

## PARTICIPATING AGGREGATOR AGREEMENT

**This Participating Aggregator Agreement** (the “Agreement”) is made by and between Alternative Energy Systems Consulting, Inc. (“AESC”), 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 \_\_\_\_\_ (Address and State of Aggregator Business). 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 that implements the BayREN Business Program (the “Program”) on behalf of Client, as defined below, and is responsible for Aggregator enrollment and management, Project Submittal support, incentive budget management, hosting web-based Program tools, and project measurement and verification (“M&V”).

**WHEREAS** Aggregator is a project developer who performs work that leads to energy load modification at Customer sites, including energy efficiency interventions; Aggregator has responsibility for Customer recruitment, project identification, all end-Customer interactions, project design and implementation, energy savings and load impacts and compliance with the Program requirements; Aggregator receives Program incentives directly 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 for Program qualified projects as a Participating Aggregator in the Program. Submission of this completed Participating Aggregator Agreement, including all requested information and Exhibits, is a condition of participation in the Program. Aggregators must provide all required information in full in order to be eligible to enroll and participate.

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

### 1. DEFINED TERMS

The following capitalized terms shall have the meanings specified in this Section 1.

“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 FERC, NERC, United States Department of Transportation, California Independent System Operator, and the CPUC.

“Avoided Cost Calculator” (“ACC”): Estimates hourly, system-level costs of providing electric or gas service in \$/kwh or \$/therm. It is used to determine 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.

“BayREN Terms and Conditions”: Attached as Exhibit A to this Agreement; a set of terms and conditions with which Aggregators must agree to comply as a condition of participating in the Program.

“California Public Utilities Commission” (“CPUC”): the utility regulatory body that regulates Client and certain energy efficiency Programs, including the Program.

“Client” means the party with whom AESC has entered into a contract to perform services. For this Agreement, Client is the City and County of San Francisco Environment Department.

“Confidential Information” The Customer’s personal identifiable information (PII), energy use data, billing data, account information and information relating to their facilities, 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 Privacy & Data Security Laws 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 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 individual or commercial entity that receives products and services from the Aggregator in exchange for money or other compensation.

“Customer Site Eligibility Tool” (“CSET”): Software by AESC that automatically cross references Customer site information against user inputs to help determine the eligibility of a given site for the Program.

“Effective Useful Life” (“EUL”): An estimate of the median number of years that the measures installed under the Program are still in place and operable as defined by the BayREN Business M&V plan.

“Energy Savings”: The annual/first year reduction in kWh over the baseline year, resulting from the implementation of a Project at a Customer site. For the purposes of incentive calculation, energy savings will be distinguished into summer peak period (June through September, 4:00 p.m.–9:00 p.m.) and non-peak period savings (all other hours of the year that do not fall into summer peak periods).

“Implementation Plan” (“IP”): A description of the Program that includes Program overview, budget, expected energy savings, Program description, delivery and Customer services, Program activities and approach, innovation characteristics, metrics, logic model and other Program plan details as required by the CPUC.

“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 the Program. This plan is governed by the requirements of the CPUC population-level components of the NMEC Rulebook v.2 and, if applicable, the site-level components of the NMEC Rulebook v.2 and any subsequent updates.

“Mutual Non-disclosure Agreement”: Attached as Exhibit B to this Agreement; it is an agreement between the Aggregator and the Client in which the parties agree to keep certain information confidential.

“Participating Aggregators”: Aggregators that agree to be bound by the Program terms and conditions defined in this Agreement, the BayREN Business Implementation Plan, Manual and M&V Plan.

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

“Performance Period”: The Performance Period is 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”: Means information that (i) identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household; and (ii) includes personal information or personal data or other such similar terms and meaning as defined under applicable Privacy & Data Security Laws.

“Population-level NMEC” (“Pop-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.

“Prevailing Wage”: As defined by the California Department of Industrial Relations, “the basic hourly rate paid on public works projects to a majority of workers engaged in a particular craft, classification or type of work within the locality and in the nearest labor market area (if a majority of such workers are paid at a single rate). If there is no single rate paid to a majority, then the single or modal rate being paid to the greater number of workers is prevailing”.

“Privacy & Data Security Laws”: means all applicable laws, rules, regulations, directives, and governmental requirements in San Francisco City and County, California and other States of the United States and Federal laws that relate in any way to the confidentiality, collection, use, processing, storage, sharing, combining, selling, disposal, privacy, or security of Personal Information including, but not limited to, the California Consumer Privacy Act (CCPA) and the California Privacy Rights Act (CPRA) as currently in force and as amended, updated, supplemental, or replaced from time to time.

“Program”: Refers to the BayREN Business Program, an energy efficiency Program implemented by AESC Inc. on behalf of the City and County of San Francisco Environment Department, which the Aggregator is enrolling in by signing this Participating Aggregator Agreement.

“Program Manual”: A description of the Program that includes eligibility criteria, eligibility verification process, incentive rates and structure, incentive calculation methodology, various schedules and timelines, quality assurance and control plans, and other details as required by the CPUC.

“Project”: A measure, project, or intervention intended to modify the energy consumption or energy load shape of 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. The Project Implementation Period is considered ended no sooner than the date the Customer approved the project installation, as evidenced by the signed scope of work.

“Project Submittal”: refers to an Aggregator submitting a complete project application with all required documentation (as outlined in the application checklist and/or other Program guides) to AESC and the Client to review.

“Quarterly Aggregator Cohort”: Used in terms of grouping project payments for Population-based projects, an individual Aggregator’s group of projects that started M&V during the same year and quarter. TSB limits to incentive reservations are based on the total performance of the Quarterly Aggregator Cohort.

“Services” or “Work”: Work required by Aggregator to furnish and install qualifying energy efficiency and load modification measures at eligible Customer sites in accordance with Client’s Program requirements to deliver desired Program benefits. AESC shall not be responsible or liable for the performance, supervision, or management of Aggregator work.

“Summer Peak Savings”: Savings accrued during the summer peak period (June to September, 4:00 p.m.–9:00 p.m.)

“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. TSB is estimated (for incentive reservation) using the Value Estimator Tool (VET) and calculated (for payable savings) using the CEDARS Cost-Effectiveness Tool (CET).

“Value Estimator Tool” (“VET”): Calculator used to estimate an Aggregator’s 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.

## **2. AGGREGATOR RESPONSIBILITIES**

As a Participating Aggregator for the Program under this Agreement, Aggregators are responsible for complying with all the requirements, policies, and rules in the BayREN Business Implementation Plan, BayREN Business Program Manual, BayREN Business M&V Plan, and related documents, along with following terms and conditions. Responsibilities in the section are subject to update if AESC notifies Aggregators via email and website posting. Aggregators are responsible for:

### **2.1 PROJECT SUBMITTAL:**

- (a)** Project eligibility will be determined in two steps. First, using the Customer Site Eligibility Tool (“CSET”), Aggregator will confirm preliminary Program eligibility for each building prior to obtaining Customer signature for Program participation. Aggregator will retain proof of preliminary eligibility to submit with Project Application. If CSET returns a non-committal response, Aggregator will work with AESC to confirm building eligibility.
- (b)** Aggregator will submit each Project Application for AESC and Client approval. Client will conduct additional eligibility checks per the BayREN Business Program Manual. Aggregator’s Customer will not purchase equipment or start construction prior to approval.

(c) Aggregator shall follow procedures defined on provided documents linked to AESC's Program website at <https://aesc-inc.com/bayren-business-program/> to submit Projects (a "Project Submittal") for AESC and Client review, savings evaluation, project enrollment and incentive funds commitment. Aggregator shall complete Program training prior to submitting projects for Program 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, supporting calculations, schedule, and planned demand response Program enrollment. 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 BayREN Business Program Implementation Plan ("IP"), BayREN Business Program Manual, and BayREN Business M&V Plan, and related documents. Upon Project Application approval, AESC will provide Aggregator with an estimated incentive. Incentive estimates generated through the Value Estimator Tool will not be binding. While initial incentive will be paid on estimated value in the Project Application, the final payment will be based on actual results.

(d) Aggregator shall provide a Customer-signed Customer Project Application for each project submitted for enrollment in the Program.

**2.2** PROJECT IMPLEMENTATION: During the Project Implementation Period, Aggregator shall implement each approved Project as described in the Project Submittal. Aggregator shall notify AESC and Client of changes in project scope, following the Project Implementation Period after the measure is installed and commissioned, so that AESC and Client may determine, in their sole discretion, whether adjustments shall be made to the project file and incentive reservation. Aggregator shall not initiate Project Implementation Period prior to written approval from AESC. Projects must be installed by no later than the date communicated by AESC and the Client in writing, unless AESC notifies Aggregators of a subsequent new date in writing and website posting. Aggregator shall obtain required permitting and licensing certification forms.

**2.3** PROJECT COMPLETION NOTIFICATION: Aggregator shall promptly notify AESC and Client upon completion of the Project Implementation Period via submitting the post-installation package to AESC. After review and approval of post-installation documentation, SFE will issue a Performance Period Notification Letter ("PPNL") in order to initiate the twelve-month M&V Performance period. Aggregator shall provide AESC and Client final installed project information as specified in the BayREN Business Program Manual. Aggregator shall also furnish required permitting and licensing certification forms.

**2.4** QUALITY ASSURANCE: Aggregator shall grant access to all information requested by AESC and Client so that they may perform quality assurance and quality control ("QA/QC") of project applications and perform select site inspections and/or verifications of installation, as needed, to ensure the work receiving 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 the Program goals and quality standards are met. AESC or Client may coordinate inspections with the Aggregator and will notify Aggregator of any corrective actions identified. Aggregator shall comply with all requirements in the Program documentation, including but not limited to the BayREN Terms and Conditions, project review process and requirements, BayREN Business Implementation Plan, BayREN Business Program Manual, BayREN Business M&V Plan, and related documents. Aggregator data access will be restricted to view-only, and Aggregator agrees not to download, copy, screenshot, or otherwise copy data provided in Praxis or take any steps to circumvent these restrictions.

**2.5** DEMAND RESPONSE PARTICIPATION: Aggregator agrees that the Customer may participate in demand response ("DR") events during the Program M&V period. DR events are temporary changes in electricity consumption by Customer in response to signals or incentives from PG&E. 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 the Program does not hinder or violate the Aggregator's obligations to deliver DR resources in other markets (Programs, CAISO, contracts, etc.).

**2.6** PERMITTING AND LICENSING: Aggregator shall comply with Public Utilities Code ("PUC") Section 399.4 (b) (1) and (2), including but not limited to 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 performed; c) Supply 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 make available on the website a project certification form for submittal at project completion, which will be required to initiate the M&V period.

- 2.7** **TRAINING RECORDS:** Aggregator shall maintain records demonstrating completed training and any associated assessments required to perform the Services or Work in accordance with this Agreement, Applicable Law, or the relevant certifying organization. The maintenance of such information shall include copies of certificates, licenses, and other materials demonstrating the Services or Work is and will be performed by qualified individuals. Training and qualification records must be provided to AESC within 48 hours of request.
- 2.8** **SAFETY:** Aggregator shall, at all times, conduct their work in a safe manner and possess the technical expertise and capacity to provide the necessary services in connection with the Program and each project. If AESC or Client at any time observes Aggregator performing Services or Work in an unsafe manner, or in a manner that may, if continued, become unsafe, AESC or Client shall have the right to require Aggregator to stop the work affected by the unsafe practice until corrective action is taken so the Services or Work performance has been rendered safe.
- 2.9** **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, Client and CPUC employees, representatives, designees and contractors to inspect the Services or Work. Access rights must be provided to AESC, Client, or their assigned agents within 5 days of notice.
- 2.10** **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 the Program and to allow for AESC, Client, 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 approving AESC's access to Customer energy data.
- 2.11** **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 Agreement 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 two years from the date of final payment under this Agreement. This includes paid invoices and canceled checks for purchased materials and project-related charges.
- 2.12** **DOCUMENT RETENTION AND PRODUCTION REQUIREMENTS:** Aggregator shall maintain accounting records and other evidence pertaining to costs incurred and hours worked on the Program and shall make the records available to AESC and Client at all reasonable times during the term of this Agreement and for not less than five (5) years from the date of the final payment to Aggregator for its work on the Program. At AESC's request, Aggregator shall deliver a copy of any or all original records required to be retained under this Agreement.
- 2.13** **MISREPRESENTATION OF PROGRAM, COST, OR PRICING DATA:** The knowing misrepresentation of cost or pricing data by Aggregator shall be considered a material breach of this Agreement.
- 2.14** **CUSTOMER SERVICE:** Aggregator shall provide Customer service in a professional, courteous, and timely manner at all times during the term of this Agreement. Aggregator agrees to maintain high standards of Customer care, including but not limited to: (a) promptly responding to inquiries and requests from Client and/or Customer within (2) business days or within an agreed upon time frame, if requested information is not available; (b) communicating clearly, respectfully, and consistently with all Client, representatives, and third parties; (c) addressing complaints or concerns in a constructive and solution-oriented manner; and (d) ensuring that all personnel involved in the performance of this Agreement are trained to uphold these Customer service standards. Both AESC and Client reserve the right to provide feedback on the Contractor's customer service performance and may require corrective action if service



levels are deemed unsatisfactory. Repeated failure to meet these standards will be considered a material breach of this Agreement and may result in termination.

- 2.15** **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 their 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 Client harmless from repair expenses.
- 2.16** **NO PUBLIC RELEASE OF RESULTS:** Aggregator agrees to not publicly release any results of the Services or Work resulting from this Agreement, 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 Client). Under no circumstances shall any release of information present any material findings not reasonably inferable from the data.
- 2.17** **THIRD PARTY LICENSES:** Aggregator represents and warrants any third-party materials made available to Client in accordance with this Agreement comply with any such corresponding and applicable third-party licenses, terms of use, and policies and procedures.
- 2.18** **INFRINGEMENT PROTECTION:** Aggregator represents that any materials used, or otherwise provided, as a Deliverable under this Agreement, do not infringe upon the copyright, patent or license, or otherwise violate the proprietary rights, including trade secret rights, of any person or entity.
- 2.19** **NO PUBLICITY:** Aggregator shall not include Client's name, trademark, trade name, logo, identity or any affiliation for any reason, any reference to this Agreement, or any reference to Client'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 Client. AESC and Client 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 Client endorses, recommends, or vouches for Aggregator. Aggregators who wish to develop marketing materials for the Program beyond what is developed and furnished by the Program or Client should coordinate with AESC to ensure compliance.
- 2.20** **CUSTOMER PERSONAL INFORMATION:** Aggregator shall represent and warrant that all personal information, as defined in Privacy and Data Security Laws, and including personal and entity names, e-mail addresses, addresses, phone numbers, any other public or privately-issued identification numbers, IP addresses, Media Access Control 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.
- 2.21** **DATA SECURITY:** Aggregator shall adopt and continuously implement, maintain and enforce reasonable technical and organizational measures, consistent with the sensitivity of Personal Information including, but not limited to, measures designed to (1) prevent unauthorized access to, and otherwise physically and electronically protect, the Personal Information and (2) protect AESC and Client data against unauthorized or unlawful access, disclosure, alteration, loss, or destruction.
- 2.22** **CYBER PROTECTION FOR PROGRAMMABLE DEVICES:** The following requirements apply to any Deliverables under this Agreement containing software, firmware, microcode or other Programmable features. These requirements apply on a continuing basis for the longer of five years and the expected service life of the Deliverables (the "Service Life"):

- (a) **MALICIOUS CODE:** Aggregator shall represent, warrant, and covenant to AESC and Client that upon Deliverables being delivered, the Deliverables will not contain or make available any Malicious Code. Without limiting any of Client's rights and remedies with respect thereto (all of which are expressly reserved), if Aggregator is made aware of detects or Malicious Code in the Deliverables during the Service Life, Aggregator shall immediately notify Contractor, who shall immediately notify AESC and Client. If Client or AESC has not put the Deliverables into use, Aggregator shall be responsible to remove such Malicious Code, remediate its effects and certify the Malicious Code has been removed from any Deliverables related to providing the services under this Agreement. If the Deliverables related to the services are in use, Aggregator shall assist AESC and Client to remove the Malicious Code in accordance with the Section below "Security Updates and Support."
- (b) **CYBERSECURITY SPECIFICATIONS:** Aggregator shall represent, warrant, and covenant that the Deliverables for the Services and Work comply with the cybersecurity features and functions, if any, described in the associated specifications.
- (c) **SECURITY VULNERABILITIES AND TESTS:** Aggregator acknowledges the Deliverables provided related to the Services and Work in accordance with this Agreement, may be subject to security testing by Client or its security testing consultants before the Deliverables are accepted, or at any time during their Service Life. If the Deliverables are integrated with products supplied by third parties, that third party may also be involved in the testing process. Aggregator agrees to fully cooperate with such tests that may include: (a) providing source code and other documentation (which Client shall use solely for testing purposes), and (b) providing a representative with suitable technical expertise to participate in the tests. The conduct and results of the tests, including any security vulnerabilities identified in or during the tests, shall be Client Confidential Information. Tests identifying any security vulnerabilities will be resolved in accordance with the following Section, Security Updates and Support.
- (d) **SECURITY UPDATES AND SUPPORT:** Aggregator(s) shall maintain a technical support line with access to AESC to promptly address any security-related issues and if Aggregator(s) become aware of any Malicious Code or security vulnerability in the Deliverables during their Service Life, they shall immediately notify AESC, who shall immediately notify Client. If Malicious Code or security vulnerability is identified during the Service Life, AESC shall provide an update or revision to any Deliverables related to the Services in accordance with this Agreement, will remove the Malicious Code and/or cure the vulnerability (a "Security Patch") without delay and at no charge and upon request, assist Client in implementing the Security Patch and at no charge.

**2.23 USE OF CLIENT PROPERTY:** All records, reports, computer Programs, written procedures and similar materials, documents, or data, in whatever form, provided by AESC to Aggregators shall remain Client's Confidential Information. Aggregator shall be responsible to safeguard such Client Confidential Information in accordance with the terms of this Agreement and such information be returned immediately to AESC or Client upon completion of Aggregator's use for performance of the Services, Work, or earlier upon AESC or Client's request. Alternatively, Aggregator may destroy such information, provided an officer of Aggregator certifies the destruction in writing.

**2.24 TAX AND CERTAIN PAYMENTS:** Nothing in this Agreement shall relieve the Aggregator from their responsibility to pay any tax that may be levied by any Government authority. Aggregator shall indemnify and hold harmless and defend AESC and Client (a) on an after-tax basis, for any liability incurred by AESC or Client resulting from Aggregator's failure to institute any such required withholding, and in addition (b) any liability incurred by AESC or Client as a result of Aggregator's delay or failure to pay any (i) Participating Aggregator, including but not limited to, any demands for payment, invoices, liens or other consideration due or allegedly due; or (ii) delay or failure to pay any employees, laborers, or other personnel of Contractor related to any compensation, monies, wages, benefits or other payment or consideration due or allegedly due.

### **3. AESC RESPONSIBILITIES**

**3.1** SITE ELIGIBILITY: Aggregator shall identify sites that are eligible to participate in the Program and AESC shall determine in its sole discretion preliminary eligibility based on the criteria required for Population-based NMEC M&V as stated in the BayREN Business M&V Plan or BayREN Business Program Manual. Client has the final authority on site eligibility.

**3.2** PROJECT ELIGIBILITY: AESC and Client shall determine, in their discretion, the eligibility of each project Aggregator submits, based on complete data provided and the Program policies and procedures. AESC shall notify Aggregators, as soon as possible, of incomplete project information required to estimate project impacts and reserve incentive funds. AESC may, at its discretion, offer guidance to Aggregators on estimating expected energy savings and assessing potential impacts on their project portfolios, but is not obligated to do so

**3.3** SUPERVISION: AESC assumes no responsibility to manage or supervise the work performed by its Aggregators.

**3.4** AGGREGATOR INCENTIVE RESERVATION: AESC shall calculate or validate estimated Aggregator incentives for submitted projects based on climate zone, measure type(s), energy savings, and savings load shape. Based on the mix of energy efficiency measures, AESC will determine a weighted effective useful life ("EUL") that will be applied to the measured savings. Incentives will be calculated using TSB outputs from the VET. The Client may request additional information before approving or rejecting the submission. AESC shall reserve 120% of the estimated incentive funds and the Client will provide Aggregator an Incentive Reservation Letter ("IRL"). Client reserves the right to implement a project cost cap. If implemented, AESC or Client will notify Aggregator via email, and that will serve as an addendum to this agreement. The Aggregator proceeds at their own risk based on any approved incentive reservation.

**3.5** SAVINGS MEASUREMENT AND VERIFICATION ("M&V"): Following Aggregator notification that the Project Implementation Period is complete, delivery of final project details and required certification forms, and final approval from both AESC and Client, Client will issue a Performance Period Notification Letter ("PPNL") and initiate a twelve (12) month M&V Performance Period to measure hourly project impacts, savings, and incentives according to Population-based NMEC guidelines and the Program M&V Plan. During the M&V Performance period, AESC will provide Aggregators with monthly reports on project kWh and therms savings performance to support identification and remedy of potential performance issues, and to support savings forecasting. These values will be used to determine payable incentives and will be input within Praxis for Aggregator transparency.

**3.6** AGGREGATOR PERFORMANCE PAYMENTS: AESC will calculate Payable Savings at each site and calculate the earned Aggregator incentive. Client will approve each recommendation. Then, Client's third-party incentives processor will invoice Client for approved payments and will issue payment to Aggregator according to the timelines stated in the BayREN Business Program Manual. AESC will not reimburse Aggregator for any labor or expenses incurred, including but not limited to identifying, selling, constructing, or monitoring projects.

**(a)** Each Pop-NMEC project will be issued with two types of payments:

(1) Advance payment is provided upon Project Implementation Period completion approval and resulting PPNL notification. The calculation methodology for the Advance payment is outlined in the BayREN Business Program Manual. Payments will be made on an individual project basis and are processed monthly.

(2) Final true-up payment will be made at the Quarterly Aggregator Cohort level, following the cohort's 12-month M&V Performance Period. The final true-up payment is based on trued-up realized savings. Final true-up payment will be calculated based on the methodology outlined in the BayREN Business Program Manual and M&V Plan.

**(b)** In cases where the Aggregator is overpaid (i.e. project receives an Advance payment but is determined to be disqualified or withdrawn during M&V period, or final performance amount is less



than amounts already paid), Client will deduct the net amount overpaid from the Aggregator's earned incentives in future performance payments, irrespective of Quarterly Aggregator Cohort.

#### **4. AESC RETAINS RIGHTS TO INTELLECTUAL PROPERTY; AGGREGATOR KNOW-HOW**

**4.1** 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. For clarity, AESC retains ownership of all right, title, and interest in and to AESC's pre-existing intellectual property ("IP") rights, including, without limitation: (i) reports, writings, abstracts, summaries, drawings, flow charts, images, artwork documents, know-how, technology, inventions, discoveries, processes, techniques, methods, methodologies, business processes, ideas, concepts, research, proposals, materials, that are created, prepared, produced, authored, edited, amended, conceived, or reduced to practice by the AESC solely or jointly with others; (ii) all computer Programs (both source code and object code), software, firmware, designs, application Programs, operating systems, scripts, animation sequences, interfaces, Programming code, applets, executables, objects, formats or page descriptions, data, databases, computer architecture or hierarchies, files and utilities; (iii) all supporting documentation for any of the foregoing, including input and output formats, listings, narrative descriptions, operating instructions and training documentation; and (iv) all tangible media upon which any of the foregoing are recorded, including, without limitation, disks, CDs, tapes, chips or photographs (collectively "Pre-Existing Intellectual Property"). All Intellectual Property rights in and to AESC's Pre-Existing Intellectual Property shall be owned exclusively by AESC and its licensors. AESC and its licensors shall also exclusively own all right, title, and interest in and to any and all enhancements, improvements, modifications, and any other derivative works of AESC's Pre-Existing Intellectual Property, whenever conceived, developed or otherwise created, either before or during the Term of this Agreement, or after its termination or expiration. For clarity, AESC and its licensors shall retain ownership of all Pre-Existing Intellectual Property incorporated into the deliverables, as well as the rights to any pre-existing third-party software or other works licensed by AESC from third parties that may be contained in any of the deliverables. AESC grants the Aggregator a limited, irrevocable, perpetual, fully paid-up, royalty-free non-transferable, non-sublicensable, non-exclusive license to use, reproduce, display, distribute, transmit, modify (including to create derivative works) Pre-Existing Intellectual Property to the extent incorporated in the deliverables. All other rights in and to Pre-Existing Intellectual Property are expressly reserved by AESC. The aforementioned license does not include the right to use any of the Pre-Existing Intellectual property separately or independently from the Deliverables.

**4.2** 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 BayREN Business Program.

#### **5. TERM OF AGREEMENT:**

The term of this Agreement will commence on the Effective Date, and shall continue, unless terminated earlier in accordance with Section 10 of this Agreement.

#### **6. SUBCONTRACTING:**

If Aggregator hires a subcontractor in connection with this Agreement or a 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 AESC and any subcontractor, contractor or agent of Aggregator. Aggregator is solely responsible for paying its subcontractors. Neither Client nor AESC shall have any obligation to pay or to enforce the payment to any subcontractor, contractor or agent of Aggregator.

#### **7. ASSIGNMENT:**

Aggregator may not transfer or assign its rights and obligations under this Agreement without 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. AESC may in its discretion assign this Agreement or any

of its rights or obligations under this Agreement to any parent, subsidiary or affiliated business entity of the AESC or in the event of a merger, acquisition, the sale or transfer of majority of the assets, or change of control.

## **8. CONFIDENTIAL INFORMATION; PUBLICITY**

**8.1** 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 implement the Program.

**8.2** “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.

**8.3** 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, and (b) 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.

**8.4** 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.

**8.5** 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.

## **9. CORRECTIVE ACTIONS:**

**9.1** 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 Program policies and guidelines; misrepresentations about the Program, a site or project equipment, schedule, status or cost information; failure to provide requested project information, Customer service complaints; inappropriate behavior and language to AESC,

Customer or Client; suspected fraudulent activity; unsafe Aggregator Services or Work; or poor workmanship.

- 9.2** The Aggregator shall reply to AESC's written notice of breach, or request for Corrective Actions, within five (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 suspension from Program, termination of this Agreement, withholding or delay of incentive payments, cancellation of Program project fund commitments, and forfeiture of Project incentives.

## **10. TERMINATION:**

- 10.1** 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 suspend and/or terminate Aggregator by giving Aggregator five (5) business days' prior written notice. Additional information regarding the Aggregator suspension and/or termination process may be found in the BayREN Business Program Manual.
- 10.2** AESC may terminate this Agreement if funding is reduced or eliminated by Client 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.
- 10.3** This Agreement is subject to changes, modifications, or termination by order or directive of the CPUC or Client. AESC reserves the right to modify this Agreement accordingly and will notify Aggregators within five (5) days upon notice of required changes.
- 10.4** 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 [BayRENBusiness@franklinenergy.com](mailto:BayRENBusiness@franklinenergy.com) or Aggregator email provided (Franklin Energy Services, LLC is hosting email services for the Program on behalf of AESC Inc. and is not a party in this Agreement).

## **11. GOVERNING LAW; DISPUTE RESOLUTION**

- 11.1** GOVERNING LAW. This Agreement shall be construed and enforced under the substantive laws of the State of California.
- 11.2** DISPUTES. The Parties shall use their commercially reasonable 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 (30) days, upon notice by either Party to the other, such dispute, claim, question, or disagreement shall be submitted to binding arbitration under Section 11.3 below.
- 11.3** BINDING ARBITRATION.
- (a)** Any Dispute that the Parties cannot resolve under Section 11.12 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.
- (b)** 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.

- (c) The arbitration hearing shall be held in San Francisco 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.
- (d) 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.
- (e) The Parties shall exchange all documents they intend to submit to the arbitrator for consideration and may conduct a reasonable number of witness depositions, not to exceed three (3), 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.
- (f) 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.

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

**12.1** 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, (d) it will not act to interfere with or impede the contractual relationship between the Client and AESC, or to suggest or cause the Client to modify or terminate the Client contract or to not renew any services with AESC, or (e) will not make any public announcements, media releases, or other forms of public disclosure relating to this Agreement, Franklin Energy, the Client or AESC products and services without the prior written approval of AESC.

### **12.2** INDEMNIFICATION.

- (a) Each Party (the "Indemnifying Party") shall indemnify and hereby indemnifies, defends and holds harmless the other party and its parent, subsidiaries and affiliates (including without limitation their

respective shareholders, members, patrons, partners (general and/or limited), trustees, directors, officers, managers, agents, representatives, and employees (the "Indemnified Party"), from and against any claims, damages, demands, suits, actions, judgments, liabilities, defaults, investigations, responses to discovery requests, or any other costs and expenses, including reasonable attorneys' fees (collectively, "Losses") resulting from or in connection with: (i) bodily injury to, or death of, persons or damage to or destruction of property, to the extent directly caused by or arising out of any negligent act or omission or willful misconduct of either party or anyone acting under either party's direction or control or on either party's behalf in connection with or incident to the performance of the Services, or (ii) third party allegations that any Services or Deliverables, or any portion thereof infringe that third party's copyright, patent, trademark, trade, name, trade secret, or any other intellectual property rights

**(b)** Each Party's indemnification obligations under this Agreement are conditioned on (i) the Indemnified Party providing timely notice of any claim or proceeding to the Indemnifying Party under which it intends to seek to enforce the indemnification obligations; provided, however, that an Indemnified Party's failure to notify the Indemnifying Party under this Section 12.2(b) will relieve the Indemnifying Party of its obligations under Section 12.2(a) only if and only to the extent the Indemnifying Party was prejudiced by not receiving timely notice of the claim, and (ii) the Indemnified Party fully cooperating with the Indemnifying Party, including making all defenses available to the Indemnifying Party that would be available to the Indemnified Party. The obligations of Indemnifying Party to indemnify and hold the Indemnified Party harmless under Section 12.2(a) exclude Losses resulting from proven and adjudicated grossly negligent acts or omissions solely attributable to the Indemnified party.

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

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR BREACH OF THE OBLIGATIONS OF CONFIDENTIALITY UNDER SECTION 8 OR AGGREGATOR'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 12, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING ANY DAMAGES FOR LOSS OF PROFIT OR INCOME, ARISING FROM OR RELATING TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IF EITHER PARTY SHOULD BE HELD LIABLE UNDER THIS AGREEMENT, SUCH LIABILITY SHALL BE LIMITED TO THE AMOUNT PAID BY AESC TO AGGREGATOR DURING THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

### **14. NOTICES:**

**14.1** All written notices hereunder shall be given to AESC at the following location:

Contract Manager: Antonio Corradini, President  
Address: 2445 Impala Drive, Carlsbad, CA 92010  
Email Address: ACorradini@aesc-inc.com  
Telephone: (858) 344-4293

With a copy to: Alternative Energy Systems Consulting, Inc.  
102 N. Franklin Street  
Port Washington, WI 53074  
Attn: Corporate Counsel

**14.2** Notices shall be given to Aggregator at the following address:

Aggregator:	
Address:	
Email Address:	
Telephone No.:	



**15. 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.

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

This Agreement, together with the BayREN Business Program Implementation Plan, BayREN Business Program Manual, BayREN Business M&V Plan filed with the CPUC, and other Program communications constitute the entire agreement between the Parties. No modification or amendment shall be valid unless made in writing and signed by each Party. This Agreement supersedes all prior or contemporaneous negotiations, 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.

**17. THIRD PARTY BENEFICIARIES:**

Reserved.

**18. 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.

**19. ADDITIONAL TERMS AND CONDITIONS:**

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

**19.1 INSURANCE REQUIREMENTS:**

**(a)** Aggregator represents and warrants that as an independent contractor it has in force, and will maintain in force, adequate worker's compensation, commercial general liability, commercial automobile liability, and other forms of insurance, as required under Exhibit A, sufficient to protect and indemnify AESC and Client, and each of their officers, directors, partners, principals, agents, servants, and employees, from any losses resulting from the conduct, actions or omissions of Aggregator, its officers, directors, partners, agents, servants and employees. Aggregator further represents and warrants that none of its insurance policies expressly excludes the coverage for liabilities and claims that Aggregator may be held liable under this Agreement. Aggregator will forward to AESC, within fifteen (15) calendar days of the Effective Date and prior to commencing Services, a certificate of insurance listing AESC and Client as an additional insured, except for worker's compensation, and verifying Aggregator is insured in policy amounts sufficient to meet its obligations hereunder for all matters relating to its work on the Project. Such certificate shall indicate that the insurance may not be canceled prior to a thirty (30)-day notification period and that AESC shall be immediately notified in writing of any such notice of termination. AESC shall have no duty to Aggregator, or any of its insured, to review any certificate or policies of insurance furnished to AESC to determine whether the terms of each certificate or policy comply with this section.

**(b)** Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of this Agreement.

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

- (a) The Energy Efficiency measure improvement or installation has complied with any applicable permitting requirements, including any applicable specifications or requirements set forth in the California Building Standards Code (Title 24 of the California Code of Regulations)
- (b) The Energy Efficiency measure improvement or installation was completed by person(s) who hold the appropriate and current license(s).
- (c) HVAC Standards. For any non-residential project pursuant to this Agreement installing, modifying or maintaining a Heating Ventilation and Air Conditioning (“HVAC”) system or component with incentives valued at \$3,000 or more, Aggregator shall ensure that each worker or technician involved in the project, including all of its employees and agents and those of each Subcontractor, meet at least one of the following workforce criteria:

  - (i) Complete a California or federal accredited HVAC apprenticeship;
  - (ii) Be enrolled in a California or Federal accredited HVAC apprenticeship;
  - (iii) Completed at least five years of work experience at the journey level as defined by the California Department of Industrial Relations, Title 8, Section 205, of the California Code of Regulations, passed a practical and written HVAC system installation competency test, and received credentialed training specific to the installation of the technology being installed; or
  - (iv) Has a C-20 HVAC contractor license issued by the California Contractor’s State Licensing Board.
  - (v) 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.
- (d) Advanced Lighting Controls Standards. For each lighting controls measure installed in a nonresidential setting where the project is seeking an energy efficiency incentive of \$2,000 or more, each worker or technician, and not just the contracting firm(s) itself, is required to receive certification through the successful completion of the California Advanced Lighting Controls Training Program (CALCTP) prior to initiation of work.

### **19.3 BAYREN TERMS AND CONDITIONS FLOWDOWNS:**

- (a) Aggregator agrees to be bound by and to comply with terms and conditions of the BayREN Terms and Conditions. This agreement is not valid unless the Aggregator has also executed the BayREN Terms and Conditions as set forth in Exhibit A and Mutual Non-Disclosure Agreement as set forth in Exhibit B. In the event of any conflict or inconsistency between the provisions of this Agreement and the BayREN Terms and Conditions set forth in Exhibit A, and the Mutual Non-Disclosure Agreement set forth in Exhibit B, the stricter provisions shall control and govern.

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

**Alternative Energy Systems Consulting, Inc.**

Signature: \_\_\_\_\_

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

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

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

**Aggregator:**

Signature: \_\_\_\_\_

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

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

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

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**EXHIBIT A****PROGRAM TERMS, CONDITIONS AND REQUIREMENTS**

Where Bay Area Regional Energy Network (“BayREN”) is the applicable Program Administrator, the following additional terms and conditions shall apply to the Program Terms and Conditions (“Agreement”):

**1. Insurance Requirements for Aggregator****1.1. GENERAL LIABILITY**

Aggregator shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars (\$1,000,000) per occurrence and with a two-million-dollar (\$2,000,000) aggregate limit. AESC, Program Administrator (“BayREN”), BayREN members, its officers, agents, and employees, and the City & County of San Francisco, its officers, agents, and employees each shall be named as an additional insured on the commercial general liability policy, and the Certificate of Insurance shall include an additional endorsement page.

**1.2. AUTO LIABILITY**

Where the services to be provided under this Agreement involve or require the use of any type of vehicle by Aggregator in order to perform said services, Aggregator shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000.00). AESC, Program Administrator (BayREN), BayREN members, agents, and employees, and City & County of San Francisco, officers, agents, and employees each shall be named as an additional insured on the commercial general liability policy, and the Certificate of Insurance shall include an additional endorsement page.

**1.3. WORKERS' COMPENSATION**

Aggregator acknowledges Regulations require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the applicable Labor Code. If Aggregator has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to AESC within fifteen (15) days after the Effective Date. The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City and County of San Francisco for all work performed by the Aggregator, its employees, agents, and subcontractors.

**2. BayREN Business Program Standards and Regulations****2.1. WORKFORCE STANDARDS**

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

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

- i. Completed an accredited HVAC apprenticeship;
- ii. Is enrolled in an accredited HVAC apprenticeship;
- iii. Completed at least five years of work experience at the journey level as defined by the California Department of Industrial Relations, Title 8, Section 205, of the California Code of Regulations, passed a practical and written HVAC system installation

- competency test, and received credentialed training specific to the installation of the technology being installed; or
- iv. Possesses a C-20 HVAC contractor license issued by the California Contractor's State Licensing Board.

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

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

**2.2. Licensing and/or Certifications.**

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

**2.3. Quality Assurance.**

Aggregator shall comply with Quality Assurance procedures, as they are defined in the BayREN Business Program Manual, including but not limited to: (i) industry standard best practices; and (ii) procedures that ensure highest level of equipment functionality, Customer satisfaction, and that Workforce Standards are satisfied.

**2.4. Data Security Measures.**

Prior to receiving any utility Data, and at all times continuing thereafter, Aggregator shall comply with all applicable data security policies, laws and terms as outlined within the BayREN Business Participating Aggregator Agreement and the Mutual Non-disclosure Agreement set forth in Exhibit B. Data shall mean all data or information provided by or on behalf of utility provider, including but not limited to, 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 the utility provider to AESC as the utility provider may approve of in advance and in writing (in each instance); account numbers, forecasts, and other similar information disclosed to or otherwise made available to AESC. Program Administrator Data shall also include all data and materials provided by or made available to AESC by the Program Administrator'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 the Program Administrator and their licensors.

Additionally, Aggregator shall execute the Mutual Non-disclosure Agreement ("NDA") attached hereto as Exhibit B. Subcontractors are not required to execute a NDA but Aggregator shall ensure that any Subcontractor, at its own expense, adopt and continuously implement, maintain and enforce reasonable technical and organizational measures, consistent with the sensitivity of Personal Information and Confidential Information including, but not limited to, measures designed to (1) prevent unauthorized access to, and otherwise physically and electronically protect, the Personal Information and Confidential Information, and (2) protect Program Administrator content and data against unauthorized or unlawful access, disclosure, alteration, loss, or destruction.



- Promptly after the Participating Aggregator Agreement terminates or expires (i) Aggregator will securely destroy all Program Administrator Data in its possession and certify the secure destruction in writing to the Program Administrator, and (ii) Aggregator will return (or if requested by AESC, Program Administrator, destroy) all other Confidential Information and property of the other (if any), provided that AESC's attorney shall be permitted to retain a copy of such records or materials solely for legal purposes.
- 2.5. Performance Assurance.**  
Regardless of the specific work provided, Aggregator shall maintain any payment and/or performance assurances as may be requested by AESC or the Program Administrator during the performance of the work.
- 2.6. Fitness for Duty.**  
Aggregator shall ensure that all Covered Personnel report to work fit for their job. Covered Personnel may not consume alcohol while on duty and/or be under the influence of drugs or controlled substances that impair their ability to perform their work properly and safely. Aggregator shall have, and shall ensure that any Subcontractor shall have, policies in place that require its employees report to work in a condition that allows them to perform the work safely. For example, employees should not be operating equipment under medication that creates drowsiness.
- 2.7. Background Checks.**  
Aggregator shall conduct appropriate background checks as required by rules and standards as set forth in the BayREN Business Program Manual, to the extent legally permissible, on all personnel.
- 2.8. Standards of Performance.**  
Aggregator shall deliver the work under the Participating Aggregator Agreement in a timely, professional, good, and workmanlike, and ethical manner as specified in the BayREN Program Manual. Material and labor warranties must be disclosed to the end-user and included as a part of the Aggregator agreement with the end-user.
- 2.9. Attendance at Meetings.**  
Aggregator's representatives will attend all meetings required by AESC while the Work, or any part of it, is in progress, or as reasonably requested by AESC, and will be prepared and authorized to address all matters related to the Work.
- 2.10. 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 Aggregators, and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, or disability.
- 2.11. Warranties to Participants.**  
Aggregator shall provide a standard, best practice installation warranty for the workmanship on each BayREN Business Program project. Aggregator shall provide proof to AESC that the Aggregator has submitted all warranty registrations for the equipment. Aggregator shall prosecute manufacturer warranty claims on behalf of the Participant.
- 2.12. Post-Installation Maintenance and Operation.**  
Aggregator shall ensure each equipment remains installed, reasonably maintained, and operational, including any and all timely repairs and replacements, for the entire Term.
- 2.13. Site Access.**  
Aggregator shall be responsible for obtaining any and all access rights from Participants and other third parties to the extent necessary to perform the Work. Aggregator shall also procure any and all access rights from Participants and other third parties in order for the Program Administrator, its officers, agents,

and employees, and AESC employees, representatives, designees, California Public Utilities Commission officers, agents, and evaluators, and Aggregators to access the project site and inspect the work prior to, during, and after installation for the full Term.

**2.14. Compliance with Laws.**

Aggregator shall comply at all times during the Term with any and all federal, state, and local laws, regulations, orders, ordinances, permitting requirements and resolutions, including without limitation.

**2.15. Program Administrator Customer Engagement Protocol.**

Aggregators shall comply at all times during the Term with any Program Administrator-provided co-branding and/or Customer engagement protocol that provides Program Administrator's expectations for Customer interactions by Aggregator. Failure of Aggregator to comply at all times with this section will constitute a material breach pursuant to Participating Aggregator Agreement Section 9 and may result in the discontinuation of work with the Program Administrator at Program Administrator's request.

**3. Subcontractors**

Aggregator shall be solely responsible for ensuring that each Subcontractor complies with the terms and conditions of this Exhibit A. If Aggregator will use any subcontractor(s) to provide Services, Aggregator shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees, and BayREN, BayREN members, its officers, agents and employees, and the Aggregator as additional insureds.

**California Civil Code § 1542 Waiver.** Aggregator is on notice of, and hereby specifically and expressly waives, the provisions of California Civil Code § 1542, which provides that a "*general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.*"

**4. Payments**

BayREN shall authorize payments to Aggregator based on measured and verified energy savings performance of the Aggregator's portfolio of projects. Acting through a contracted third-party, BayREN makes payments according to the cadence and timeline stated in the BayREN Program Manual. The Aggregator shall refer to the latest BayREN Program Manual for payment calculation method and over/under-performance remedies here: <https://cedars.sound-data.com/Programs/BAYREN06/details/>.

Aggregator

City and County of San Francisco

By:

By: Environment Department

Name:

Name: Lowell Chu

Title:

Title: Energy Program Manager

Date:

Date:

**Approved as to Form:**

David Chiu  
City Attorney

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

Sarah Crowley  
Deputy City Attorney

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

**EXHIBIT B****MUTUAL NONDISCLOSURE AGREEMENT**

This MUTUAL NONDISCLOSURE AGREEMENT ("**Agreement**") is made and entered into as of \_\_\_\_\_ between \_\_\_\_\_, a \_\_\_\_\_ with offices at \_\_\_\_\_ ("**Company**"), and the Bay Area Regional Energy Network ("BayREN") acting by and through the San Francisco Department of the Environment located at 1455 Market Street, Suite 13A, San Francisco, CA 94102.

1) Purpose. The parties wish to explore the option of the Company to participate in the BayREN Business Program ("**Relationship**"), and in connection with this Relationship, each party (the "**Disclosing Party**") may disclose to the other (the "**Receiving Party**") certain confidential technical and business information which the Disclosing Party desires the Receiving Party to treat as confidential and use solely in connection with the Relationship.

2) Definitions:

"**Confidential Information**" means any information, data or materials, regardless of whether it is in tangible form, that is disclosed or otherwise made available by or on behalf of the Disclosing Party to the Receiving Party and that is (i) designated by the Disclosing Party as "Confidential," "Proprietary" or some similar designation; (ii) designated by the Disclosing Party as confidential or proprietary within reasonable time after the time of disclosure; or (iii) covering the terms and conditions of this Agreement or the Relationship to be negotiated by the parties; provided, however, that the Disclosing Party's technical, business, commercial or legal information, trade secrets and know-how about product plans, business relations, business plans, services, suppliers, proprietary lists, Customers and prospective Customers, prices and costs, markets, marketing materials, software, specifications, developments, processes, designs, drawings, hardware or software configuration information, licenses, and other materials derived from the foregoing shall be deemed Confidential Information of the Disclosing Party even if not designated as such. Confidential Information shall not, however, include any information which (A) was publicly known and made generally available in the public domain prior to the time of disclosure by the Disclosing Party; (B) becomes publicly known and made generally available after disclosure by the Disclosing Party to the Receiving Party through no action or inaction of the Receiving Party in violation of this Agreement; (C) is already in the possession of the Receiving Party at the time of disclosure by the Disclosing Party; (D) is obtained by the Receiving Party from a third party without a breach of such third party's obligations of confidentiality; (E) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information, in each of the foregoing (A) – (E), as shown by the Receiving Party's appropriate documents or other competent evidence in the Receiving Party's possession, or (F) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body, or is otherwise required to be disclosed pursuant to a request by a third party under applicable federal, state, or local law including, but not limited to, the California Public Records Act and the City and County of San Francisco's Sunshine Ordinance provided, however, that the City shall provide prompt notice of such court order or requirement to the Company to enable the Company to seek a protective order or otherwise prevent or restrict such disclosure.

"**Person(s)**" means any individual or entity whatsoever.

"**Affiliate(s)**" means, with respect to any Person (or its Affiliates), any other Persons that directly, or indirectly through intermediaries, control, are controlled by, or are under common control with, such Person.

"**Representatives**" means a Person's directors, officers, employees, agents, attorneys, advisers, and other representatives.

3) Non-use and Non-disclosure. Each party agrees, as the Receiving Party, to use any Confidential Information of the Disclosing Party solely for the purpose of executing the Relationship between the Receiving Party and the Disclosing Party. The Receiving Party will keep secret and shall not, without the prior written consent of the Disclosing Party, directly or indirectly, disclose, publish, furnish or otherwise make available Confidential Information to third parties except on a need-to-know basis to its Representatives or professional advisers (e.g., attorneys and accountants) whose knowledge of Confidential Information is required in connection with the Relationship, and who have entered a binding, written agreements restricting disclosure of Confidential Information based the standards outlined herein. Neither party

shall reverse-engineer, disassemble or decompile any prototypes, software, plans, or other tangible objects which embody the other party's Confidential Information and which are provided to the party hereunder.

**4) Maintenance of Confidentiality.** A Receiving Party shall not make any copies of the Confidential Information of the Disclosing Party unless the same are previously approved in writing by the Disclosing Party. The Receiving Party shall reproduce the Disclosing Party's proprietary rights notices on any such approved copies, in the same manner in which such notices were set forth in or on the original. Notwithstanding anything to the contrary set forth herein, the Receiving Party shall be permitted to disclose Confidential Information to the extent (and only to the extent) the Receiving Party is required by law or upon affirmative, written advice of counsel to disclose such Confidential Information, provided that the Receiving Party gives the Disclosing Party prompt written notice of such requirement and upon the request of the Disclosing Party, the Receiving Party cooperates in good faith and at the expense of the Disclosing Party in any reasonable and lawful actions which the Disclosing Party takes to resist such disclosure or limit the information to be disclosed. If any Confidential Information is disclosed by the Receiving Party in contravention of this Agreement, the Receiving Party shall immediately notify the Disclosing Party and the Receiving Party shall make commercially reasonable efforts to mitigate the effect of such disclosure.

**5) No Obligation.** Nothing herein shall obligate either party to proceed with any transaction between them, and each party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement concerning the business opportunity.

**6) No Warranty.** ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS". EACH PARTY MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING ITS ACCURACY, COMPLETENESS OR PERFORMANCE.

**7) Return of Materials.** All documents and other tangible objects containing or representing Confidential Information which have been disclosed by either party to the other party, and all copies thereof in the possession of the other party, shall be and remain the property of the Disclosing Party and shall be promptly returned to the Disclosing Party or destroyed upon the Disclosing Party's written request. At the request of the Disclosing Party, the Receiving Party will furnish a certificate signed by an officer of the Receiving Party, certifying that any Confidential Information not returned has been destroyed.

**8) No License.** Nothing in this Agreement is intended to grant any rights to either party under any intellectual property rights of the other party, nor shall this Agreement grant any party any rights in or to the Confidential Information of the other party except as expressly set forth herein.

**9) Term.** The obligations of each Receiving Party hereunder shall survive for a period of three (3) years from the date of disclosure. Notwithstanding the expiration of the term, the obligations of Section 3 shall continue forever and shall terminate only at such time, and then only to the extent, the Disclosing Party's Confidential Information no longer constitutes Confidential Information.

**10) Remedies.** Given the unique nature of the Confidential Information, the parties agree that any violation or threatened violation of this Agreement may cause irreparable injury to the Disclosing Party, therefore the parties agree such violation or threatened violation shall entitle the other party to seek injunctive or other equitable relief in addition to all legal remedies.

**11) Export.** The parties acknowledge that the export of Confidential Information may be subject to regulations which may prohibit the export of such information to certain foreign countries or the disclosure of such information to certain foreign nationals. The parties, therefore, agree to comply strictly with all applicable export laws, regulations, executive orders and the like.

**12) Miscellaneous.** This Agreement shall bind and inure to the benefit of the parties hereto and their successors and permitted assigns. This Agreement may be assigned by either party to a successor in interest of such party who has agreed in writing to assume all the assigning party's obligations herein. This Agreement shall be governed by the laws of the State of California, without reference to conflict of laws principles. Any disputes under this Agreement shall be resolved in a court of general jurisdiction in San Francisco County, California. This document contains the entire agreement between the parties with respect to the subject matter hereof, and neither party shall have any obligation, express or implied by law, with respect to trade secret or proprietary information of the other party except as set forth herein. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision. This Agreement may not be amended, nor any obligation waived, except by a writing signed by both parties hereto. This Agreement may be signed in counterparts and delivered by electronic means, and such counterparts shall be valid and binding on the parties with the same effect as if original signatures had been exchanged.



13) Entire Agreement. This Agreement embodies the entire understanding between the parties respecting the subject matter of this Agreement and supersedes any and all prior negotiations, correspondence, understandings and agreements between the parties respecting the use and disclosure of Confidential Information. This Agreement has been negotiated by the parties and their respective attorneys, and the language of this Agreement shall not be construed for or against either party. The headings are not part of this Agreement.

14) Notices. All notices under this Agreement shall be made by prepaid, certified first class U.S. mail return-receipt requested, by internationally recognized overnight courier service or by hand delivery to the party entitled to such notice at the address first set forth above to the attention of such party's legal department.

**Aggregator****City and County of San Francisco**

By:

By:

Environment Department

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

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

Lowell Chu

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

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

Energy Program Manager

Date: \_\_\_\_\_  
\_\_\_\_\_Date: \_\_\_\_\_  
\_\_\_\_\_**Approved as to Form:**David Chiu  
City Attorney

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

Sarah Crowley  
Deputy City Attorney

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