



## Marketing Agreement

This Marketing Agreement (“**Agreement**”) is effective as of the date of last signature below (“**Effective Date**”) between OhmConnect, Inc., with its principal place of business at [371 3rd Street, 2nd Floor, Oakland, California 94607] (“**OhmConnect**”), and the City of Redondo Beach with its principal place of business at 415 Diamond Street, Redondo Beach, California (“**Partner**” or “**City**”), OhmConnect and Partner wish to enter into a strategic marketing collaboration as described in the attached Schedule A. The parties agree as follows:

### SECTION 1 Definitions

“**Affiliate**” means any legal entity that owns, is owned by, or is commonly owned with a party. “**Own**” means having more than 50% ownership or the right to direct the management of the entity.

“**Confidential Information**” means any information that may be disclosed or made available by one party (“**Disclosing Party**”) to the other party (the “**Receiving Party**”) regarding business affairs, products and services, third-party confidential information and other sensitive or proprietary information designated or otherwise identified as “confidential.”

“**Intellectual Property Rights**” means any patent, copyright, trade secret, trademark or other proprietary right.

“**Personal Information**” means any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

### SECTION 2 Collaboration

**2.1 Marketing Activities.** OhmConnect and Partner will perform the marketing activities set forth in **Schedule A (“Marketing Activities”)**. Each party will share information and cooperate with the other to meet the marketing obligations in this Agreement. The parties will each appoint a contact person to be its primary contact for the cooperation contemplated by this Agreement. Neither party will (nor will it authorize or assist any third party to) engage in misleading or deceptive advertising or trade practices, represent to customers or others that either party in any way guarantees the other’s performance, or make any representations, warranties, or covenants on the other’s behalf.

### SECTION 3 License Grants

**3.1 Materials License.** Each party hereby grants to the other a nonexclusive, non-sublicensable, non-transferrable, royalty-free, fully paid-up license under all its Intellectual Property Rights to use and reproduce any materials shared by the other as part of the Marketing Activities.

**3.2 Trademark License.** Each party grants to the other a nonexclusive, non-sublicensable, non-transferable license to use the other party’s trademarks in connection with the Marketing Activities. Each party’s use of the other party’s trademarks shall conform with trademark usage guidelines provided by the party that is owner of the trademark. Notwithstanding the above, OhmConnect shall obtain approval from the City Council prior to utilizing the City seal for any purpose, as required by law.

**3.3 Ownership.** Each party will retain all rights in and to its own intellectual property. Except as otherwise set forth herein, this Agreement does not grant either party (by implication, estoppel or otherwise) any right, title, interest, or license, in the other party's Intellectual Property Rights. Each party reserves all rights not expressly granted in this Agreement. The parties do not intend to jointly develop or create any Intellectual Property Rights in connection with this Agreement.

**3.4 Privacy Policy.** Each party will comply with all applicable privacy laws. OhmConnect shall maintain a privacy policy on how Personal Information is collected, used, stored, secured and disclosed as a result of the Marketing Activities, including the controls that individuals have over the use and sharing of their Personal Information and how they may access their Personal Information. The City shall adhere to its existing privacy policies and shall comply with the California Public Records Act, Government Code Section 6250 et seq. ("CPRA").

## **SECTION 4 Term**

**4.1 Term.** The term of this Agreement begins on the Effective Date and shall continue for a period of [one (1) year] ("**Term**"). [The Agreement will automatically renew for additional one (1) year terms on each applicable anniversary of the Effective Date unless either party provides written notice of its intent not to renew at least thirty (30) days prior to the next renewal date.]

**4.2 Termination.** Either party may terminate this Agreement for the other party's:

- (1) Material breach of this Agreement that is not cured within 30 days after the nonbreaching party provides written notice of the breach;
- (2) Insolvency, or the commencement by or against a party of a case or proceeding under any bankruptcy, reorganization, insolvency or moratorium law, or any other applicable law for the relief of debtors; or
- (3) Liquidation or dissolution, or the sale, lease or other disposition of all or a substantial part of a party's business or assets.

**4.3 Effect of Termination.** Following termination, each party will promptly either return all originals, copies and reproductions of the other party's materials and Confidential Information or certify the destruction of the same upon a party's request.

**4.4 Survival.** All provisions of this Agreement that may reasonably be interpreted or construed as surviving the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

## **SECTION 5 Confidentiality**

**5.1 Feedback.** Either party may provide suggestions, comments or other feedback to the other party with respect to products and services. Feedback is voluntary and, even if designated as confidential, the party receiving feedback may use it for any purpose without obligation of any kind. The party receiving feedback will not disclose the source of feedback without the consent of the party providing it. Unless the parties specifically agree in writing, feedback will not create any confidentiality obligation.

**5.2 Public Records Act.** Notwithstanding any provision of this Agreement, the City will comply with the CPRA.

## **SECTION 6 Representations and Warranties; Disclaimers**

**6.1 Mutual.** Each party represents and warrants to the other that: (i) at all times during the Term it has and will have all requisite corporate power and authority to execute this Agreement, to perform its obligations, and to consummate the transactions contemplated hereby; (ii) neither is presently under, nor will either enter into, any agreement, commitment, understanding or other obligation, whether written or oral, that is inconsistent or in conflict with this Agreement; (iii) it will each comply with all applicable laws; (iv) it has all rights necessary to grant the other party the rights and licenses in this Agreement.

**6.2** EXCEPT FOR THE WARRANTIES IN SECTION 6.1, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH REGARD TO ANY OF ITS SERVICES, PRODUCTS OR OTHER INFORMATION FURNISHED UNDER THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTY ARISING OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE).

## **SECTION 7 Limitation of Liability**

EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR: (A) ANY LOSS OF PROFIT, LOSS OF DATA, OR ANY OTHER INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES OF ANY KIND WHATSOEVER, WHETHER OR NOT IT WAS AWARE OF THE POSSIBILITY OF SUCH DAMAGES, SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN OR IF THE EXCLUSIVE REMEDIES STATED HEREIN FAIL OF THEIR ESSENTIAL PURPOSE.

## **SECTION 8 Indemnification**

**8.1 Claims.** Each party (the "**Indemnifying Party**") will, at its sole expense and the request of the other party, defend any third-party claim (a "**Claim**") brought against such other party or such other party's Affiliates, directors, officers, employees, agents, licensees or independent contractors (each, an "**Indemnified Party**") to the extent that the Claim, if true, would constitute a breach of a warranty, representation or covenant made by the Indemnifying Party under this Agreement (collectively, the "**Indemnified Claims**").

**8.2 Claims Procedure.** The Indemnified Party must promptly notify the Indemnifying Party in writing of any Indemnified Claim and provide information regarding the nature of the action and relief sought; reasonably cooperate with the Indemnifying Party at the Indemnifying Party's expense for the defense of the Indemnified Claim. The Indemnifying Party will take control and conduct the defense of such Indemnified Claims, all related proceedings or negotiations, and the settlement of any such Indemnified Claim. The Indemnifying Party will employ counsel reasonably satisfactory to the Indemnified Party. The Indemnified Party may employ separate counsel at its own cost. The Indemnifying Party must not settle any Indemnified Claim on the Indemnified Party's behalf without first obtaining written consent, which will not be unreasonably withheld. The Indemnifying Party will pay all third-party liabilities, losses, damages, costs, and expenses actually awarded by a court or agreed to in settlement resulting from the Indemnified Claim. No settlement of an Indemnified Claim that involves a remedy other than payment of money by the Indemnifying Party shall be agreed to and entered without the consent of the Indemnified Party, which consent shall not be unreasonably withheld or delayed.

**8.3 Entire Liability.** This Section 8 sets forth the entire liability of each party with respect to Indemnified Claims governed by this Section 8.

## SECTION 9 Notices

Notices may be provided either by electronic or physical mail or delivery. The person(s) identified on the first page of this Agreement will receive notices on behalf of their respective party. Each party may change the persons to whom notices will be sent by giving notice to the other. Notices will be effective for all purposes on actual receipt when physically delivered or on acknowledgment of receipt if sent by electronic mail. Notices will be sent to:

If to OhmConnect:

OhmConnect, Inc.

Attn: General Counsel

371 3rd Street, 2nd Floor

Oakland, CA 94607

If to Partner:

Michael Webb  
City Attorney  
City of Redondo Beach  
415 Diamond Street  
Redondo Beach, CA 90277  
michael.webb@redondo.org

Jon Welner  
Mintz  
44 Montgomery Street, 36th Floor  
San Francisco, CA 94104  
jwelner@mintz.com

## SECTION 10 Publicity

Neither party will issue any press releases or make any other public announcements that relate to the parties' relationship, the Marketing Activities, or this Agreement, without prior written approval from the other party, which may be provided by e-mail. Notwithstanding the above, the City cannot restrict or constrain the statements of elected officials speaking on behalf of themselves or their constituents.

## SECTION 11 General Terms

**11.1 Jurisdiction and Governing Applicable law.** The applicable laws of the State of California govern this Agreement. If federal jurisdiction exists, the parties consent to exclusive jurisdiction and venue in the federal courts in San Francisco County, California. If not, the parties consent to exclusive jurisdiction and venue in the Superior Court of California in the County of San Francisco.

**11.2 Assignment.** Neither party may assign this Agreement, in whole or in part, without other party's prior written consent. Any attempted assignment in violation of this section will be void. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective permitted successors and assigns.

**11.3 Force Majeure Event.** Neither party is liable for failure to perform any obligation under this Agreement to the extent such failure is caused by a force majeure event including natural disasters,

war, civil disturbance, government action, strikes, and other causes beyond the party's reasonable control. The party affected by the force majeure event will provide prompt notice to the other party and will use its best efforts to resume performance. Obligations not performed due to a force majeure event will be performed as soon as reasonably possible when the force majeure event ends. If the force majeure event continues for a period of more than 30 days, the other party may terminate this Agreement on written notice.

**11.4 Independent Contractors.** The parties are independent contractors. This Agreement does not create an employer-employee relationship, partnership, joint venture or agency relationship and does not create a franchise. Neither party nor any of its representatives may make any representation, warranty or promise on the other party's behalf.

**11.5 Miscellaneous.** This Agreement is nonexclusive. It will not be interpreted to limit either party's right to enter into agreements with other third parties for the same or similar activities, subject to each party's compliance with its confidentiality obligations herein. Except as expressly set forth in this Agreement, each party will pay for its own costs and expenses associated with this Agreement unless otherwise agreed in writing. If any court of competent jurisdiction determines that any provision of this Agreement is illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect. A party's delay or failure to exercise any right or remedy will not result in a waiver of that or any other right or remedy. No waiver will be binding unless in writing and signed by the waiving party.

**11.6 Entire Agreement.** This Agreement (including any Schedules) is the entire agreement between the parties regarding its subject matter. It replaces all prior agreements, communications and representations between the parties regarding its subject matter. This Agreement can be changed only by an amendment signed by both parties; provided that the Schedules may be modified and updated upon mutual agreement of the parties via email. If this Agreement and any Schedule conflict, the Agreement will control.

**11.7 Execution; Counterparts.** This Agreement is not binding until duly executed by both parties. The parties may execute this Agreement in counterparts. Each counterpart will be deemed an original and all counterparts will constitute one agreement binding both parties. Facsimile signatures will also be considered binding.

The parties have agreed to this Marketing Agreement as of the Effective Date.

**OHMCONNECT, INC.**

**CITY OF REDONDO BEACH**

Name \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Name William C. Brand

Title \_\_\_\_\_

Title Mayor

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

415 Diamond Street  
Redondo Beach, CA 90277

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

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

ATTEST:

APPROVED AS TO FORM:

**Schedule A**  
**Description of Marketing Activities**

**Partner:** City of Redondo Beach

**Purpose:** Support efforts to drive OhmConnect demand response program enrollments to lower dependency on peaker power plant generation.

**Obligations**

**Redondo Beach Outreach to residents:**

Redondo Beach's primary obligation is to perform outreach activities, with a good-faith effort to target 1,000 sign-ups. This includes but is not limited to:

- Coordination with OhmConnect on outreach material development
- Coordination and rallying of outreach through city channels, elected officials and other municipal leaders, adjacent cities, community benefit organizations, and institutions with the following activities:
  - Email: Best practice campaigns have a minimum of two sequenced, 2-drip emailed
  - Social Media: Best practice has a minimum of 2-3 times on top 1-2 channels
  - Flyers: Distribute flyers through digital and physical channels
  - Postcards / mailers: Identify opportunities for mailer inclusion in existing outgoing mail
  - Press: Coordinate with OhmConnect on a press release and identify other media opportunities as appropriate
  - Additional Channels: As identified

**OhmConnect support:**

OhmConnect is committed making this a successful and valuable campaign through, but not limited to, the following activities:

- Marketing Support: Providing copy, graphics, schedules and all other marketing support
- Data Sharing: Share energy reduction and enrollment and relevant data resulting from the marketing effort
- Subsidized smart devices: Provide heavily subsidized smart devices for new customer onboarding.
- Customer Activation: Ship devices, manage customer support, and engage customers in demand response events
- Other marketing/programmatic activities as agreed upon