

PARTICIPATING AGGREGATOR AGREEMENT

This Participating Aggregator Agreement (the "Agreement" or "PAA") is made by and between Alternative Energy Systems Consulting, Inc. ("AESC" or "Implementer"), a California corporation having its principal place of business located at 2445 Impala Drive, Carlsbad, CA 92010 and _____ ("Aggregator"), a _____ having its principal place of business located at _____.

The Aggregator agrees on the responsibilities and scope as defined throughout this Agreement for the following programs (please mark with check in box below with applicable choices):

- Commercial Efficiency Market Program
- Residential Efficiency Market Program
- Peak Flex Market Program

This Agreement is effective on _____ ("Effective Date"). AESC and Aggregator are each individually referred to herein as a "Party" and collectively as the "Parties."

RECITALS:

WHEREAS AESC is the Implementer of the Commercial and Residential Energy Efficiency Market Programs (hereinafter referred to as "EE Markets") and the Peak Flex Market Program (hereinafter referred to as "PF Market") on behalf of Marin Clean Energy (hereinafter referred to as "MCE") and, in coordination with AESC's subcontractor implementers (Demand Side Analytics, Resource Innovations, ASK Energy), is responsible for aggregator recruitment, technical support, incentive estimation and funds commitment, project measurement and verification (M&V), and Aggregator incentive payment. The EE Markets and PF Market Programs hereinafter are collectively referred to as "MCE Programs" and allow for aggregators to receive incentive payments for flexibility savings across a portfolio of customers.

WHEREAS Aggregator is a project developer that performs Work that leads to energy load modification at Customer sites, including energy efficiency, demand response, and demand flexibility interventions; Aggregator has turn-key responsibility for Customer recruitment, project identification, all end-Customer interactions, project design and implementation, energy savings and load impacts and compliance with EE Market and Peak Flex Market project and program requirements; Aggregator receives MCE Programs' incentives directly from AESC and has latitude to utilize a wide variety of business models to finance and actualize load modification impacts at Customer sites.

WHEREAS This Agreement establishes minimum requirements for aggregators to earn program incentives through AESC as a participating aggregator in the MCE Programs, and projects or sites cannot be submitted for approval without this fully executed Agreement.

WHEREAS Aggregator and AESC wish to enter into this Agreement so Aggregator can submit projects to the MCE Programs.

WHEREAS Aggregator and AESC wish to enter into this Agreement to memorialize the rights and responsibilities of AESC and of Aggregator under MCE Programs.

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:

I. ACRONYMS AND DEFINED TERMS

The following capitalized terms shall have the meanings specified in this Section I. Other terms are defined in the text of this Agreement, and, throughout this Agreement, those terms shall have the meanings respectively ascribed to them.

"Applicable Law(s)": All local, state, and federal laws, rules, regulations, ordinances, codes, statutes, regulations, and lawful orders of governmental authorities that are relevant to the proper and safe performance of the Work. Applicable Laws include but are not limited to Privacy & Data Security Laws and all applicable regulations, rules, orders, decisions, and requirements of the Federal Energy Regulatory Commission, North American Electric Reliability Corporation, United States Department of Transportation, California Independent System Operator, and the California Public Utilities Commission.

"Avoided Cost Calculator" (ACC): Estimates hourly, system-level costs of providing electric or gas service in \$/kwh or \$/therm. It is used to determine the EE Markets program benefits of energy efficiency and integrated demand side management projects.

"Baseline Period": The baseline period is the 12-month period leading up to the energy efficiency intervention or retrofit.

"Confidential Information": The Customer's personal identifiable information (PII), energy use data, billing data, account information and information relating to Customer's facilit(ies), including any such equipment, processes, products, specifications, designs, records, data, software programs, finances, technologies, trade secrets, marketing plans or manufacturing processes or products; and Personal information as defined in California Civil Code 1798.140(o)(1). If in doubt about whether certain information is Confidential Information, Aggregator agrees to treat such information as Confidential Information. Aggregator will share Confidential Information strictly for the purpose of carrying out its obligations to perform the Work and will restrict access to the Confidential Information to those of its personnel with a need-to-know basis. Aggregator agrees to implement and maintain reasonable security procedures and practices to protect the unauthorized disclosure, destruction, and/or use of Confidential Information.

"Customer": The building owner or other end-user who purchases and receives natural gas and/or electricity.

“Customer Site Eligibility Tool”: Also known as CSET. Software by Implementer that automatically cross references customer site information against user inputs to determine the eligibility of a given site for EE Markets.

“California Public Utilities Commission (CPUC)”: the utility regulatory body that regulates MCE and certain energy efficiency programs, including EE Markets.

“Demand Response Event Reduction”: Demand Response Event Reduction is defined as the sum of all MWh divided by sum of all hours for all DR events during the months of June 1st and October 31st.

“DR Event”: DR Event is the timeframe for a demand response event. The number and length of DR Events vary year to year.

“Energy Efficiency (EE) Markets”: Commercial and Residential Energy Efficiency Markets targeting year-round energy efficiency savings with an emphasis on summer peak periods; Customers of both Pacific Gas & Electric Company and MCE can be served by EE Markets based on eligibility requirements outlined in the Programs’ IP.

“Energy Savings”: The annual/first year reduction in kWh or therms over the baseline year, resulting from the implementation of a Project at a Customer site.

“Project Implementation Period”: The Project Implementation Period is the period between the Baseline Period and the Performance Period and covers the time when measures are installed, and the project construction is completed. The Project Implementation Period may also include time to adjust, fine-tune, or commission the measure as part of the construction process.

“Implementation Plan” or “IP” - A detailed description of a program that includes program theory, planned program processes, expected program activities, measurement and verification (M&V) plan, program budget, projected energy savings and demand reductions and other program plan details as required by the CPUC.

“Intellectual Property” – Any and all materials, information, or other property created, prepared, accumulated or developed by Implementer or Implementer Party, 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 Implementer or Implementer Party, including Praxis, CSET and VET.

“Measurement and Verification (M&V) Plan”: Written plan which outlines the rules, methodology, and process in which energy savings will be calculated and claimed within MCE Programs. This plan is included as a section within each of the Programs’ Implementation Plans. This plan is governed by the requirements of the California Public Utilities Commission’s (CPUC) population-level components of the NMEC Rulebook v.2.0 and any subsequent updates.

“Net Peak EE Savings”: Savings accrued during the net peak period, June to September, 7:00 p.m. – 9:00 p.m.

“Net Peak PF Savings”: Demand reduction accrued during the net peak period of June to October, 7:00 p.m. – 9:00 p.m., except during DR events.

“Participating Aggregators” – Aggregators that agree to be bound by all program terms, including MCE Programs’ terms and conditions defined in this Agreement, the Programs’ Program Manual, and M&V Plan section within the IP. Participating Aggregators shall not be provided access to any Confidential Information or MCE Data unless they are also a Subcontracted Aggregator.

“Payable Savings”: Payable savings are the savings determined via the method and calculation software described in the Programs’ IP M&V Plan which constitute the basis of payments between the Implementer and Aggregators.

“Peak EE Savings”: Savings accrued during the peak period, June to September, 4:00 p.m. – 7:00 p.m.

“Peak PF Savings”: Demand reduction accrued during the peak period, June to October, 4:00 p.m. – 7:00 p.m., except during DR events.

“EE Performance Period”: The period of time over which savings from energy efficiency interventions and projects are measured. The Performance Period immediately follows the Project Implementation Period.

“Personal Information”: As defined in California Civil Code Section 1798.140(o)(1).

“Peak Flex (PF) Market”: Demand Response program, targeting temporary summer (June – October) demand reduction during DR events and/or load shifting reduction during peak periods. As opposed to EE Markets, all project sites within the MCE service territory can be served by PF Market.

“PF Performance Period”: The sum of all Demand Response Event Reduction and/or load shift reduction, calculated at summer’s conclusion. Net Demand and/or load shift reduction and Payable Savings are determined by summing all demand changes (positive and negative) during this time, as outlined in the Programs’ IP M&V Plan.

“Population-level NMEC”: An energy savings calculation approach in which results are based on pre- and post-intervention energy usage data observed at the meter and calculated across a group of sites, rather than a modeled engineering forecast or deemed value (or a Site-level metered savings calculation). For Population-level normalized metered energy consumption (NMEC), measurement methods are fixed before the program starts and apply to all sites in the group in a uniform fashion.

“Privacy & Data Security Laws”: All privacy and data security laws, including but not limited to the California Consumer Privacy Act of 2018, applicable to the processing of personal information under this Agreement.

"Prime Contract": AESC's contract with MCE to perform services as a Lead Implementer of the MCE Programs.

"Project": A measure, project, or intervention intended to modify the energy consumption or energy load shape of a Customer site.

"Project Enrollment": Upon confirmation of a site's eligibility for participation in PF Market, it is included as a DR participant.

"Site Pre-Enrollment": The process of providing information about a potential PF Market site to assess eligibility.

"Services" or "Work": Work required by Aggregator to furnish and install qualifying energy efficiency measures and/or demand response interventions at eligible Customer sites in accordance with MCE Programs' requirements to deliver desired program benefits. AESC shall not be responsible or liable for the performance, supervision, or management of Aggregator work.

"Subcontracted Aggregator": Participating aggregators who also subcontract to AESC in order to be eligible for access to certain Confidential Information or MCE Data for purposes of simplified data sharing and visibility, customer targeting and lead generation. Subcontracted aggregators must meet data security policies set forth by MCE and agree to AESC's contract flow down requirements".

"Total System Benefit (TSB)": An expression, in dollar value, of the lifecycle energy, capacity, and greenhouse gas (GHG) avoided cost benefits of an energy efficiency Program project or Program portfolio. TSB is derived by the hourly load shape of energy savings, measure effective useful life, and climate zone.

"Value Estimator Tool": Also known as VET. Calculator used to estimate an aggregator's EE Market project incentive based on estimated project impacts including measure energy savings, load shape, effective useful life, and climate zone. The calculator is underpinned by the hourly avoided grid costs and Total System Benefits in the CPUC Avoided Cost Calculator, and program overhead costs.

II. EE MARKETS AGGREGATOR RESPONSIBILITIES

As a Participating Aggregator (Aggregator) for the MCE Commercial Efficiency Market and/or Residential Efficiency Market programs under this Agreement, EE Market Aggregators are responsible for all of the following terms:

a. PROJECT SUBMITTAL:

- i. Using the Customer Site Eligibility Tool, Aggregator will confirm program eligibility for each building prior to obtaining customer signature for program participation. Aggregator will retain proof of eligibility to submit with Project Application. If Customer Site Eligibility Tool returns a non-committal response, Aggregator will work with AESC to confirm building eligibility.
- ii. Aggregator will submit each Project Application for AESC approval. For Commercial EE Market projects, Aggregator will not start construction prior to approval.
 1. For the Residential EE Market, projects are enrolled in a single-stage process, in which submissions will be checked for eligibility and officially enrolled following project completion.
- iii. Aggregator shall follow procedures defined on the AESC MCE Programs website at www.aesc-inc.com/mce-peak-flex-and-ee-market-programs/ to submit Projects (a "Project Submittal") for review, savings evaluation, Project Enrollment and incentive funds commitment. Aggregator shall complete EE Markets' training prior to submitting projects for incentive reservation; recorded training will be available on the website. Required project data includes, but is not limited to, customer and meter information, measure savings and load impacts, implementation schedule, and for Commercial EE Market, supporting calculations and planned demand response program enrollment. The final set of requirements, which supersede those listed here, are available on the Programs' website. All data furnished by Aggregator to AESC, pursuant to this Agreement, will be made in good faith, and be true, accurate and subject to verification. Aggregator shall comply with all applicable rules and standards as set forth in the Programs' IP. Upon Project Application approval, AESC will provide Aggregator with an estimated incentive. Incentive estimates generated through the Value Estimator Tool will not be binding. Incentives will be paid on actual results, not on the estimated values in the Project Application.
- iv. Aggregator shall provide a Customer-signed Customer Project Application for each project submitted for enrollment in MCE Programs.

- b. PROJECT IMPLEMENTATION. During the Project Implementation Period, Aggregator shall implement each approved Project in strict accordance with the information submitted in the Project Submittal. Aggregator shall immediately notify AESC of changes in project scope, prior to or during the Project Implementation Period, so that AESC may determine, in its sole discretion, whether adjustments shall be made to the project file and incentive reservation. For Commercial EE Market, Aggregator shall not initiate Project Implementation Period prior to written approval from AESC. Projects must be installed by no later than December 31st, 2026, unless the Program provides a written extension.

- i. This section does not apply to Residential EE Market Program.

- c. PROJECT COMPLETION NOTIFICATION: Aggregator shall promptly notify AESC upon completion of the Project Implementation Period in order to initiate the twelve-month M&V Performance period. Aggregator shall provide AESC final installed project information including scope, measures, and costs. Aggregator shall furnish required permitting and licensing certification forms.

- d. DEMAND RESPONSE PARTICIPATION: Aggregator agrees that the Customer may participate in demand response (DR) events during the M&V period. Aggregator must disclose any planned separate Demand Response program dual participation during Project Submittal for each site, or any DR enrollments during the M&V period. Participation in MCE Programs do not hinder or violate the Aggregator's obligations to deliver DR resources in other markets (programs, CAISO, contracts, etc.).
- e. PERMITTING AND LICENSING: Aggregator shall comply with Statutory Program Project Certification Obligations in accordance with Public Utilities Code ("PUC") Section 399.4 (b) (1) and (2), including a) Certification that project complies with applicable permitting requirements, including any applicable specifications or requirements of Title 24 of the California Code of Regulations; b) Certification that if a contractor performed the installation or improvements, the contractor holds the appropriate license for the work performed; c) Supply a proof of permit closure for an incentive related to purchase or installation of central air conditioning or a heat pump, and their related fans. AESC will provide Aggregator a project certification form for submittal at project completion, which will be required to initiate the M&V period.
- f. TRAINING RECORDS: Aggregator shall at all times (a) provide all necessary training to its employees, contractors, subcontractors and agents; (b) require subcontractors to provide training to their employees about the safety and health rules and standards required under this Agreement; and (c) comply with all rules, laws, codes, ordinances and regulations of any sort which are applicable to Aggregator and/or the work being done by Aggregator
- g. SAFETY: Aggregator shall: 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.
- h. RIGHTS TO ACCESS CUSTOMER SITES: Aggregator shall be responsible for obtaining any and all access rights from customers and other third parties to the extent necessary to perform Services and shall procure any and all access rights in order for AESC, MCE and CPUC employees, representatives, designees and contractors to inspect the Work or Services.
- i. RIGHT TO ACCESS CUSTOMER DATA: Aggregator shall obtain any and all access rights from enrolled Customer and other third parties to the extent necessary to implement MCE Programs and to allow for MCE and CPUC employees, representatives, agents, designees and contractors to inspect the projects or evaluate the program. Aggregator may be requested by AESC to coordinate data access including facilitating Customer approval of AESC's access to Customer energy data such as, but not limited to, through PG&E Share My Data (https://www.pge.com/en_US/small-medium-business/energy-alternatives/alternatives-to-pge/third-party-data-access.page).
- j. AVAILABILITY OF INFORMATION: Aggregators shall keep accurate records and books of accounts including, but not limited to, financial and non-financial records of required actions under this Contract such as training, background checks, and document retention and disposal requirements, and shall preserve all such records and books of accounts and make them available for audit for a period of three years from the date of final payment under this agreement. This includes paid invoices and canceled checks for purchased materials and project related charges.
- k. MISREPRESENTATION OF COST OR PRICING DATA. The knowing misrepresentation of cost or pricing data by Aggregator shall be considered a material breach of this Contract.
- l. WARRANTIES AND WORKMANSHIP: Aggregator warrants and shall warrant in its agreement with any Customer that any Services or Work shall be done with the degree of skill and care required by current, good and sound professional procedures and practices, in conformance with prevailing generally accepted professional and industry standards that are appropriate for the purposes set forth under this Agreement. Aggregators warrant that the equipment, material and parts furnished shall be of the kind and quality that is free of defects in workmanship, material, design, and title, shall be of good and merchantable quality, and shall be fit for its intended purpose. When applicable, Aggregators shall repair or replace at its expense any part of the Services or Work that develops defects due to faulty material or workmanship within one year after being placed in operation. Aggregator shall, at its expense and as applicable, repair or replace such Services or Work damaged as the result of the defects or repairing and hold AESC and MCE harmless from repair expenses.
- m. NO PUBLIC RELEASE OF RESULTS: Aggregator agrees to not publicly release any results of the Services or Work resulting from this PAA, absent AESC's review and written approval of the information, documentation, and any other materials to be released (and such approval will be conditional on AESC receiving approval from MCE). Under no circumstances shall any release of information present any material findings not reasonably inferable from the data.
- n. NO PUBLICITY: Aggregator shall not include MCE's name, any reference to this PAA, or any reference to MCE's purchase or use of any products, Services or Work provided in a published customer list or in other publicity or advertisement, including internet, without the prior written consent of MCE. AESC and MCE maintain a non-endorsement policy and Aggregator agrees not to state or imply in any form of written, verbal, or electronic advertisement, communication, or any other business development effort, that AESC or MCE endorses, recommends, or vouches for Aggregator. Aggregators who wish to develop marketing materials for MCE Programs beyond what is developed and furnished by MCE should coordinate with AESC to ensure compliance.
- o. CUSTOMER PERSONAL INFORMATION: Aggregator shall represent and warrant that all personal information, as defined in California Civil Code Section 1798.140(o)(1), and including 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 acquired from AESC to provide Services or perform work in related to this Agreement, is in compliance with all laws applicable to such personal information, including any required consumer consent to use of the personal information for these purposes.

III. PEAK FLEX MARKET AGGREGATOR RESPONSIBILITIES

As a Participating Aggregator (Aggregator) for the MCE PF Market program under this Agreement, PF Market Aggregators are responsible for the following terms from the EE Markets Aggregator Responsibilities: 2.7, 2.8, 2.9, 2.10, 2.11, 2.12, 2.13, 2.14, 2.15, 2.16. In addition to the responsibilities included above for the EE Markets programs, PF Aggregators will be responsible for the following:

- a. ESTIMATED TARGET LOAD REDUCTION: Aggregators shall provide AESC with an estimated target load reduction quantity for their PF Market portfolio.
- b. SITE ENROLLMENT: Aggregator shall follow procedures defined on the AESC MCE Programs website at www.aesc-inc.com/mce-peak-flex-and-ee-market-programs/ to submit sites (a "Site Submittal") for eligibility check and enrollment ("Site Enrollment") in PF Market. Site Enrollment requirements are available in the Programs' IP. All data furnished by Aggregator to AESC, pursuant to this Agreement, will be made in good faith, and be true, accurate and subject to verification. Aggregator shall comply with all applicable rules and standards as set forth in the Programs' IP. Prior to Site Enrollment Aggregators shall verify that sites participating in PF Market meet eligibility requirements:
 - i. Sites may not participate in other DR programs except as noted in the Program's IP M&V Plan. If a site is already participating in an eligible DR Program (other than PF Market), Aggregator shall provide event data from the additional program. Otherwise, the site will not be allowed to participate in PF Market program;
 - ii. Site is located in the MCE service area;
 - iii. Participant has a SmartMeter and generates interval data;
 - iv. Participant has a staff member with the ability to influence energy usage at Participant site(s)
 - v. Participant meets the following Program-specific data requirements:
- c. ADDING OR DELETING SITES: As Aggregator enters into the agreements with customer sites to participate in PF Market, Aggregator will notify AESC. Aggregator acknowledges that time is of the essence for providing notification, especially if customers are added or dropped during the summer period (June – October).
- d. PERMITTING AND LICENSING: Aggregator shall obtain, maintain, and obey any and all licenses, permits, and/or registrations required by Applicable Law to install, and if applicable to, maintain the Project.

IV. AESC RESPONSIBILITIES

- a. AGGREGATOR COMPLIANCE: AESC is responsible for ensuring Aggregators that implement MCE Programs' Projects on behalf of Customers are adhering to the MCE Programs' requirements to enable Customer participation. AESC assumes no responsibility to manage or supervise the Work performed by its Aggregators.
- b. SITE ELIGIBILITY: Aggregator shall identify sites that are eligible to participate in MCE Programs. For EE Markets, MCE and AESC shall determine in their sole discretion eligibility based on the following criteria required for Population-based NMEC M&V, or the Programs' IP, which may add requirements and/or supersede those below:
 - i. Data sufficiency (e.g., at least 12 months of historical usage data)
 - ii. Site model fit < 1.0 Coefficient of the Variation of the Root Mean Square Error (CVRMSE).
 - iii. Site has not participated in a CPUC-funded EE program, or installed solar, in the 12 months prior to the planned MCE Programs' project intervention.
 - iv. For EE Markets, for any site that has participated in a CPUC-funded EE program, or installed solar, in the 12 months prior to the planned MCE Programs' project intervention, AESC may, but is not obligated to, evaluate the ability to develop a program-compliant model that can adequately account for those impacts in the baseline, Project Implementation Period, and Performance Period. In such cases, Aggregator may need to provide sufficient data to assist with the evaluation.
 - v. For PF Market, site may not be enrolled in another DR program, except as noted in the Program IP.

- c. **PROJECT ELIGIBILITY:** For EE Markets, AESC shall determine, in its sole discretion, the eligibility of each project Aggregator submits, based on complete data provided and the policies and procedures outlined in the Programs' IP. AESC shall notify Aggregators, as soon as possible, of incomplete project information required to estimate project impacts and reserve incentive funds. AESC may also, but is not obligated to, help Aggregators scope projects and identify qualifying measures. Information in the Programs' IP adds to and/or supersedes this information.
- d. **QUALITY ASSURANCE:** For EE Markets, Aggregator shall grant access to all information requested by AESC so that it may perform quality assurance and quality control (QA/QC) of project applications and perform select site inspections and/or verifications of installation to ensure the work receiving MCE Program funds meets program requirements. Projects may be selected for remote or on-site inspections based on Program requirements, risk management strategies, and to ensure MCE Program goals and quality standards are met. AESC will coordinate inspections with the Aggregator and will notify Aggregator of any corrective actions identified. Information in the Programs' IP adds to and/or supersedes this information.
- e. **AGGREGATOR INCENTIVE RESERVATION:** For EE Markets, AESC shall calculate or validate estimated Aggregator incentives for submitted projects based on climate zone, measure type(s), energy savings, and savings load shape. Incentives will be calculated using Avoided Cost Calculator values in the Value Estimator Tool. Based on the measure mix, AESC will determine a weighted effective useful life (EUL) that will be applied to the measured savings to determine incentive payments. AESC shall reserve some percent of the estimated incentive funds for each approved project as defined in the program plans to account for potential TSB overperformance. Information in the Programs' IP adds to and/or supersedes this information
- f. **SAVINGS MEASUREMENT AND VERIFICATION (M&V):** For EE Markets, following Aggregator notification that the Project Implementation Period is complete, delivery of final project details and required certification forms, AESC will initiate a twelve (12) month M&V Performance Period to measure hourly project impacts, savings, and incentive according to Population-based NMEC guidelines and the applicable Programs' IP M&V Plan. During the M&V Performance period, AESC will provide Aggregators monthly reports on project performance and incentives earned to support identification and remedy of potential performance issues, and to support savings and incentive budget forecasting. For PF Market, AESC will initiate and perform M&V at the end of the peak period and per the methodology outlined in the Program's IP and M&V plans. Information in the Programs' IP adds to and/or supersedes this information.
- g. **AGGREGATOR PERFORMANCE PAYMENTS:**
 - i. For EE Markets, on a quarterly basis, AESC will calculate Payable Savings at each site and calculate the earned aggregator incentive. AESC will submit to MCE an incentive payment initiation request for each aggregator's earned incentives, and will issue payment within 30 days upon AESC's receipt of payment from MCE. Information in the Programs' IP supersedes this information.
 - ii. In cases where the Aggregator is overpaid (i.e. project receives a quarterly payment, but is determined to be disqualified or withdrawn during M&V period), AESC will deduct the net amount overpaid from the Aggregator's earned incentives in future quarterly performance payments. If the overpaid exceeds what is earned from these future performance payments, then AESC will invoice the Aggregator for the remaining overpaid amount. Information in the Programs' IP supersedes this information.
 - iii. For PF, AESC and its designees will determine, upon completion of all events, net demand reduction during all event hours for each site to calculate aggregator's earned incentive, and will issue payment by December 31 of the event year. Information in the Programs' IP supersedes this information.

V. AESC RETAINS RIGHTS TO INTELLECTUAL PROPERTY; AGGREGATOR KNOW-HOW

- a. Any tools, methodologies, documents, Intellectual Property or other materials (including, without limitation, software) AESC provides to Aggregator to perform the Services, remain the sole property of AESC or its licensors.
- b. Aggregator shall retain rights in any know-how, expertise or techniques ("Know-how") it brings in performance of the Services; provided that Aggregator grants to AESC a non-exclusive, irrevocable, royalty free license to use that Know-how for the purposes of executing their contractual obligations to implement the MCE Programs.

VI. TERM OF AGREEMENT:

The term of this Agreement will commence on the Effective Date, and shall continue, unless terminated earlier in accordance with the terms of this Agreement, until all M&V on all Aggregator projects are complete and paid.

VII. SUBCONTRACTING:

If Aggregator hires a subcontractor in connection with this Agreement or an MCE Program Project, Aggregator shall ensure compliance by such subcontractor with all terms and conditions of this Agreement and Aggregator assumes all risk and liability that its subcontractors fail to do so. Nothing contained in this Agreement shall create any legal or contractual relationship between MCE and any subcontractor, contractor or agent of Aggregator, or between AESC and any subcontractor, contractor or agent of Aggregator. Aggregator is solely

responsible for paying its subcontractors. Neither MCE nor AESC shall have any obligation to pay or to enforce the payment to any subcontractor, contractor or agent of Aggregator.

VIII. ASSIGNMENT:

Aggregator may not transfer or assign its rights and obligations under this Agreement without receiving AESC's prior written consent. However, Aggregator may assign its rights to receive payment under this Agreement to a third party financial or insurance intermediary, at its sole and absolute discretion.

IX. CONFIDENTIAL INFORMATION; PUBLICITY

- a. **HANDLING OF CONFIDENTIAL INFORMATION.** Each Party (each a "**Receiving Party**") agrees not to disclose to third parties Confidential Information received from the other Party ("**Disclosing Party**") and not to use such Confidential Information for its own benefit or the benefit of any other party, except to further the Services and AESC's performance under the Prime Contract.
- b. "Confidential Information" means information related to the business of the other Party, including the terms and conditions of this Agreement, all business plans, technical information or data, product ideas, methodologies, algorithms and analytical routines, software, and all personnel, customer, suppliers, contracts and sale, financial and other information, ideas, materials or other subject matter of such Party, whether disclosed orally, in writing or otherwise, that is provided by Disclosing Party to the Receiving Party clearly marked as confidential or that would reasonably be understood to be considered confidential under the circumstances. Information shall not be Confidential Information if it is: (a) already known free of restriction when it is obtained by the Receiving Party, (b) subsequently learned by the Receiving Party from a third party without breach of this Agreement, (c) is or becomes publicly available through no fault, default or breach of or by the Receiving Party or (d) is independently developed by the Receiving Party without reference to or use of any Confidential Information of the Disclosing Party.
- c. **NON-DISCLOSURE.** Neither Party shall disclose Confidential Information of the other Party to any Person, firm or enterprise, unless authorized by the other Party in writing, except that each Party may disclose such Confidential Information (a) to its employees, agents, sub-contractors, advisors and consultants with a legitimate need to know the same, (b) if the Receiving Party is AESC, to the Commissioning Entity if related to AESC's performance under the Prime Contract and (c) under Applicable Law, rule or regulation or compulsion of proper judicial or other legal process. Each Party also agrees not to publish or otherwise divulge such information, in whole or in part, in any manner or form, nor to authorize or permit others to do so, and shall take reasonable measures to restrict access to such information while in such Party's possession, to those employees needing such information to perform the work described herein, *i.e.*, on a "need to know" basis. Each Party agrees to immediately notify the other Party in writing if such Party determines or has reason to suspect a breach of this requirement has occurred.
- d. **RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION.** Upon termination or expiration of this Agreement, upon request of the Disclosing Party to such effect, the Receiving Party shall return to the Disclosing Party or confidentially destroy (and certify such confidential destruction in a form reasonably acceptable to the Disclosing Party) all Confidential Information of such Disclosing Party, all documents and media containing such Confidential Information and any copies or extracts thereof. Upon written request by the Disclosing Party, the Receiving Party shall promptly cease, and shall cause its recipients to cease, use of such Confidential Information and any information or materials that contain, incorporate or are derived from such Confidential Information.
- e. **REMEDIES.** Each Party (as Receiving Party) acknowledges that the Disclosing Party considers its Confidential Information to contain trade secrets of the Disclosing Party and that any unauthorized use or disclosure of such information would cause the Disclosing Party irreparable harm for which remedies at law would be inadequate. Each Party (as Receiving Party) agrees that the Disclosing Party will be entitled, in addition to any other remedies available to it at law or in equity, to seek the issuance of injunctive relief, without bond, enjoining any breach or threatened breach of the Receiving Party's obligations hereunder regarding the Confidential Information of the Disclosing Party, and such further relief as any court of competent jurisdiction may deem just and proper.

X. CORRECTIVE ACTIONS:

- a. If Aggregator breaches this agreement or is out of compliance with program requirements, AESC will notify Aggregator in writing to initiate Corrective Actions. Breaches or compliance issues may be related to, but not limited to, any failure to comply with MCE Programs' policies and guidelines, misrepresentations about a site or Project equipment, schedule, status or cost information, failure to provide requested Project information, Customer service complaints, suspected fraudulent activity, or poor workmanship.
- b. The Aggregator shall reply to AESC's written notice of breach, or request for Corrective Actions, within 5 business days and shall follow requested and documented timelines for issue remediation and Corrective Action requested. Failure to address a breach or rectify Corrective Action items may be grounds for termination of this Agreement, cancellation of MCE Programs' Project fund commitments, and forfeiture of Project incentives.

XI. TERMINATION:

- a. If Aggregator fails to promptly respond to AESC's written notices of breach, or requests to cure Corrective Actions within timeframes requested by AESC, AESC reserves the right to terminate Aggregators by giving Aggregator 5 business days' written notice.
- b. AESC may terminate this Agreement if funding is reduced or eliminated by MCE or the CPUC. If AESC terminates this Agreement for any reason other than a breach by Aggregator, Aggregator shall be paid the incentive payments earned within up to one year past the Project approval date for any projects approved in accordance with the terms of this Agreement so long as proof of required insurance is provided for such one-year period.
- c. This Agreement is subject to changes, modifications, or termination by order or directive of the CPUC or MCE. AESC reserves the right to modify this agreement accordingly and will notify Aggregators within 5 days upon notice of required changes.
- d. 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 email to flexmarket@aesc-inc.com or aggregator email provided.

XII. GOVERNING LAW; DISPUTE RESOLUTION

- a. GOVERNING LAW. This Agreement shall be construed and enforced under the substantive laws of the State of California.
- b. DISPUTES. The Parties shall use their best efforts to amicably settle any claim, controversy, disagreement or other matter in question between the Parties that arise out of or relate to the terms and conditions or formation of this Agreement or regarding the performance or non-performance by the Parties of their respective obligations under this Agreement, including any claim for breach or repudiation thereof (a "**Dispute**"). To this effect, the Parties shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution to any Dispute satisfactory to both Parties. If the Parties do not reach such solution within thirty days, upon notice by either Party to the other, such dispute, claim, question, or disagreement shall be submitted to binding arbitration under [Section XII(c)] below.
- c. BINDING ARBITRATION.
 - i. Any Dispute that the Parties cannot resolve under Section XII(b) above shall be finally settled by arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, provided that a demand for arbitration shall not be made after the date when institution of a legal or equitable proceeding based upon such claim, dispute or other matter in question would be barred by the applicable statute of limitations.
 - ii. The arbitration shall be conducted by a single arbitrator with experience in commercial matters. The arbitrator shall be chosen by agreement of the Parties within five (5) days after the request for arbitration is received pursuant to the above. If the Parties cannot agree on an arbitrator within such time, then the arbitrator shall be chosen under the AAA procedures from its panel of arbitrators with high technology commercial experience. Notwithstanding the process for choosing the arbitrator, an arbitrator shall be chosen within ten (10) days after the request for arbitration is received.
 - iii. The arbitration hearing shall be held in San Diego County, California, or at such other place that mutually agreed by the Parties and the arbitrator. The place of the arbitration hearing will be established within thirty (30) days from the request/demand for arbitration. The arbitration shall commence within twenty (20) days from the date the place of arbitration hearing is established, and the arbitration shall be concluded in not over three (3) days unless otherwise ordered by the arbitrator.
 - iv. The arbitrator shall have no authority to issue an award contrary to the express terms of this Agreement or the laws of the State of California or applicable US Federal Law, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error.
 - v. The Parties shall exchange all documents they intend to submit to the arbitrator for consideration and may conduct a reasonable number of witness depositions before the final arbitration hearing. The award on the hearing shall be made within fourteen (14) days after the close of the submission of evidence. An award rendered by the arbitrator shall be final and binding on the Parties to such proceeding and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator shall have the authority to determine issues of arbitrability and to award compensatory damages, but shall not have authority to award punitive or exemplary damages.
 - vi. Either Party may apply to the arbitrator seeking injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either Party also may, without waiving any other remedy under this Agreement, seek from any court having jurisdiction any interim or provisional relief necessary to protect the rights or property

of that Party, pending the establishment of the arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the controversy). The arbitrators shall award to the prevailing Party, if any, as determined by the arbitrator, all of its costs and fees. As used in this Section, "costs and fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees of the arbitration, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees.

XIII. REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION:

a. GOOD STANDING.

At all times during the Term, 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.

b. INDEMNIFICATION.

- i. Aggregator agrees to indemnify, defend, and hold AESC and MCE, and their respective 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, and attorney's fees ("Claims"), arising from or in connection with (a) any act or omission of Aggregator, or Aggregator's employees, officers, contractors, owners and agents ("Aggregator Parties") in connection with this Agreement, or a Project or work performed under this Agreement; (b) any products installed or services performed during the installation, operation or maintenance of any Project, or otherwise in connection with any Project; or (c) any and all fines, penalties, or similar imposed by any governmental authority in connection with any Project or this Agreement generally.
- ii. AESC agrees to indemnify, defend and hold the 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 AESC (a) in connection with this Agreement, any Project or work performed under this Agreement, or (b) resulting in fines, penalties or similar imposed by any governmental authority in connection with any Project or this Agreement.

XIV. LIMITATIONS ON LIABILITY:

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

XV. NOTICES:

- a. All written notices hereunder shall be given to AESC at the following location:

Contract Manager: Keith Patel, Chief Financial Officer
Address: 2445 Impala Drive, Carlsbad, CA 92010
Email Address: kpatel@aesc-inc.com
Telephone: (805) 637-1152

- b. Notices shall be given to Aggregator at the following address:

Aggregator:
Address:
Email Address:
Telephone No.:

XVI. SEVERABILITY:

If a court or arbitrator determines that any provision of this Agreement is invalid or unenforceable, the remainder of the Agreement will continue in full force and effect.

XVII. COMPLETE AGREEMENT; NO WAIVER:

This Agreement, together with the MCE Programs' Implementation Plan filed with the CPUC constitute the entire agreement between the Parties. These Implementation Plans are filed in CEDARS at:

Residential Efficiency Market Program (MCE01d): cedars.sound-data.com/documents/download/3193/main/

Commercial Efficiency Market Program (MCE02d): cedars.sound-data.com/documents/download/3194/main/

Peak Flex Market Program (MCE20): cedars.sound-data.com/documents/download/2992/main/

No modification or amendment shall be valid unless made in writing and signed by each Party. This Agreement supersedes all prior or contemporaneous negotiations, representation, 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.

XVIII. THIRD PARTY BENEFICIARIES:

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 Counterparty 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.

XIX. 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.

XX. 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.

XXI. ADDITIONAL TERMS AND CONDITIONS

When Aggregator is serving MCE Customer(s), the following additional terms and conditions apply:

a. **INSURANCE REQUIREMENTS:**

- i. **GENERAL LIABILITY:** Aggregator shall maintain a commercial general liability insurance policy and a copy of the certificate evidencing such insurance shall be provided to AESC within 15 days after the Effective Date.
- ii. **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 AESC within 15 days after the Effective Date.
- iii. Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of this Agreement.

b. **WORKFORCE STANDARDS:** 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 AESC, Aggregator shall provide, and shall require every Subcontractor to provide all documentation necessary to demonstrate to MCE's or AESC's reasonable satisfaction that Aggregator Parties have complied with the Workforce Standards.

- i. **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:

1. Completed an accredited HVAC apprenticeship;
2. Is enrolled in an accredited HVAC apprenticeship;
3. 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
4. Has a C-20 HVAC contractor license issued by the California Contractor's State Licensing Board.
5. 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.

- ii. **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.

- c. **MCE NON-DISCLOSURE AGREEMENT.** Prior to receiving any MCE Data, Aggregator shall execute the non-disclosure agreement ("NDA") attached hereto as Exhibit A. 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.
 - i. Promptly after the Agreement terminates or expires (i) Aggregator will securely destroy all MCE Data in its possession and certify the secure destruction in writing to MCE.

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

Alternative Energy Systems Consulting, Inc.

By: _____

Name: _____

Title: _____

Date: _____

Aggregator:

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A**FORM 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 MCE Programs, 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 MCE Programs. Such disclosure is subject to the following legal continuing representations and warranties by Aggregator:
 - (a) 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;
 - (b) Aggregator represents and warrants that the authorized representative(s) executing this Agreement is authorized to execute this Agreement on behalf of the Aggregator; and
 - (c) 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 MCE Programs and that any other use of the information is prohibited.
 - (d) 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 MCE Programs.
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 (a) was 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 MCE Programs.

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 MCE Programs. 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 Aggregator 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, 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. Aggregator 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 the 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 MCE Programs, or if at any time Aggregator ceases performance or MCE requires Aggregator cease participation in the MCE Programs, 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.

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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:

Signature:

Name:

Title:

Address:

Date: