**ADDITIONAL TERMS AND CONDITIONS**

These Additional Terms and Conditions (“Additional Terms”) apply to the “Agreement for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_” entered into by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Service Provider”), and East Bay Community Energy Authority, a joint powers authority formed under the laws of the State of California (“EBCE”), on or about \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2021 (“Agreement”). Service Provider’s services under the Agreement are collectively referred to herein as the “Services”. The provisions of these Additional Terms shall govern over any conflicting or inconsistent terms or conditions set forth in the Agreement, including any online terms and conditions incorporated or referenced therein.

1. Term and Termination. The term of the Agreement shall be one (1) year unless sooner terminated as provided herein. The Agreement may be extended by agreement of the Parties’ authorized representatives on the same terms and conditions for up to three (3) additional, one (1) year terms. Either party may terminate the Agreement for any reason by providing the other with not less than thirty (30) days’ prior, written notice. Any amounts earned for Services provided, but unpaid as of the date of termination, shall be paid by EBCE to Service Provider provided Service Provider is not then in breach of the Agreement.

2. Where EBCE is required to “click through” or otherwise accept or be made subject to any online terms and conditions in accessing or using the Services, such terms and conditions are not binding and shall have no force or effect as to the Services or the Agreement.

3. Notwithstanding any provision of the Agreement, and to the maximum extent permitted by law, the Service Provider will indemnify, defend and pay attorneys’ fees, and hold EBCE, its officials, officers, employees, and agents harmless with respect to all claims, actions and liabilities to the extent arising out of the Service Provider’s violation of any law, statute, or regulation, performance or breach of this Agreement, any actual or alleged infringement of any intellectual property right in providing the Services to EBCE, and/or any unauthorized disclosure or use of EBCE Data.

4. EBCE Data.   
  
 a. Ownership. EBCE’s data (“EBCE Data”), which shall also be known and treated by Service Provider as confidential Information, shall include: (a) all data made available or accessible to Service Provider by EBCE, or that is collected, transmitted, accessed, used, processed, stored, or generated as the result of the EBCE’s use of the Services; and (b) personally identifiable information (“PII“) collected, transmitted, used, processed, stored, or generated as the result of the use of the Services, including, without limitation, any information that identifies an individual, such as an individual’s social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother’s maiden name, email address, credit card information, or an individual’s name in combination with any other of the elements listed herein. Except where subject to a third party’s intellectual property rights, all EBCE Data is and shall remain the sole and exclusive property of EBCE and all right, title, and interest in the same belongs to EBCE.

b. License to Use EBCE Data. Service Provider is provided a limited license to access EBCE Data for the sole and exclusive purpose of providing the Services, including a license to collect, transmit, process, store, generate, and display EBCE Data only to the extent necessary to provide the Services. Service Provider shall: (a) keep and maintain EBCE Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Agreement and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose EBCE Data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Agreement, and applicable law; (c) allow access to EBCE Data only to those employees of Service Provider who are directly involved with and responsible for providing the Services; and, (d) not use, sell, rent, transfer, distribute, or otherwise disclose or make available EBCE Data for Service Provider’s own purposes or for the benefit of anyone other than EBCE without EBCE’s prior written consent.

c. Without limiting Service Provider’s obligation of confidentiality as further described herein, Service Provider shall be responsible for establishing, maintaining, and providing a written description to EBCE of, a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that comply with or are substantial similar to the security controls identified in the current version of NIST SP800-53, and that is designed to: (a) ensure the security and confidentiality of the EBCE Data; (b) protect against any anticipated threats or hazards to the security or integrity of the EBCE Data; (c) protect against unauthorized disclosure, access to, or use of the EBCE Data; (d) ensure the proper disposal of EBCE Data; and, (e) ensure that all employees, agents, and subcontractors of Service Provider, if any, comply with all of the foregoing. In no case shall the safeguards of Service Provider’s data privacy and information security program used to protect EBCE Data be less stringent than the safeguards used by Service Provider for its own data.  
  
 d. PCI-DSS Compliance. For Services that include handling credit card information, Service Provider shall comply at all times with all applicable and current Payment Card Industry Data Security Standards (PCI-DSS). Service Provider agrees that it is responsible for the security of “cardholder data” that Service Provider possesses, handles, stores, processes or transmits on behalf of EBCE, and for any impact on the security of EBCE’s cardholder data environment adversely affected by any failure of Service Provider to maintain compliance with provisions of the PCI-DSS applicable to the Services.

e. Data Breach. In the event of any act, error or omission, negligence, misconduct, or breach that permits any unauthorized access to, or that compromises or is suspected to compromise the security, confidentiality, or integrity of EBCE Data, Service Provider shall, as applicable: (a) notify EBCE as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with EBCE in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by EBCE; (c) in the case of PII, at EBCE’s sole election, (i) notify the affected individuals who comprise the PII as soon as practicable but no later than is required to comply with applicable law including, but not limited to, the provisions of California Civil Code Section 1798.82, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence.  
  
 f. Any and all cloud based storage shall be in compliance with ISO/IEC 27001 - 27018, as applicable, or successor standards thereto. Unless waived by EBCE, all data storage shall be provided solely within the continental United States and on computing and data storage devices residing therein, and all such locations shall be disclosed to EBCE promptly upon request.

5. Governing Law and Venue. Notwithstanding anything in the Agreement to the contrary, the Agreement shall be governed by and construed under the laws of the State of California. Venue for any action arising out of this Agreement shall be the United State District Court, Northern District, State of California, or Superior Court of the County of Alameda, California.

6. At all times, Service Provider shall comply with any and all applicable local, State, and federal laws, including California Civil Code Section 1798.82 and the California Consumer Privacy Protection Act of 2018, California Civil Code Section 1798.100, et seq.

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| East Bay Community Energy Authority,  A Joint Powers Authority  Nick Chaset  Chief Executive Officer  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Approved as to form:  EBCE General Counsel | [Service Provider],  A [Legal form of entity]  [Name]  [Title]  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [Name]  [Title]  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |