



November 13, 2019

Josh Brock, Director of CCA Client Services  
 Calpine Energy Solutions, LLC  
 401 West A Street, Suite 500  
 San Diego, CA 92101  
 Email: [Josh.Brock@Calpinesolutions.com](mailto:Josh.Brock@Calpinesolutions.com)

**RE:** 1) Notice of Contract Amendment Certification  
 2) Executed Amendment #2 between the City and County of San Francisco Public Utilities Commission and Calpine Energy Solutions, LLC.

Dear Mr. Brock,

This letter provides a *Notice of Contract Amendment Certification* for the following contracted work:

**Contract ID Number:** CS-247(R) (1000007708)  
 1000000229 - \$170,084.60 (old)  
 1000007708 - \$18,599,140.40 (new)

**Contract Title:** Customer and Administrative Services for Community Choice Aggregation Program

**Effective Date:** November 20, 2015 to October 31, 2021

**Amount:** Total value of contract not to exceed \$18,769,225.00

Work may not be charged against the Contract ID Number. Invoices must be charged against specific task orders only after a *Notice to Proceed* has been issued.

Sincerely,

Rosiana Angel  
 Infrastructure Budget and Payment Processing

Enclosure: Executed Agreement  
 cc: Michael Hyams

File/ CS-247(R) Amendment #2 - NCAC

OUR MISSION: To provide our customers with high-quality, efficient and reliable water, power and sewer services in a manner that values environmental and community interests and sustains the resources entrusted to our care.

**London N. Breed**  
 Mayor

**Ann Moller Caen**  
 President

**Francesca Vietor**  
 Vice President

**Anson Moran**  
 Commissioner

**Sophie Maxwell**  
 Commissioner

**Tim Paulson**  
 Commissioner

**Harlan L. Kelly, Jr.**  
 General Manager



**City and County of San Francisco  
San Francisco Public Utilities Commission  
525 Golden Gate Avenue  
San Francisco, California 94102**

**Second Amendment to the Agreement Between the City and County of San  
Francisco and Calpine Energy Solutions, LLC  
CS-247[R] Customer and Administrative Services  
for Community Choice Aggregation Program**

THIS AMENDMENT (this “Amendment”) is made as of August 1, 2019, in San Francisco, California, by and between Calpine Energy Solutions, LLC (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through the San Francisco Public Utilities Commission.

**Recitals**

WHEREAS, City and Contractor have entered into the Agreement (as defined below);

WHEREAS, City seeks to receive services from Contractor through ClickDimensions, LLC (as defined below) as an add-on to the customer relationship management platform that Contractor provides to City at no additional cost;

WHEREAS, AlphaBOLD (as defined below) is Contractor’s information technology partner;

WHEREAS, AlphaBOLD is a vendor of ClickDimensions’ services;

WHEREAS, Contractor licenses ClickDimensions’ services through AlphaBOLD;

WHEREAS, ClickDimensions’ services include email marketing, campaign automation, web intelligence, surveys, web forms and landing pages, and social marketing;

WHEREAS, City will be able to access ClickDimensions’ services through Contractor’s agreement with AlphaBOLD, at no additional cost to City, by amending the Agreement and executing certain Marketing Automation Terms of Service;

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein; and

NOW, THEREFORE, Contractor and the City agree as follows:

**Article 1      Definitions**

The following definitions shall apply to this Amendment:

**1.1 Agreement.** The term “Agreement” shall mean the Agreement dated October 28, 2015 between Contractor and City, as amended through the Certification of Name Change, dated January 24, 2017, and through the First Amendment to the Agreement dated August 23, 2018.

**1.2 AlphaBOLD.** “AlphaBOLD” shall mean AlphaBOLD Inc.

**1.3 ClickDimensions.** “ClickDimensions” shall mean ClickDimensions, LLC.

**1.4 Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

## **Article 2 Modifications to the Agreement**

The Agreement is hereby modified as follows:

**2.1 Section 65.** Section 65 is added to the Agreement to read as follows:

### **65. ClickDimensions’ Services.**

a. Contractor grants to City use of ClickDimensions’ services during the term of this Agreement, at no additional cost to City, in connection with the customer relationship management services Contractor is providing to City as set forth in Appendix A.

b. The Marketing Automation Terms of Service applicable to City’s use of ClickDimensions’ services are attached hereto as Appendix C and incorporated into this Agreement by this reference.

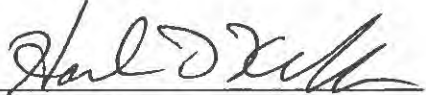



## **Article 3 Effective Date**

The modification set forth in Article 2 shall be effective on and after August 1, 2019.

## **Article 4 Legal Effect**

Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

<p><b>CITY</b> Recommended by:</p> <p> Harlan L. Kelly, Jr. General Manager San Francisco Public Utilities Commission</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By:  William K. Sanders Deputy City Attorney</p> <p>Approved:</p> <p> Alaric Degrafinried Director of the Office of Contract Administration and Purchaser</p>	<p><b>CONTRACTOR</b> Calpine Energy Solutions, LLC</p> <p> James M. Wood President City vendor number: 0000027863</p>
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Appendix C: Marketing Automation Terms of Service

## APPENDIX C

### Marketing Automation Terms of Service

THESE TERMS OF SERVICE (THESE “TERMS”) GOVERN THE MARKETING AUTOMATION SERVICE PROVIDED BY CONTRACTOR TO CITY THROUGH CLICKDIMENSIONS. Capitalized terms used in these Terms have the meanings assigned in Section 13 hereof unless otherwise defined in these Terms or in the Agreement.

**1. Access to the Services.** Subject to City’s compliance with these Terms and ClickDimensions’ Acceptable Use Policy attached hereto as Appendix 1 and incorporated herein by this reference, Contractor grants City a nonexclusive, nontransferable limited sublicense to use the Services for its internal business purposes during the applicable term of service and subject to any other restrictions or limitations identified in these Terms or the applicable Order Form.

1.1. The software used to provide the Services (the “Software”) is located on Microsoft Windows Azure servers which are located in Microsoft data centers. The Services are provided via the Microsoft Windows Azure cloud platform. Windows Azure runs in data centers managed and operated by Microsoft Global Foundation Services (GFS). These data centers comply with key industry standards, such as ISO/IEC 27001:2005, for security and reliability. The data centers are managed, monitored, and administered by Microsoft operations staff that have years of experience in delivering the world’s largest online services with 24 x 7 continuity. For detailed information about Windows Azure security please visit Microsoft’s Azure security page at <http://www.windowsazure.com/en-us/support/trust-center/security/>

1.2. These Terms are not intended to, nor do they, provide any license rights to the Software except as provided herein. The original and all copies of the Software and Services remain the sole property of ClickDimensions or its licensors, subject to all of the confidentiality and other restrictions set forth in these Terms. City must retain all legends relating to copyright, trademarks, patents, or confidentiality on all copies of the Documentation or any print of a screen display from the Services. ClickDimensions reserves all right, title and interest in and to the Software and Services under all applicable federal, state and local laws of the United States and any other jurisdiction. Neither Contractor nor ClickDimensions is obligated to provide, and City acquires no right of any kind with respect to, any source code for the Software.

1.3. The Services may interoperate with various third party platforms such as Twitter, Facebook, LinkedIn, Instagram, and other social networking sites as determined by ClickDimensions from time to time (“**Third-Party Platforms**”). Continued interoperation of the Services with any Third-Party Platform is dependent upon the availability of each such platform, and ClickDimensions may cease to provide such functionality if access to any Third-Party Platform is not available to ClickDimensions on commercially reasonable terms.

**2. Term.** These Terms are effective for the term of the Agreement, unless the Services are earlier terminated by either party as provided herein.

**3. Conditions of Use.** City’s right to use the Services is subject to the following restrictions and limitations.

3.1. The Services must not be used for the sending of unsolicited commercial email (as such term is defined in the CAN-SPAM Act of 2003 and any rules adopted under such act (the “Act”) or any other Applicable Law);

3.2. The Services will only be used for lawful purposes and in accordance with Applicable Law;

3.3. The Services will not be used for hosting content, including images and documents, that knowingly infringe on the intellectual property rights of third parties, or that include any obscene or libelous material or other material that violates any Applicable Law;

3.4. City will not access or otherwise use third party mailing lists or otherwise prepare or distribute mass unsolicited commercial email as such term is defined in the Act or other Applicable Law in connection with City's use of the Services;

3.5. City will import, access or otherwise use only lists for which all listed parties have consented to receive correspondence from City in connection with City's use of the Services; City hereby covenants that City will not use any other lists in connection with City's use of the Services;

3.6. City acknowledges that not all email messages sent through use of the Services will be received by their intended recipients;

3.7. Every email message sent by City in connection with the Services must contain the "unsubscribe" link that allows the recipient to remove themselves from City's mailing list;

3.8. City will comply with the restrictions on content of email messages and activities using the Services as set forth or referenced in these Terms;

3.9. City is the sole or designated "sender" (as such term is defined in the Act) of any email message sent by City using the Services;

3.10. The "from" line of any email message sent by City using the Services will accurately and in a non-deceptive manner identify the City and its products or services;

3.11. The "subject" line of any email message sent by City using the Services will not contain any deceptive or misleading content regarding the overall subject matter of the email message;

3.12. City will include in any email message sent by City using the Services a valid physical address for City, which may be a valid post office box meeting the registration requirements established by the United States Postal Service;

3.13. In any email message sent by City using the Services, City will not include any incentives (e.g., coupons, discounts, awards) that encourage a recipient to forward the email message to another recipient; and

3.14. In City's use of the Services, City agrees to represent City accurately and will not impersonate any other person, whether actual or fictitious.

3.15. City's use of Third-Party Platforms is at City's own risk and is governed by the terms and conditions of such Third-Party Platforms (and City shall comply with all such terms and conditions). Neither Contractor nor ClickDimensions nor any of their respective agents makes any representations or has any liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such Third-Party Platform or any transactions completed and any contract entered into by City with any such third party.

3.16. City will not:

3.16.1. Resell, sublicense, time-share, or otherwise share the Services with any third party unless otherwise approved by Contractor or ClickDimensions;

3.16.2. Make the Services available to anyone who is not an “Authorized User.” An Authorized User is an employee of City, or a person to whom City has outsourced service, who is authorized to access the Software;

3.16.3. Modify or create derivative works of or decompile, disassemble or reverse-engineer the Software or otherwise attempt to derive the source code of the Software;

3.16.4. Copy any feature, design or graphic in the Software or the Services; or

3.16.5. Access or use the Services for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

#### **4. City Data.**

4.1. City must provide all data for use in the Services (the “**City Data**”), and neither Contractor nor ClickDimensions is obligated to modify or add to the City Data. As between City, Contractor, and ClickDimensions, City is solely responsible for the content, legality, quality and accuracy of the City Data, and for determining the suitability of the Services for City’s business. City represents and warrants complying with Applicable Laws regarding City Data. City will not upload any of the following types of information for use in the Services: (a) personal health information, (b) driver’s license numbers, (c) passport numbers, (d) social security, tax ID or similar numbers, or (e) bank, checking, credit card, debit card, or other financial account numbers.

4.2. City owns all right, title and interest in and to the City Data. City is solely responsible and liable for the City Data and will control access to and the management of the City Data through City’s account and Authorized Users.

4.3. Contractor, ClickDimensions, and their respective agents must keep the City Data confidential in accordance with Section 11 of these Terms.

4.4. Contractor, ClickDimensions, and their respective agents may use the City Data only as necessary to carry out their obligations under these Terms, and for no other purpose; provided, however, that Contractor, ClickDimensions, and their respective agents may access and use City Data (i) as necessary to identify or resolve technical problems or respond to complaints about the Services; (ii) to improve the Services, and (iii) to identify trends and publish reports on its findings, provided the reports include data aggregated from more than one customer site and do not identify City.

4.5. ClickDimensions will use industry-standard technical and organizational measures in compliance with Applicable Laws to keep City Data secure and to protect against accidental loss or unlawful destruction, alteration, disclosure or access.

4.6. In the event of a security breach that may affect City, if and to the extent required by Applicable Laws: (i) Contractor, ClickDimensions, or their respective agents will notify City of the breach and provide a description of the event, and (ii) if Contractor, ClickDimensions, or their respective agents reasonably determine, and notify City, that it is necessary for all or part of such information to be forwarded on to individuals on one or more of City’s email lists, City will promptly forward such information to the individuals on such list or lists, all in accordance with Applicable Laws.

4.7. By agreeing to these Terms, each of City and Contractor agrees to comply with, and be bound by, the terms of the ClickDimensions Data Processing Addendum attached hereto as Appendix 2 and incorporated by this reference, to the extent applicable to the Services delivered pursuant to these Terms.

## **5. Consulting Services.**

5.1. ClickDimensions will provide its consulting and professional services to City in connection with the Services only to the extent City enters into a separate agreement with ClickDimensions and City.

## **6. Warranties.**

6.1. Contractor warrants that (i) the Services will function substantially in accordance with the Documentation; (ii) Contractor has the right to provide the Services to City under these Terms; and (iii) the Services will be provided in compliance with Applicable Law. If the warranty set forth in subsection 6.1(i) is breached during the Term, Contractor will cause ClickDimensions to modify the Services to conform to the Documentation.

6.2. Neither Contractor nor ClickDimensions has any obligation under Section 6.1(i) if (i) the Software has been modified by City or any third party, unless the modification has been pre-approved in writing by Contractor or ClickDimensions; or (ii) the non-conformance is caused by any third-party software or hardware, by accidental damage or by other matters beyond the reasonable control of Contractor, ClickDimensions, or their respective agents.

6.3. EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS, THE SERVICES ARE PROVIDED WITH NO OTHER WARRANTIES OF ANY KIND, AND CONTRACTOR AND CLICKDIMENSIONS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR AND CLICKDIMENSIONS DO NOT WARRANT THAT THE USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. NEITHER CONTRACTOR NOR CLICKDIMENSIONS IS RESPONSIBLE OR LIABLE IN ANY MANNER FOR ANY THIRD-PARTY PLATFORMS ASSOCIATED WITH OR UTILIZED IN CONNECTION WITH THE SERVICES, INCLUDING THE FAILURE OF ANY SUCH THIRD-PARTY PLATFORMS.

## **7. [Reserved]**

## **8. Indemnification**

**8.1. By Contractor.** Contractor will indemnify, defend and hold harmless City and its employees (collectively, the “**City Indemnitees**”) from any fines, penalties or damages finally awarded against any or all of the City Indemnitees (including reasonable costs and legal fees incurred by any of the City Indemnitees) arising out of any third party suit, claim or other legal action (a “**Claim**”) alleging that (i) the Services have not been provided in accordance with Applicable Law; or (ii) the use of the Services by City in accordance with these Terms infringes any copyright, trade secret or patent. Notwithstanding the foregoing, City acknowledges and agrees that, as a sub-licensor of the Services (which are ultimately licensed and provided by ClickDimensions), Contractor will provide indemnification for Claims under Section 8.1(i) or (ii) only to the extent that Contractor is indemnified by ClickDimensions for such Claims.

8.1.1. If there is a Claim under Section 8.1(ii), or Contractor or ClickDimensions believes that such a Claim is likely, Contractor will, at its option, either (i) obtain, or cause ClickDimensions to obtain, a license from such third party for the benefit of City; or (ii) cause ClickDimensions to modify the Services so that they no longer infringe; or (iii) if neither of the foregoing options is commercially feasible, terminate the relevant Order Form under these Terms, in which case ClickDimensions shall refund all prepaid subscription fees, if any, under the relevant Order Form for unused Services.

8.1.2. Contractor shall have no indemnification obligations under Section 8.1(ii) or otherwise for any Claim arising out of: (i) City’s combination of the Services with software or service not supplied or approved by



Contractor or ClickDimensions, to the extent the alleged infringement is caused by such combination; (ii) any repair, adjustment, modification or alteration to the Services by City or any third party, unless approved by Contractor or ClickDimensions; or (iii) any refusal by City to install and use a non-infringing version of the Services offered by Contractor or ClickDimensions.

This Section states the entire liability of Contractor with respect to any Claim of intellectual property infringement arising out of use of the Services.

**8.2. By City.** City will indemnify, defend and hold harmless Contractor, ClickDimensions, and their respective agents, affiliates, directors and employees (collectively, the “**Contractor Indemnitees**”) from any fines, penalties or damages finally awarded against any or all of the Contractor Indemnitees (including reasonable costs and legal fees incurred by any of the Contractor Indemnitees) arising out of any Claim for (i) infringement of any copyright, trade secret or patent, or (ii) failure to comply with Applicable Law, to the extent that any such Claim arises out of or resulted from City’s use of the Services (and not the Services themselves).

**8.4. Indemnification Process.** If a Claim that may give rise to indemnification is commenced, the party being indemnified under these Terms (the “**Indemnified Party**”) will provide written notice of the Claim to the party providing indemnification under these Terms (the “**Indemnifying Party**”) within five (5) days of receipt of the Claim (a “**Claim Notice**”). The Indemnifying Party, at its sole expense, will promptly take control of the defense. The Indemnified Party shall have the right to participate in any proceedings in such manner as it may deem appropriate at its own cost and expense. The Indemnified Party will cooperate with the Indemnifying Party in the defense of the Claim. In no event will the Indemnifying Party enter into a settlement arrangement which requires any payment or other consideration from the Indemnified Party, or contains a stipulation to or an admission or acknowledgement of any wrongdoing (whether in tort or otherwise) on the part of the Indemnified Party, without the Indemnified Party’s prior written consent, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party will be relieved of its indemnification obligation under this Section 8 if the Indemnified Party materially fails to comply with this Section and such material failure prejudices the Indemnifying Party’s defense of the Claim.

## **9. Termination and Suspension.**

9.1. Either party to the Agreement may terminate the Services if the other party materially breaches these Terms and the breach is not cured within 30 days after written notice is provided to the breaching party.

9.2. Contractor reserves the right to suspend access to the Services, at its sole discretion, if Contractor or ClickDimensions determines in its reasonable discretion that City is misusing (e.g., SPAM) the Services in a way that adversely affects the reputation and deliverability of the overall solution provided by Contractor through ClickDimensions. Contractor will use commercially reasonable efforts to notify City prior to any such suspension unless Contractor reasonably determines: (a) it is prohibited from doing so under Applicable Law or under legal process (such as court or government administrative agency processes, orders, mandates, and the like); or (b) it is necessary to delay notice in order to prevent imminent harm to the Services or a third party. Under circumstances where notice is delayed, Contractor will provide notice if and when the related restrictions in the previous sentence no longer apply.

9.3. Upon any expiration or termination of these Terms, the rights and licenses granted hereunder will automatically terminate, and City will cease all further use of the Services. Contractor will have no liability for any costs, losses, damages, or liabilities arising out of or related to termination of these Terms. Upon expiration or termination of these Terms, Contractor, ClickDimensions, and their respective agents will destroy any City Data in their possession or under their control within 90 days (or earlier upon request) of the effective date of termination or expiration, and neither Contractor nor ClickDimensions will have any further obligation to maintain or provide access to any City Data. If and to the extent permitted by Applicable Laws,

Contractor, ClickDimensions, and their respective agents may retain a copy of the City Data for the sole purpose of serving as evidence in the context of the establishment, exercise or defense of legal claim(s) or of complying with legal obligations under Applicable Law, which will be deleted or anonymized upon expiration of the applicable legal retention period. The provisions of Sections 4 (City Data), 8 (Indemnification), this Section 9.3 (Effect of Termination), 10 (Limitation of Liability), and 11 (Confidentiality) will survive termination of these Terms.

## **10. Limitation of Liability.**

10.1. SUBJECT TO SECTION 10.3 BELOW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER UNDER THESE TERMS FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOST OR CORRUPTED DATA, LOST PROFITS, LOST BUSINESS OR LOST OPPORTUNITY), OR ANY OTHER SIMILAR DAMAGES UNDER ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY), EVEN IF THE OTHER PARTY HAS BEEN INFORMED OF THIS POSSIBILITY. CITY ASSUMES ALL RESPONSIBILITY FOR THE SELECTION OF THE SERVICES, SOFTWARE AND DOCUMENTATION NECESSARY TO ACHIEVE CITY'S INTENDED RESULTS, AND FOR THE USE AND RESULTS OF THE SERVICES.

10.2. SUBJECT TO SECTION 10.3 BELOW, EACH PARTY'S TOTAL LIABILITY FOR ANY DIRECT LOSS, COST, CLAIM OR DAMAGES OF ANY KIND RELATED TO THE SERVICES SHALL NOT EXCEED THE AMOUNT OF THE FEES ULTIMATELY PAID OR PAYABLE TO CLICKDIMENSIONS FOR THE SERVICES DURING THE 12 MONTHS BEFORE THE EVENT GIVING RISE TO SUCH LOSS, COST, CLAIM OR DAMAGES. THIS LIMITATION ON LIABILITY IS A CONTROLLING FACTOR IN THE SETTING OF THE FEES ULTIMATELY PAYABLE TO CLICKDIMENSIONS.

10.3. THE LIMITATIONS ON LIABILITY SET FORTH IN SECTIONS 10.1 AND 10.2 DO NOT APPLY TO LIABILITY ARISING FROM: (I) FRAUD OR WILLFUL MISCONDUCT; OR (II) A PARTY'S DUTY TO INDEMNIFY THE OTHER FOR THIRD-PARTY CLAIMS UNDER SECTION 8 OF THESE TERMS; OR (III) A BREACH OF A PARTY'S CONFIDENTIALITY, AND COMPLIANCE WITH LAW OBLIGATIONS UNDER THIS AGREEMENT; PROVIDED, HOWEVER, EACH PARTY'S LIABILITY FOR CLAIMS ARISING OUT OF A BREACH DESCRIBED IN THIS SECTION 10.3 SHALL NOT EXCEED THE GREATER OF TEN TIMES THE FEES ULTIMATELY PAID TO CLICKDIMENSIONS DURING THE 12-MONTH PERIOD PRIOR TO THE DATE THE CLAIM AROSE OR ONE MILLION DOLLARS.

## **11. Confidentiality.**

11.1. Each recipient (the "Recipient") of Confidential Information from the other party (the "Disclosing Party") agrees that it will not disclose, provide, or otherwise make publicly available such Confidential Information during the term of the Agreement, and for a period of 5 years thereafter, and in the case of Confidential Information that the Disclosing Party identifies as a trade secret under applicable law, for as long as such Confidential Information remains a trade secret. Each Recipient agrees that it will obtain a written confidentiality agreement from each third party (consultant or any other person) not governed by these Terms who is duly provided access to the Confidential Information of the Disclosing Party. In addition, each Recipient agrees that it will not: (i) use the Disclosing Party's Confidential Information for any purpose beyond the scope of these Terms; (ii) copy any part of the Confidential Information or disclose any part of the Confidential Information to any third party other than Recipient's employees or consultants who need the information to perform their duties; (iii) authorize or permit any such employee or consultant to use or disclose any part of the Confidential Information in violation of these Terms; or (iv) produce any product or offer any service of any nature whatsoever based in whole or in part on the Confidential Information or cause or assist any third party in doing so.

11.2. The Recipient's obligations under these Terms will not apply to any portion of the Confidential Information that: (1) at the time of disclosure to Recipient, was in the public domain or subsequently becomes a part of the public domain through no breach of these Terms by the Recipient; (2) Recipient had in its possession at the time of disclosure by the Disclosing Party, as established by written documentation in existence at that time, and that was not acquired directly or indirectly from the Disclosing Party or with knowledge of confidentiality restrictions; (3) Recipient subsequently acquires by lawful means from a third-party who is under no obligation of confidentiality or non-use owed to Disclosing Party; (4) Recipient subsequently independently develops without any use of or reference to the Confidential Information; or (5) City is required to disclose pursuant to the California Public Records Act or the San Francisco Sunshine Ordinance.

11.3. If Recipient is legally compelled to disclose any portion of the Confidential Information in connection with a lawsuit or similar proceeding or to any governmental agency, or in connection with a request under the California Public Records Act or the San Francisco Sunshine Ordinance, Recipient will give Disclosing Party prompt notice of that fact, including in its notice the legal basis for the required disclosure and the nature of the Confidential Information that must be disclosed. Recipient will cooperate fully with Disclosing Party in obtaining a protective order or other appropriate protection relating to the disclosure and subsequent use of the Confidential Information. Recipient will disclose only that portion of the Confidential Information that is legally required to be disclosed.

## **12. Miscellaneous.**

12.1. These Terms represent the entire agreement of the parties with respect to the subject matter hereof and supersede any prior or current understandings, whether written or oral. If there is a conflict between these Terms and any other part of the Agreement, these Terms will prevail. No document, purchase order, or any handwritten or typewritten text which purports to alter or amend these Terms will alter or amend any provision of these Terms, unless the parties both specify in writing that such terms or conditions control.

12.2. Any waiver, modification or amendment of any provision of these Terms will be effective only if in writing and signed by duly authorized representatives of both parties.

12.3. The parties consent to the exercise of exclusive jurisdiction by the state or federal courts in the State of California for any claim relating to these Terms.

12.4. City will not assign or otherwise transfer any of its rights or obligations under these Terms without the prior written consent of Contractor and ClickDimensions. Any assignment in breach of this Section is void.

12.5. City and Contractor will: (a) comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption; (b) implement and maintain policies and procedures, including adequate procedures under applicable laws, statutes and regulations relating to anti-bribery and anti-corruption, to ensure compliance with such laws and enforce them where appropriate; and (c) promptly report to the other any request or demand for any undue financial or other advantage of any kind received in connection with the performance of these Terms.

12.6. City may not export or re-export, directly or indirectly, any Services, Documentation or confidential information to any countries outside the United States except as permitted under the U.S. Commerce Department's Export Administration Regulations.

## **13. Glossary.**

13.1. "Agreement" means the Agreement between the City and County of San Francisco and Calpine Energy Solutions, LLC, CS-247[R] Customer and Administrative Services for Community Choice Aggregation Program dated October 28, 2015, as amended.

13.2. "Applicable Law" means all applicable laws, orders, regulations and other acts of all governmental authorities, foreign or domestic, having jurisdiction over these Terms or the activities of such party hereunder.

13.3. "Confidential Information" means (i) City Data or (ii) all information or material which (1) gives the Disclosing Party a competitive business advantage or the opportunity of obtaining such advantage or the disclosure of which could be detrimental to the interests of the Disclosing Party; and (2) is marked "Confidential," "Restricted," or "Proprietary Information" or other similar marking.

13.4. "City Data" means any electronic information stored in the Software database, including Personal Data.

13.5. "Documentation" means user documentation provided electronically by ClickDimensions for use with the Services, as periodically updated and located at <https://support.clickdimensions.com/hc/en-us/categories/115000187534-ClickDimensions-Knowledge-Base>.

13.6. "Personal Data" means any information relating to (i) an identified or identifiable natural person and, (ii) an identified or identifiable legal entity (where such information is protected similarly as personal data or personally identifiable information under applicable data protection laws and regulations).

13.7. "Services" or "Service" means the hosted City experience solutions provided by Contractor through ClickDimensions under these Terms and any modifications periodically made thereto by ClickDimensions.