# **FORECAST METHODOLOGY ASSESSMENT agreement**

This Forecast Methodology Assessment Agreement (“***Agreement***”) is entered into as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“***Effective Date***”) by and between the Climate Action Reserve, a California nonprofit public benefit corporation (the “***Reserve***”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Forecast Methodology Proponent *(“****Proponent****”*) (each individually a “***Party***” and collectively, the **“*Parties***”).

WHEREAS, Proponent desires to have its forecast methodology submitted to the Reserve [via email to administrator@climateforward.org] (“**Forecast Methodology**”) approved by the Reserve for use in the Reserve’s certain Climate Forward Program (“**Program**”).

NOW, THEREFORE, in submitting this Agreement to the Reserve, the undersigned Proponent and the Reserve hereby agree as follows:

Reference is made to the Reserve’s Climate Forward Forecast Methodology Approval Manual and the Reserve’s Climate Forward Program Manual. In case of conflict between the terms of this Agreement and either of the Climate Forward Forecast Methodology Approval Manual or the Climate Forward Program Manual, the terms of this Agreement shall govern.

1. **Provision of Information and License Grant****; Ownership**
	1. Proponent agrees to use its best efforts to submit all documentation that is required or requested by the Reserve in order for the Reserve to properly assess the Forecast Methodology for compliance with the Climate Forward Forecast Methodology Approval Manual and Climate Forward Program Manual (“**Documentation**”).
	2. Proponent hereby grants to the Reserve a non-exclusive, worldwide, perpetual, fully transferable and sub-licensable, irrevocable, royalty-free, fully paid-up right and license to use, reproduce, publicly display, modify, distribute and make derivative works of, the Forecast Methodology and any portion thereof, and any Documentation submitted to the Reserve, in connection with the operation of the Reserve and its programs, including, without limitation, the Climate Forward Program.
	3. All right, title and interest to any derivative works, modifications, or improvements made to the Forecast Methodology by or for the Reserve shall remain solely with the Reserve. As between the Reserve and Proponent, the Reserve shall retain all right, title and interest to Reserve confidential information provided by the Reserve to Proponent in connection with this Agreement.
2. **Compliance with Reserve Rules**
	1. Proponent agrees to comply with all applicable rules of the Reserve, as may be updated from time to time (including but not limited to the Climate Forward Program Manual, Climate Forward Forecast Methodology Approval Manual, and Terms of Use of the Reserve’s website as may be updated by the Reserve from time to time (collectively, “Reserve Rules”).
	2. Proponent acknowledges that if the Forecast Methodology is approved under the Program, the Reserve may subsequently put on hold, withdraw or otherwise limit use of the Forecast Methodology by Proponent, as set out in the Reserve Rules.
3. **Payment of Forecast Methodology Assessment Fees**
	1. Fees.
		1. Standard Forecast Methodology Assessment Review Fee: Proponent agrees to pay to the Reserve, when due, a fee of US $7,500 for the Forecast Methodology review.
		2. External Expert Review Fee: In accordance with the Climate Forward Forecast Methodology Approval Manual, the Reserve may decide, in its own discretion, that the engagement of external expert methodology reviewers is necessary to complete the Forecast Methodology review. If expert external review is deemed necessary, then Proponent will be informed of this decision, and an additional fee shall be negotiated in good faith by the Reserve and Proponent. The final fee due for expert external review may vary from the agreed upon fee, subject to Reserve and Proponent approval.
	2. Payment. Proponent shall provide Proponent’s billing information prior to the approval of the Forecast Methodology or any other Program activity. Invoices will be sent to Proponent by email and will be posted on a webpage accessible by Proponent on the Program website. Proponent will be notified that payment is due upon an invoice being created. Proponent shall pay any fees charged thereunder by check or wire transfer of immediately available funds in United States dollars on the date and to the account identified by the Reserve from time-to-time on the invoice, or if no date is indicated, no later than thirty (30) days from the date of the invoice (the “Due Date”), without offset or reduction of any kind. All payments made to the Reserve will be non-refundable.
	3. Late Payment. If Proponent fails to pay when due any fees, costs or other amounts which Proponent is obligated to pay under this Agreement, such amounts will be deemed delinquent. Acceptance of late payment of any such amounts or of any interest accrued thereon shall not constitute a waiver by the Reserve of Proponent’s default with respect to such late payment, nor prevent the Reserve from exercising any other rights or remedies available to it under the Reserve Rules or any applicable law. Non-payment of delinquent fees by Proponent within thirty (30) days of the Due Date shall (Delinquency) constitute a material breach of this Agreement. Without limiting any other remedies available to the Reserve in the event of a material breach, in the case of Delinquency, the Reserve shall have the right to freeze Proponent’s access to its account until such time as Proponent pays all outstanding fees. Reserve shall bear no liability to Proponent or any third party in connection with Reserve’s exercise of its rights and remedies hereunder.
	4. Changes in Fees and Costs. The Reserve may, upon thirty (30) days’ notice to Proponent and in its sole reasonable discretion, increase or decrease any or all of the fees and costs payable hereunder at any time. In no event shall any portion of such fees and costs be prorated or refunded to Proponent upon termination of this Agreement or termination or suspension of Proponent’s access to the Program. Failure to respond to the Reserve within the effective date set forth in the notice shall be deemed to constitute acceptance of such changes to the fees and costs payable hereunder.
	5. Taxes and Other Charges. Proponent shall be solely responsible for all taxes and charges imposed by a governmental authority related to the use of the Forecast Methodology, and any other costs Proponent incurs in connection with the approval of the Forecast Methodology. As used herein “taxes” includes, but is not limited to, any or all ad valorem, property, occupation, severance, first use, conservation, gross receipts, privilege, sales, use, consumption, excise, lease, and transaction taxes, and any other taxes and governmental charges, fees, and assessments, or increases therein.
	6. **Expenses**. For the avoidance of doubt, Proponent will be solely responsible for all expenses incurred by Proponent in connection with this Forecast Methodology assessment. The Reserve shall not reimburse Proponent for any expenses incurred in performing its obligations under this Agreement.
4. **Term**. This Agreement shall be effective as of the Effective Date, and shall continue in full force and effect until its termination pursuant to Section 10 hereof (the “***Term***”).
5. **Proponent’s Representations and warranties**

Proponent represents and warrants that:

* 1. It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing;
	2. It has the power to execute this Agreement and submit any other documentation relating to this Agreement, to deliver and to perform its obligations under this Agreement, and has taken all necessary action to authorize such execution, delivery and performance;
	3. Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
	4. All governmental and other consents that are required to have been obtained by it with respect to this Agreement have been obtained and are in full force and effect and all conditions of any such consents have been complied with;
	5. All information that is furnished by Proponent pursuant to this Agreement, the Forecast Methodology and any other Documentation is true, accurate and complete in all material respects;
	6. Forecast Methodology and submitted Documentation do not infringe or otherwise violate the intellectual property rights of any other party;
	7. Proponent has the right to grant the license granted hereunder; and
	8. Proponent will respond to any and all requests for further information or clarification made by the Reserve in respect to the information contained within the Forecast Methodology or Documentation. Proponent will enter into good faith discussions and in a commercially reasonable manner with the Reserve and/or expert reviewers with a view to achieving consensus on any changes to be made to the Forecast Methodology in order for it to be approved by the Reserve for use in the Program.

1. **Forecast Methodology Review process**
	1. The Reserve agrees that it will undertake a review of this Forecast Methodology in accordance with the Climate Forward Methodology Approval Manual, and wider Reserve Rules (“**Review**”).
2. **Confidentiality****:** Proponent acknowledges and agrees that it shall not submit any information to the Reserve that it may want kept confidential, through the Forecast Methodology, submitted Documentation, or otherwise. In particular, the Reserve may use the information provided in the Forecast Methodology submission and associated Documentation to conduct public stakeholder consultation on the Forecast Methodology. As part of this process, information and documentation from the Forecast Methodology and submitted Documentation may be posted for public viewing on the Reserve website, and will not be kept confidential. The Reserve may also share submitted Forecast Methodology and Documentation with external experts, as part of the Forecast Methodology approval process.

From time to time, the Reserve may disclose to Proponent Confidential Information (as defined below) in connection with this Agreement. Proponent shall use the Confidential Information solely in connection with this Agreement and shall not disclose or permit access to Confidential Information other than to its employees, officers, directors and representatives who need to know such Confidential Information and are bound by confidentiality obligations no less protective of the Confidential Information than the terms contained herein. Confidential Information means all non-public, proprietary or confidential information of the Reserve, in oral, visual, written, electronic or other tangible or intangible form. [For the avoidance of doubt, the fact that the Parties are in discussions regarding the Program shall constitute Confidential Information]. If Proponent is required by a valid legal order to disclose any Confidential Information, Proponent shall, before such disclosure, notify the Reserve of such requirements so that the Reserve may seek a protective order or other remedy.

1. **Indemnification**. Proponent shall indemnify and hold harmless the Reserve and its affiliates, and the directors, officers, agents, representatives and employees of all such entities (each an “***Indemnified Party***” and collectively “***Indemnified Parties***”) from and against any and all liabilities, losses, damages, costs, expenses, causes of action, claims, suits, legal proceedings and similar matters, including without limitation reasonable attorneys’ fees and expenses arising from or relating to (1) any claim asserted by any parties in relation to the Reserve’s use of the Forecast Methodology; or (2) any breach of any representation, warranty or obligation of Proponent in this Agreement or any intentional misconduct or negligence by Proponent or any of Proponent’s employees, agents or subcontractors in connection with its performance under this Agreement. In the event of any third-party claim, demand, suit, or action (a “***Claim***”) for which an Indemnified Party is or may be entitled to indemnification hereunder, the Reserve may, at its option, require Proponent to defend such Claim at Proponent’s sole expense. Proponent may not agree to settle any such Claim without the Reserve’s express prior written consent.
2. **Limitation of Liability**. In no event will the Reserve be liable for any consequential, indirect, exemplary, special, on incidental damages arriving from or relating to this Agreement**.**
3. **Termination**.
	1. **Termination by the Reserve**. The Reserve may terminate this Agreement at any time, with or without cause, for its convenience, effective upon thirty (30) days’ notice to Proponent. In addition, the Reserve may terminate this Agreement immediately upon written notice to Proponent if Proponent materially breaches this Agreement and fails to fully cure such breach to the Reserve’s satisfaction within fifteen (15) days after the Reserve gives notice of the breach to Proponent.
	2. **Termination by Proponent.** Proponent may terminate this Agreement immediately upon written notice to the Reserve if the Reserve materially breaches any of its obligations under this Agreement and fails to cure such breach within thirty (30) days after Proponent gives notice of the breach to the Reserve.
	3. **Effects of Termination**. Upon termination of this Agreement for any reason, or earlier as requested by the Reserve, Proponent will deliver to the Reserve any and all data, documents and other materials (including all copies thereof) in Proponent’s possession or control that contain, summarize, or disclose any intellectual property provided by, or on behalf of, the Reserve. Upon any termination of this Agreement Proponent shall pay the Reserve all fees then due and payable under this Agreement, irrespective of whether the Forecast Methodology has been approved. The license granted pursuant to Section 1.2 shall survive the termination of this Agreement.
4. **General Provisions**.
	1. **Governing Law; Venue**. This Agreement shall be governed by and construed in accordance with the laws of the State of California without reference to any conflict of laws principles that would require the application of the laws of any other jurisdiction. Proponent irrevocably consents to the personal jurisdiction of the state and federal courts located in Los Angeles County, California for any suit or action arising from or related to this Agreement, and hereby waives any right Proponent may have to object to venue in such courts.
	2. **Arbitration**. Any dispute regarding any aspect of this Agreement or any act which allegedly has or would violate any provision of this Agreement or any law (each a “**Dispute**”) shall be submitted to arbitration in Los Angeles, California, before an experienced arbitrator selected in accordance with the rules of the American Arbitration Association or its successor, as the exclusive remedy for any such claim or Dispute. The decision of the arbitrator shall be final, conclusive and binding upon the Parties. The prevailing Party in such arbitration shall be entitled to recovery of its costs and expenses including reasonable attorneys’ fees incurred as a result of such arbitration. Should any Party to this Agreement pursue any Dispute by any method other than said arbitration, the responding Party shall be entitled to recover from the initiating Party all damages, costs, expenses and attorneys’ fees incurred as a result of such action.
	3. **Other Remedies**. Proponent acknowledges that certain breaches of this Agreement by Proponent would cause irreparable injury to the Reserve for which monetary damages would not be an adequate remedy and therefore, notwithstanding anything to the contrary in Section 11.2, the Reserve shall have the unrestricted right to seek equitable relief in any court of competent jurisdiction for any violation of this Agreement, without the need of posting a bond or other form of security.
	4. **No Assignment**. This Agreement and Proponent’s rights and obligations under this Agreement may not be assigned or transferred, in whole or in part, by operation of law or otherwise, by Proponent without the Reserve’s express prior written consent. Any attempted assignment, delegation, or transfer in violation of the foregoing will be null and void. The Reserve may freely assign this Agreement or any of its rights under this Agreement to any third party.
	5. **Waiver**. All waivers must be in writing and signed by the Party to be charged. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of such provision or of any other provision on any other occasion.
	6. **Severability**. If any provision of this Agreement is, for any reason, held to be illegal, invalid or unenforceable, the remaining provisions of this Agreement will be unimpaired and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.
	7. **Headings**. The headings used in this Agreement are for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.
	8. **Rules of Construction**. The Parties hereto acknowledge and agree that they have participated fully in the preparation, review and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.
	9. **Notices**. Unless otherwise specified herein, any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier, overnight delivery service or confirmed facsimile, or seventy-two (72) hours after being deposited in the regular mail as certified or registered mail (airmail if sent internationally) with postage prepaid, if such notice is addressed to the Party to be notified at such Party’s address or facsimile number as set forth below, or as subsequently modified by written notice:
		* 1. if to the Reserve, to:

Craig Ebert
President
Climate Action Reserve
818 W. 7th Street, Suite 710
Los Angeles, California 90017

* + - 1. if to Proponent, to:
	1. **Counterparts**. This Agreement may be executed in two or more counterparts (including by facsimile), each of which shall be deemed an original and all of which together shall constitute one instrument.
	2. **Entire Agreement; Amendments**. This Agreement and documents incorporated by reference herein constitute the entire agreement between the Parties with respect to the subject matter hereof and supersedes and merges all prior or contemporaneous understanding, negotiations, discussions, communications and agreements (whether written or oral) between the Parties. This Agreement may not be amended, supplemented or modified unless such amendment, supplement or modification is in writing and signed by both Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first written above.

**“The Reserve”
Climate Action Reserve**

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

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

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

**“Proponent”
(Organization or Individual)**

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

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

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

Tax ID/SSN:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_