the Work prior to, during, and after installation for the full Term.
- 2.12 Compliance with Laws. Aggregator shall observe and comply with all rules and regulations of the SCP and all federal, state, and local laws, ordinances and regulations. Aggregator shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Aggregator observes that any of the Work required by this Agreement is at variance with any of these laws, ordinances, rules or regulations, Aggregator shall notify the SCP, in writing, and, at the sole option of the SCP, any necessary changes to the scope of the Work shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Aggregator's receipt of a written termination notice from the SCP. If Aggregator performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the SCP of the violation, Aggregator shall bear all costs arising therefrom.
- 2.13 SCP Customer Engagement Protocol. Aggregator shall comply at all times with any SCP-provided SCP co-branding and/or Customer Engagement Protocol that provides SCP's expectations for Customer interactions by Aggregator. Aggregator shall not represent or claim affiliation to SCP or any of SCP's programs without prior written consent and adherence to SCP's customer engagement protocol. Aggregator shall never utilized door-to-door unsolicited recruitment efforts for residential Projects. Failure of Aggregator to comply at all times with this provision will constitute a material breach of this Supplemental Agreement and section 9.1 of the FPA, and may result in the discontinuation of work with SCP at SCP's request and in SCP's sole discretion.
- 2.14 Prevailing Wages. Aggregator is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq. (collectively, "Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Work is a "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Aggregator and its Subcontractors shall fully comply with all applicable Prevailing Wage Laws, including, without any limitation whatsoever, being registered with DIR (Labor Code, §§ 1725.1, 1771.1). Aggregator and its Subcontractors shall comply with all California Labor Code provisions, including, without limitation, prevailing wages (Labor Code, §§ 1771, 1774, 1775), employment of apprentices (Labor Code § 1777.5), certified payroll records (Labor Code §§ 1771.4, 1776), hours of labor (Labor Code §§ 1813, 1815) and debarment of contractors and subcontractors (Labor Code § 1777.1).

3. INDEMNIFICATION AND LIABILITY LIMITATIONS

- 3.1 Indemnification. In addition to, and without in any way limiting Aggregator's indemnification obligations under the FPA, to the furthest extent permitted by California law, Aggregator shall defend, indemnify, and hold free and harmless SCP, its officials, officers, employees, volunteers, and agents, and any public agency which is a party to the joint powers agreement pursuant to which SCP is organized under section 6500 of the Government Code and their officials, officers, employees, volunteers, and agents ("the indemnified parties") from any and all claims, demands, causes of action,

costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim(s)"), to the extent that the Claim(s) arise out of, pertain to or relate to, in whole or in part, the negligence, recklessness, errors or omissions, or willful misconduct of Aggregator, its officials, officers, employees, subcontractors, consultants, or agents directly or indirectly arising out of, connected with, or resulting from the FPA, a Project, this Supplemental Agreement, the NDA and/or any SCP Data or Confidential Information, including without limitation the payment of all consequential damages. This indemnification and defense obligation shall survive the early expiration or termination of this Supplemental Agreement.

3.2 Limitation on Liability.

3.2.1 Notwithstanding any other provision of this Supplemental Agreement, in no event, shall SCP be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Supplemental Agreement, a Project, the Work, the FLEXmarket(s), or the FPA. This article shall survive the early expiration or early termination of the Supplemental Agreement.

3.2.2 The Parties expressly agree that this provisions shall take precedence over any liability limitation in the FPA, including, without limitation, Article 13.1 therein.

4. OTHER OBLIGATIONS

4.1 Attendance at Meetings. Aggregator's representatives will attend all meetings required by Recurve and SCP while the Work, or any part of it, is in progress, or as reasonably requested by Recurve and SCP, and will be prepared and authorized to address all matters related to a Project.

4.2 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.

4.3 California Civil Code § 1542 Waiver. Aggregator waives all known and unknown claims against SCP related to the Agreement. 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 that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

4.4 No Recourse Against Constituent Members of SCP. SCP 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 SCP's constituent members in connection with this Agreement.

- 4.5 Disputes. In the event of a dispute between the Parties as to the FPA, Supplemental Agreement, a Project or the performance of Work, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Aggregator shall neither rescind this Supplemental Agreement nor stop performing the Work.

ATTACHMENT B

TERMS OF NON-DISCLOSURE AGREEMENT

By entering into the Supplemental Agreement, Aggregator agrees to be bound by the following terms of the NDA.

1. REPRESENTATIONS & WARRANTIES.

1.1 Subject to the terms and conditions of this NDA, Confidential Information (as defined below), including, without limitation, information regarding customers of SCP, including Customers as defined in the FPA ("SCP Customers"), may be disclosed to Aggregator by SCP (or SCP's data management consultant, at SCP's direction) from time to time as provided by this NDA and solely for the purposes set forth on Schedule 1 to this Attachment B attached hereto. Such disclosure is subject to the following legal continuing representations and warranties by Aggregator:

1.1.1 Aggregator represents and warrants that it has all necessary authority to agree to this NDA, and that it is a binding enforceable NDA according to its terms;

1.1.2 Aggregator represents and warrants that the authorized representative(s) agreeing to this NDA is (are) authorized to agree to this NDA on behalf of the Aggregator; and

1.1.3 Aggregator confirms its understanding that the Confidential Information, including information regarding SCP Customers, is of a highly sensitive confidential and proprietary nature, and that such information will be held in trust by Aggregator for the benefit of SCP and solely used as contemplated by this NDA for the purposes set forth on Schedule 1 to this Attachment B attached hereto, and that any other use of the information is prohibited.

1.2 Aggregator represents and warrants that it will implement and maintain expert, industry standard best practice, and no less than reasonable security procedures and practices appropriate to the nature of the information, to protect all Confidential Information and personal information from unauthorized access, destruction, use, modification, or disclosure, and prohibits the use of the data for purposes not set forth on Schedule 1 to this Attachment B attached hereto.

2. CONFIDENTIAL INFORMATION DEFINED

2.1 "Confidential Information", as used in this NDA, refers to all information SCP discloses to Aggregator which SCP might reasonably expect Aggregator not to disclose to other persons or use for unauthorized purposes, and any derivative thereof, and includes, without limitation, the following:

2.1.1 Information about SCP Customers, including, without limitation: (i) names; (ii) addresses; (iii) telephone numbers; (iv) service agreement numbers; (v) meter and other identification numbers; (vi) SCP-designated account numbers; (vii) meter numbers; (viii) electricity and gas usage (including monthly usage, monthly maximum demand, electrical or gas consumption as defined in Public

Utilities Code section 8380, load, and other data detailing electricity or gas needs and patterns of usage); (ix) 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); (x) payment / deposit status; (xi) number of units; and (xii) other similar information specific to SCP Customers individually or in the aggregate;

2.1.2 Certain data constituting "Covered Information" as that term is defined in California Public Utilities Commission ("CPUC") Decision 12-08-045, and any successor CPUC decision; *and*

2.1.3 Any SCP market, resource or procurement information considered by SCP to be proprietary and/or confidential.

2.2 "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 SCP, regardless of the form of media in which it is prepared, recorded or retained.

2.3 Except for electric and gas usage information provided to Aggregator pursuant to this NDA, "Confidential Information" does not include information that Aggregator proves: (i) was properly in the possession of Aggregator at the time of disclosure; (ii) is or becomes publicly known through no fault of Aggregator, its employees or representatives; or (iii) was independently developed by Aggregator, its employees or representatives without access to any Confidential Information.

3. DISCLOSURE PROVISIONS AND PROTECTION OBLIGATIONS

3.1 Disclosure Prohibited. During the Term of the FPA and this Supplemental Agreement, no portion of the Confidential Information may be disclosed, disseminated or appropriated by Aggregator, or used for any purpose other than the purposes set forth on Schedule 1 to this Attachment B attached hereto.

3.2 SCP Policies. Aggregator has read and agrees to comply with the SCP disclosure policies attached to this Attachment B as Schedule 1 and Schedule 2.

3.3 Protection of Confidential Information. Aggregator shall, at all times and in perpetuity, hold the Confidential Information in trust for SCP's benefit, keep in the strictest confidence the Confidential Information, and take all reasonable measures to prevent unauthorized or improper disclosure or use of Confidential Information. Aggregator shall implement and maintain expert, industry standard best practice, and no less than 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 1 to this Attachment B attached hereto. Specifically, Aggregator shall restrict access to Confidential Information, and to materials prepared in connection with the Confidential Information, 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 FLEXmarket(s) program in which Aggregator participates and any Project, and who agree in writing to be bound by the nondisclosure and confidentiality obligations of this NDA. Prior to disclosing any Confidential Information to its employees or representatives, Aggregator

shall require such parties to review this NDA and to agree in a separate writing to be bound by the terms of this NDA.

- 3.4 Return or Destruction of Confidential Information. When Aggregator fully performs the purposes set forth on Schedule 1 to this Attachment B attached hereto, or if at any time Aggregator ceases performance or SCP requires Aggregator cease performance of the purposes set forth on Schedule 1 to this Attachment B attached hereto, Aggregator shall immediately return or destroy (with reasonable prior written notice to SCP itemizing the materials destroyed) all Confidential Information then in its possession at the request of SCP.
- 3.5 Notwithstanding the foregoing, the nondisclosure obligations of this NDA shall survive any termination of this NDA.

4. COMPLIANCE WITH CPUC DECISIONS AND SCP POLICIES.

4.1 Aggregator shall comply with:

4.1.1 CPUC Decision No. 12-08-045. The consumer protections concerning subsequent disclosure and use set forth in Attachment B to California Public Utilities Decision No. 12-08-045, and any modifications or successors to that decision.

4.1.2 SCP Information Technology (IT) Security Policy A.4. Aggregator acknowledges that it is in receipt of and will comply with SCP's A.4 Information Technology (IT) Security Policy. Aggregator will inform SCP immediately of any breach of that policy (Schedule 2).

4.1.3 SCP Advanced Metering Infrastructure (AMI) Data Security and Privacy Policy A.5. Aggregator acknowledges that it is in receipt of and will comply with SCP's A.5 Advanced Metering Infrastructure (AMI) Data Security and Privacy Policy. Aggregator will inform SCP immediately of any breach of that policy (Schedule 3).

5. LIABILITY, REMEDIES & TERMINATION

- 5.1 Liability for Employees/Representatives, Notification of Disclosure. Aggregator shall be strictly liable for the actions of, or any disclosure or use by, its employees or representatives contrary to this NDA; however, such liability shall not limit or prevent any actions by SCP 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 and the provisions of this NDA. Aggregator shall immediately notify SCP in writing if it becomes aware of the possibility of any unauthorized disclosure, misuse or misappropriation of the Confidential Information by Aggregator or any of its employees or representatives; provided, however, nothing in this NDA shall obligate the SCP to monitor or enforce the Aggregator's compliance with the terms of this NDA.
- 5.2 Equitable Relief. Aggregator acknowledges that disclosure or misappropriation of any Confidential Information will cause irreparable harm to SCP and/or SCP Customers, the amount of which may be difficult to assess. Accordingly, Aggregator hereby agrees that SCP 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 the SCP, in law or equity.

- 5.3 Indemnification. In addition to all other remedies, to the furthest extent permitted by law Aggregator shall indemnify, defend, and hold harmless the indemnified parties (as defined in Attachment A) in any way related to, pertaining to, or arising from the breach of this NDA or any Confidential Information, consistent with the "Indemnification" provision in Attachment A. This indemnification provisions shall survive the early termination or expiration of the Supplemental Agreement.
- 5.4 Termination. This NDA shall terminate or expire upon the early termination or expiration of the Supplemental Agreement; provided, however, that the terms of this NDA remain applicable to any Confidential Information already created or received under the NDA as set forth elsewhere in this NDA.

SCHEDULE 1 TO ATTACHMENT B

AGGREGATOR PURPOSES

This NDA is intended to cover the following Work from the Aggregator:

All Work provided under, or any Project arising from or related to, the FPA and this Supplemental Agreement.

SCHEDULE 2 TO ATTACHMENT B

INFORMATION TECHNOLOGY (IT) SECURITY POLICY A.4 ADOPTED FEBRUARY 7, 2019

Information Technology (IT) is a critical Sonoma Clean Power Authority (SCP) asset and will be managed to ensure that it remains accurate, confidential, and available for authorized business activities only. Proper management of information technology is required to support regulatory compliance, minimize legal liability, reduce the risk of criminal activity, and to sustain stakeholder and customer satisfaction.

SCP is dependent on information technology to conduct business operations. The Chief Executive Officer, Director of Internal Operations, and Director of Customer Service, in collaboration with the IT Aggregator have been designated as the IT Security Team (IST) and are responsible for communicating IT policies and standards, helping all personnel achieve compliance with policies and standards, and reporting to management on any non-compliance or areas of risk.

SCP will make information technology accessible only to authorized employees or designated vendors as needed and such information shall only be used for authorized agency purposes. To ensure protection of information technology, operational guidelines will be in place for employees and designated vendors to follow which adhere to the principles below:

- Access to specific information technology is to be assigned to SCP employees or designated vendors with the minimum level of access necessary to perform respective responsibilities.
- Access to information technology will be made available only to the extent necessary to support authorized business functions.
- Security systems are to be structured with multiple layers of security, including physical, network, host, and personnel security measures.
- The degree of information security protection is to be commensurate with the impact of inadvertent or intentional misuse, improper disclosure, damage or loss.
- Adequate controls will divide sensitive duties among more than one individual to provide checks and balances that help ensure operational guidelines are followed.
- Security is not an optional component of operations. All SCP staff and designated vendors are required to protect information. All staff and designated vendors that use or have access to SCP information technology are personally responsible for exercising the proper control over information according to the operational guidelines provided to them.

Operational guidelines for treatment of information technology are subject to change as needed to protect SCP based on any changes in systems, threats, and practices. All substantive changes will be brought back before SCP's Board of Directors for formal approval.

SCHEDULE 3 TO ATTACHMENT B

ADVANCE METERING INFRASTRUCTURE (AMI) DATA SECURITY AND PRIVACY POLICY A.5 ADOPTED FEBRUARY 7, 2019

SCP developed the following policy for ensuring the privacy and security of AMI data and customer usage information pursuant to Attachment B of the California Public Utilities Commission Decision 12-08-045.

1) GENERAL

- a) SCP shall implement reasonable administrative, technical, and physical safeguards to protect covered information from unauthorized access, destruction, use, modification, or disclosure.
- b) SCP and all third parties shall provide reasonable training to all employees and contractors who use, store or process covered information as needed.
- c) SCP shall collect, store, use, and disclose only as much covered information as is reasonably necessary or as authorized by the Commission to accomplish a specific primary purpose.

2) TRANSPARENCY AND NOTIFICATION

- a) SCP shall provide customers with meaningful, clear, accurate, specific, and comprehensive notice regarding; the accessing, collection, storage, use, and disclosure of AMI data. Provided, however, that SCP is using AMI data solely for a primary purpose, it is not required to provide separate notice.
- b) SCP shall provide written notice when; confirming a new customer account and at least once a year. The notice shall inform customers how they may obtain a copy of SCP's notice regarding the accessing, collection, storage, use, and disclosure of AMI data (aka "covered information") and shall provide a conspicuous link to the notice on the home page of their website and include a link to their notice in all electronic correspondence to customers.
 - The notice shall be labeled Notice of Accessing, Collecting, Storing, Using and Disclosing Energy Usage Information and shall—be written in easily understandable language and be no longer than is necessary to convey the requisite information.
 - The notice and the posted privacy policy shall state clearly— the identity of SCP, the effective date of the notice or posted privacy policy, SCP's process for altering the notice or posted privacy policy, including how the customer will be informed of any alterations, and where prior versions will be made available to customers, and the title and contact information, including email address, postal address, and telephone number, of an official at SCP who can assist the customer with privacy questions, concerns, or complaints regarding the collection, storage, use, or distribution of covered information.
 - The notice shall provide an explicit description of— each category of covered information collected, used, stored or disclosed, and for each category of covered information, the reasonably specific purposes for which it will be collected, stored, used, or disclosed.
 - Each category of covered information that is disclosed to third parties, and, for each such category, (i) the purposes for which it is disclosed, and (ii) the categories of third parties to which it is disclosed, and the identities of those third parties to whom data is disclosed for secondary purposes, and the secondary purposes for which the information is disclosed; the approximate period of time that covered information will be retained by the covered entity a description of the means by which customers may view, inquire about, or dispute their covered information, and the means, if any, by which customers may limit the collection, use, storage or disclosure of covered information and the consequences to customers if they exercise such limits.
- c) SCP shall provide to customers upon request convenient and secure access to their covered information— in an easily readable format that is at a level no less detailed than that at which the covered entity discloses the data to third parties.

3) USE, DISCLOSURE, AND CUSTOMER AUTHORIZATION

- a) SCP may disclose covered information without customer consent to a third party acting under contract with the Commission for the purpose of providing services authorized pursuant to an order or resolution of the Commission or to a governmental entity for the purpose of providing energy efficiency or energy efficiency evaluation services pursuant to an order or resolution of the Commission.
- b) SCP may disclose covered information to a third party without customer consent when explicitly ordered to do so by the Commission; or for a primary purpose being carried out under contract with and on behalf of SCP provided that the covered entity disclosing the data shall, by contract, require the third party to agree to access, collect, store, use, and disclose the covered information under policies, practices and notification requirements no less protective than those under which the covered entity itself operates.
- c) Any entity that receives covered information derived initially from SCP may disclose such covered information to another entity with SCP's consent, but without customer consent for a primary purpose, provided that the entity disclosing the covered information shall, by contract, require the entity receiving the covered information to use the covered information only for such primary purpose and to agree to store, use, and disclose the covered information under policies, practices and notification requirements no less protective than those under which the covered entity from which the covered information was initially derived operates.
- d) When SCP discloses covered information to a third party under this subsection (reference is to subsection 6(c) of Attachment B to CPUC Decision 12-08-045) it shall specify by contract, unless otherwise ordered by the Commission, that it shall be considered a material breach if the third party engages in a pattern or practice of accessing, storing, using or disclosing the covered information in violation of the third party's contractual obligations to handle the covered information under policies no less protective than those under which the covered entity from which the covered information was initially derived.
- e) If SCP finds that a third party contractor to which it disclosed covered information is engaged in a pattern or practice of accessing, storing, using or disclosing covered information in violation of the third party's contractual obligations related to handling covered information, SCP shall promptly cease disclosing covered information to such third party.
- f) If SCP receives a customer complaint about a covered entity disclosing covered information to a Commission-authorized or customer-authorized third party and the third party's misuse of data or other violation of the privacy rules, SCP shall upon customer request or at the Commission's direction, promptly cease disclosing that customer's information to such third party. SCP shall notify the Commission of any such complaints or suspected violations.
- g) No covered entity shall use or disclose covered information for any secondary purpose without obtaining the customer's prior, express, written authorization for each type of secondary purpose. This authorization is not required when information is – (i) provided pursuant to a legal process; (ii) provided in situations of imminent threat to life or property; or (iii) authorized by the Commission pursuant to its jurisdiction and control.
- h) Separate authorization by each customer must be obtained for all disclosures of covered information except as otherwise provided for herein.
- i) SCP shall permit customers to cancel authorization for any secondary purpose of their covered information by the same mechanism initially used to grant authorization.
- j) The consent of a residential customer shall continue without expiration, but an entity receiving information pursuant to a residential customer's authorization shall contact the customer, at least annually, to inform the customer of the authorization granted and to provide an opportunity for revocation. The consent of a non-residential customer shall continue in the same way, but an entity receiving information pursuant to a nonresidential customer's authorization shall contact the customer, to inform the customer of the authorization granted and to provide an opportunity for revocation either upon the termination of the contract, or annually if there is no contract.
SCP shall permit the use of aggregated usage data that is removed of all personally-identifiable information to be used for analysis, reporting or program management

provided that the release of that data does not disclose or reveal specific customer information because of the size of the group, rate classification, or nature of the information.