

AMENDMENT NO. 1 TO THE ENERGY EXEMPLAR LLC LICENSE AGREEMENT

This Amendment (“Amendment”) is made effective as of May 17, 2022, by and between THE CITY OF SANTA CLARA d/b/a SILICON VALLEY POWER (“Customer”) and ENERGY EXEMPLAR, LLC (“EE”) and together with Customer the (“Parties”). In each instance in which the provisions of this Amendment contradict or are inconsistent with the provisions of the End User License Agreement (“EULA”) (as defined below), the provisions of this Amendment shall prevail, and the contradicted or inconsistent provisions shall be deemed amended accordingly. Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the EULA.

The Customer and EE have previously executed that certain *Energy Exemplar, LLC License Agreement* on January 7, 2020 (as amended, the “EULA”) and the Customer and EE wish to amend certain provisions of the EULA as set forth herein:

The parties hereby agree as follows:

1. THIRD-PARTY PRODUCTS

1.1. Section 1(a) of EULA is amended to read as follows:

“The term “Software” refers to (i) the PLEXOS for Power Systems electric power simulation and modelling software, (ii) any Add-ons as described on Exhibit A hereto (the “Add-ons”), (iii) any updates, upgrades, or modifications to the Software made available to Licensee by EE, and (iv) third-party products, including but not limited to, solvers, add-ons and plug-ins (“Third-Party Products”). Third Party Products include the following:

1. Gurobi® Optimization Solver through *Gurobi® Optimization LLC*; and
2. IBM CPLEX® Optimizer Solver through *International Business Machines Corporation* (IBM).”

1.2. For the avoidance of doubt, after April 18, 2022, EE shall be under no obligation to provide the Xpress-MP solver as a Third-Party Product and Customer shall no longer use such solver.

1.3. In respect of Third-Party Products, the Customer acknowledges that EE may allow the third-party vendors of those products to have access to the Customer Data as required for the interoperation and support of such Third-Party Products with the Software Products.

1.4. EE does not warrant the use or performance of such Third-Party Products. As an exclusive remedy for any defect or material error in the Third-Party Products, and as EE’s entire liability in contract, tort, or otherwise, EE agrees to cause the owner of such Third-Party Products (“Owner”) to correct such material error or defect by issuing corrected instructions, a restriction, or a bypass. The cumulative liability of EE to Customer for any and all claims relating to the Third-Party Product, in contract, tort, or otherwise, shall not exceed that portion

of the total fees paid by Customer to EE for the Third-Party Product over the preceding twelve (12) months prior to the event giving rise to such claim.”

2. GENERAL

- 2.1. **Governing Law and Jurisdiction.** This Amendment is governed by and must be construed in accordance with the laws specified in the EULA.
- 2.2. **Effect of Amendment.** Except as expressly modified by this Amendment, the License Agreement shall remain unmodified and in full force and effect.
- 2.3. **Counterparts.** This Amendment may be executed via facsimile or other electronic transmission and in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one instrument.

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IN WITNESS WHEREOF, the parties hereto have executed this **AMENDMENT NO. 1 TO ENERGY EXEMPLAR LLC LICENSE AGREEMENT** as of the date set forth in the first paragraph hereof.

ENERGY EXEMPLAR LLC:

THE CITY OF SANTA CLARA d/b/a SILICON VALLEY POWER:

By: DocuSigned by:
Stuart Kelly
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By: _____

Name: Stuart Kelly

Name: _____

Title: Senior Vice President

Title: _____

May 26, 2022

Approved as to Form:

Office of the City Attorney