

Power Market Consulting, Inc.

SOFTWARE SERVICES AGREEMENT

This Software Services Agreement (the “Agreement”) is made and entered into on this the __ day of _____, 2022 (the “Effective Date”) between Power Market Consulting, Inc., a California corporation having its principal place of business at 300 Spectrum Center Drive, Suite 400, Irvine, CA 92618 (“Licensor”) and City of Santa Clara dba Silicon Valley Power, a chartered California municipal corporation, having its principal place of business at 1500 Warburton Avenue, Santa Clara, CA 95050 (“Licensee” or “City”). Either party may be referred to individually as the “Party” or collectively as “the Parties.”

WHEREAS:

Licensor offers a business intelligence service called OASISLive™, which is designed to improve data management and decision-making capabilities of entities that buy and sell wholesale power in California;

The OASISLive service offering contains two components: (1) a model file to be installed on an individual workstation and (2) a hosted service, which enables Licensee to have access to the OASISLive Database defined below using Quantrix Modeler and/or Quantrix Enterprise applications;

Licensee seeks to obtain a nonexclusive license for the use of the model file and a subscription-based license to access the OASISLive Database; and

The Parties have agreed to the following terms and conditions:

I. Definitions.

The terms used in this Agreement have the following meanings:

- a. “Annual Contract Term” shall be defined as the period of August 20 of a year in the Term to August 19 of the following year of the Term.
- b. “Annual Subscription Fees” shall be defined as the fee for the Annual Site License for the OASISLive Database, plus the fees for the Annual OASISLive Subscription fee (based on the # of users). Annual Subscription Fees are detailed in Exhibit A (including its components Annual Site License for the OASISLive Database and Annual OASISLive Subscription Fees), attached and incorporated by reference.
- c. “Annual Third-Party Software License Fee” shall be those fees set forth in Exhibit A associated with the use of Third-Party Licensed Product.
- d. “Authorized Users” shall be defined as Licensee and its employees, agents, and any consultants, who are pre-approved by Licensor at its sole discretion to be Authorized Users.
- e. “Business Day” shall be defined as Monday through Friday, excluding holidays recognized by Licensor, during the hours of 8 a.m. to 5 p.m. PST or PDT, as applicable. Licensor recognizes the holidays which are recognized and observed by the Western Electric Coordination Council (“WECC”).
- f. “Confidential Information” shall be defined as all of the proprietary, non-public information of Licensor disclosed pursuant to or in furtherance of this Agreement, including but not limited to all Licensor Technical Information as defined herein and all information related to Licensor’s business practices. All Confidential Information shall be clearly identified or marked “Confidential.”
- g. “Copyright” shall be defined as any rights owned by Licensor under U.S. Copyright Law in the Licensed Product and the OASISLive Database.
- h. “Documentation” shall be defined as user guides, manuals, and any other materials

distributed by Licensor to Licensee, which relate to the OASISLive service offering.

- i. "Licensed Products" shall be defined as a collective reference to both the PMCI Licensed Product and the Third-Party Licensed Product.
- j. "Licensee Technical Information" shall be defined as any content, analysis, or other proprietary or non-public information, know-how, or trade secrets, which Licensee adds to the PMCI Licensed Product.
- k. "Licensor Technical Information" shall be defined as all of the proprietary or non-public information, know-how, trade secrets, calculations, and algorithms, which are embodied in the PMCI Licensed Product and the OASISLive Database.
- l. "OASISLive Database" shall be defined as the database hosted by Licensor on an off-site server, which receives, synchronizes, derives, organizes, and provides data on wholesale electric power transactions and related data from various sources including but not limited to the California Independent System Operator ("CAISO") Open Access Same Time Information System ("OASIS"). OASISLive users may run queries, perform various calculations using the pre-built matrices, and develop their own analytics using the available data.
- m. "PMCI Licensed Product" shall be defined as the Licensor's OASISLive Database, and its constituent modules, the model file created from OASISLive Database, along with any Licensor Technical Information as defined herein, which is created as of the Effective Date or during the Term of this Agreement.
- n. "Services" shall be defined as the subscription-based license, hosting, and maintenance of the OASISLive Database.
- o. "Subscription Start Date" shall be defined as the beginning date for each Annual Contract Term.
- p. "Term" shall mean the Initial Term, plus any Renewal Period(s) as defined in Section VII of this Agreement.
- q. "Termination for Cause" shall be defined as the termination of this Agreement during the Term by one Party where the other Party is in material breach of this Agreement, which breach is incapable of being cured, or if capable of being cured, has not been cured after 30 days' written notice.
- r. "Termination for Convenience" shall be defined as the termination of this Agreement during the Term by one Party in the absence of a material breach of this Agreement by the other.
- s. "Third-Party Licensed Product" shall be defined as third-party product offerings that are subject to license or sublicense other than PMCI Licensed Product. This includes Quantrix Modeler and Quantrix Enterprise applications, LCG Consulting's LMP forecast data, and other third-party products that may become available during the term of the Agreement.

II. Subscription to OASISLive Database.

- a. **Ownership of the OASISLive Database.** Licensor owns all right, title, and interest in the copyrightable elements of the OASISLive Database, including but not limited to the unique arrangement and compilation of the data, as well as to the Licensor Technical Information and the Documentation. The code in the database software is distributed and used by Licensor pursuant to the Mozilla Public License, Version 1.1.
- b. **Subscription by Modules.** OASISLive is organized into independent modules. Licensee must subscribe to the Base Module, and then may elect to subscribe to any or all of the other modules at its option at any time. Licensor's current module offerings as of the Effective Date are listed in Exhibit A, attached hereto and incorporated by reference.
 - i. In the event that Licensee elects to subscribe to an additional module or increase

the number of subscriptions or licenses during an Annual Contract Term, the license fee for that license or subscription shall be prorated for the remainder of that Annual Contract Term based on 365 days.

- ii. The City may only reduce licenses or subscriptions by providing notice before the beginning of each Annual Contract Term. Reduction of licenses or subscriptions shall not be prorated.

c. **End User License.**

- i. **License Grant.** For each subscription purchased, Licensor grants to Licensee a non-exclusive license solely for its internal business purposes for the Term and any Renewal Periods (i) to use and display the modules selected of the OASISLive Database by an Authorized User on a single shared workstation using Quantrix Modeler; (ii) to use and display the modules selected of the OASISLive Database at unlimited workstations by Authorized Users using Quantrix Enterprise (iii) to share data or analysis derived from the OASISLive Database with Authorized Users; and (iv) to permit Authorized Users to use the Documentation. Licensee's rights to the OASISLive Database shall be limited to those expressly granted in this Agreement. Any use which exceeds the scope of the license grant shall constitute a breach of this Agreement.

- ii. **Restrictions.** Licensee shall not provide access to the OASISLive Database to any third-party who is not an Authorized User. Licensee shall not attempt to access or actually access the OASISLive Database through any other model file or software other than the Third-Party Licensed Product and shall not copy or distribute any Documentation to any third-party, who is not an Authorized User.

d. **Third-Party Data.** Licensee may be required to obtain a separate license from a third-party to access third-party data.

- e. **Prohibited Uses of the Hosted Service.** OASISLive may be used only for lawful purposes and shall only be used by Authorized Users. Licensor specifically prohibits any other use of the hosted service, including but not limited to the following: (a) taking any action that disrupts, tampers with, interferes or imposes an unreasonable burden on OASISLive or the server on which OASISLive is hosted, including but not limited to the bulk download of data; (b) obtaining data from OASISLive in order to resell it; (c) impersonating an Authorized User in order to obtain unauthorized access to OASISLive; (d) using a model file or software other than the Licensed Products to access OASISLive; (e) allowing access to someone other than an Authorized User to OASISLive; (f) using or attempting to use any engine, software tool, agent, or other device or mechanism (including without limitation spiders, robots, or other intelligent agents) to navigate, search, access, monitor, or copy OASISLive; (g) attempting to upload to OASISLive any files, computer code, viruses, or programs designed to interrupt, destroy, or limit functionality of OASISLive or of any computer software, hardware, or communications equipment; (h) deciphering, decompiling, disassembling, or reverse engineering any of the software comprising or in any way making up part of OASISLive; (i) aggregating, copying, or duplicating in any manner any of the copyrightable elements of OASISLive; (j) using any means of automatically searching or mining data from OASISLive or in any way attempting to interfere with the proper functioning of OASISLive; (k) collecting or storing personal information about any other user of OASISLive; (l) intentionally or unintentionally violating any applicable local, state, national, or international law; (m) providing material support or resources to any terrorist organization; or (n) "framing," "mirroring," or otherwise incorporating any part of OASISLive into any other website without prior written permission. Licensor reserves the right to suspend or terminate Authorized Users or even Licensees who do not appropriately use OASISLive. In the event Licensee becomes aware of an inappropriate use of OASISLive (i.e., use in contravention of this Section III(e)), Licensee is obligated to promptly notify Licensor of the problem.

- f. **Maintenance.** Licensor reserves the right to take OASISLive off-line from time to time for maintenance purposes. Currently, Licensor performs daily maintenance for a brief period each morning and performs more significant maintenance tasks on a monthly and/or quarterly basis. Licensor agrees to notify Licensee reasonably in advance of any scheduled monthly or quarterly maintenance.
- g. **Incident Reporting and Obligations.** Licensee shall promptly report all errors, bugs, and other incidents to Licensor and provide as much information about the issue as possible. Incident reports should be submitted to Licensor at support@pmci-usa.com.
- h. **Service Level Response Goals.** Licensee's subscription includes OASISLive technical support. Licensor will make commercially reasonable efforts to promptly resolve all OASISLive technical support issues. Technical support issues will be addressed during Licensor's regular Business Days.

III. Rights in Third-Party Licensed Product.

- a. **Grant of License.** For each subscription purchased, Licensor grants to Licensee a non-exclusive license solely for its internal business purposes (i) to use and install the Third-Party Licensed Product on a single workstation; (ii) to allow access to Quantrix Enterprise interface to OASISLive database for Authorized Users; (iii) to allow a single connection, including remote desktop connection capability, to the OASISLive Database; (iv) to make a single back-up copy of the Third-Party Licensed Product for archival and contingency purposes only; and (v) to add Licensee-specific content, analysis, and other Licensee Technical Information to the Third-Party Licensed Product. Licensee's rights in the Third-Party Licensed Product shall be limited to those expressly granted by such third-party licensor. Any use which exceeds the scope of the license grant shall constitute a breach of this Agreement.
- b. **Restrictions.** Licensee shall not distribute, share, rent, resell, lease, sublicense or otherwise disclose or transfer the Third-Party Licensed Product to any third-party. The Third-Party Licensed Product allows Authorized Users to access content that contains the trade secrets of Licensor and in order to protect such trade secrets and other interest that Licensor may have in the Third-Party Licensed Product, Licensee agrees not to reverse engineer, decompile, translate, or disassemble the Third-Party Licensed Product in whole or in part, nor to permit any third-party to do so.
- c. **Ownership.** Licensee acknowledges that no title to the intellectual property in the Third-Party Licensed Product is transferred to Licensee under this Agreement. Licensee further acknowledges that title and full ownership rights to the content of the Third-Party Licensed Product and all of Licensor's intellectual property rights therein will remain the exclusive property of Licensor. Licensee agrees not to remove any trademark, copyright, or other proprietary notes on or in any portion of the content of the Third-Party Licensed Product as delivered, and to reproduce all such notices on and in all authorized copies.

IV. Additional Services.

Licensor is available to provide consulting services to Licensee for an additional fee upon request for additional services described in Exhibit B ("Additional Services"). Exhibit B attached hereto and incorporated by reference sets forth the terms, descriptions, and rates for any such Additional Services.

V. Customizations.

Licensor is available to make customizations to the Licensed Products for an additional fee upon request. Licensee will own all right, title, and interest in any intellectual property arising from such customizations made to the Licensed Products. Where such customizations are performed by Licensor consultants, the terms and rates in Exhibit B shall apply. If such customization includes services not included in the Consulting Services Rates, such costs shall be authorized using the

process in Exhibit B.

VI. Billing and Payment.

- a. **Maximum Compensation.** Unless an Amendment to this Agreement is executed between the Parties, the maximum amount of compensation to be paid to Licensor during the Initial Term of this Agreement shall not exceed One Million Dollars (\$1,000,000). This maximum compensation includes all items associated with this Agreement including: Annual Subscription Fees, Annual Third-Party Software License Fee, Additional Services, Reimbursable Expenses, as well as Taxes, Fees, or other costs associated with this Agreement. Compensation shall be calculated in accordance with Exhibits A and B.
- b. **Annual Subscription Fees and Annual Third-Party Software License Fee.** Annual Subscription Fees and Annual Third-Party Software License Fee are those annual fees specified in Exhibit A.
 - i. Annually, at least sixty (60) days before the next Annual Contract Term begins, Licensor shall submit a quote or initial annual task order to Licensee including Annual Subscription Fees and Annual Third-Party Software License Fee consistent with this Agreement and also reflecting the estimated number of licenses and subscriptions requested by Licensee for the next Annual Contract Term. Such quote may include any third-party licensing fees subject to the provisions of Exhibit B. For avoidance of doubt, the rates and fees in Exhibit A and B shall not be adjusted during the Initial Term.
 - ii. Licensee shall either accept that quote/task order or request modifications within thirty (30) days after receipt.
 - iii. Upon receipt of approval of a quote/task order including Annual Subscription Fees, Annual Third-Party Software License Fee and the specified number of licenses and subscriptions requested by the Licensee; Licensor shall invoice and Licensee shall make payment according to the terms of this Section VI.
 - iv. In the event of early Termination for Convenience by Licensee, Annual Subscription Fees and Annual Third-Party Software License Fee are non-refundable.
 - v. Licensor agrees that the Annual Subscription Fees and Annual Third-Party Software License Fee are fixed for the Initial Term of this Agreement. Licensor reserves the right to change the Annual Subscription Fees and Annual Third-Party Software License Fee for each Renewal Period upon at least sixty (60) days prior written notice prior to the expiration of the Initial Term or any Renewal Period.
 - vi. Notwithstanding the foregoing and during any Renewal Period, Licensor intends to set service fee prices for the next calendar year prior to end of the preceding calendar year, and upon request, may make pricing information available to Licensee when the new pricing is set, even though such prices would not become effective for Licensee until the next Renewal Period.
- c. **Additional Services.**
 - i. When Additional Services are requested by Licensee according to the process outlined in Section II of Exhibit B, Licensor will invoice Licensee for such approved Additional Services within 30 days of the end of the month during which services were provided.
 - ii. All invoices for Additional Services shall include sufficient detail for the Licensee to verify that work was performed according to the rates in Exhibit B (“Consulting Services Rates”).
 - iii. Licensor agrees that the Consulting Service Rates are fixed for the Initial Term of this Agreement. Licensor reserves the right to change the Consulting Service

Rates for each Renewal Period upon at least sixty (60) days prior written notice prior to the expiration of the Initial Term or any Renewal Period.

d. **Invoicing and Payments:**

- i. Licensor will invoice City on an annual or monthly basis on an invoice and in a format approved by City and subject to verification and approval by City.
- ii. Where applicable, invoices shall include itemization of any authorized expenses incurred with a detail listing the cost and source of such expenses and when they were incurred in a format that will permit City to verify rates are the same as those authorized in the Agreement.
- iii. Invoices shall include the amount paid to date and remaining Agreement amount.
- iv. If Licensee disputes an expense in an invoice, Licensee may deduct the disputed expense from the payment of that invoice, provided that City submits to Licensor a written explanation of why the expense is being disputed.
- v. If there are no discrepancies or deficiencies in the submitted invoice and, City shall process the invoice for payment.
- vi. Licensor shall maintain documentation of such time and costs for City inspection for a period of three (3) years from the date of termination of this Agreement.

VII. Term and Termination.

- a. **Initial Term.** This Agreement shall commence as of the Effective Date and expire four (4) years following the Effective Date, unless earlier terminated (the “Initial Term”).
- b. **Renewal Period.** This Agreement may be renewed for up to five (5) years and such extensions may be in one-year periods or multiple years as may be mutually agreed between the parties (“Renewal Period”). The parties shall execute an Amendment to this Agreement to exercise renewal period(s).
- c. **Termination.**
 - i. This Agreement may be Terminated for Cause by either Party upon thirty (30) days’ prior written notice, where the other Party is in material breach of this Agreement, and such breach is incapable of being cured, or such breach is capable of being cured, but has not been cured within such notice period.
 - ii. This Agreement may be Terminated for Convenience by either Party upon thirty (30) days’ prior written notice.
- d. **Effect of Expiration or Termination.** Expiration or termination of this Agreement will not relieve either party from its obligations arising hereunder prior to such expiration or termination. Upon expiration or termination, Licensee shall be responsible for paying Licensor all outstanding fees and expenses incurred during the Term of this Agreement.

VIII. Confidential Information.

Except as expressly provided herein, for the Term of this Agreement and for a period of five (5) years thereafter, Licensor and Licensee shall keep completely confidential and shall not publish or otherwise disclose for any reason the Confidential Information furnished pursuant to this Agreement. The foregoing notwithstanding, the obligations contained herein restricting the disclosure and use of Confidential Information shall continue to apply to any Confidential Information for so long as such Confidential Information remains protectable or legally enforceable under any other agreement or law, including applicable copyright, trade secret and patent laws. Each Party shall disclose Confidential Information only to those employees and consultants with a need

to know, and then only to the extent that such disclosure is necessary to accomplishing the purposes of this Agreement.

IX. Warranties.

- a. **Limited Warranty.** Licensor warrants that all Services provided under this Agreement will be performed in a professional, workmanlike manner in accordance with generally accepted industry standards. In addition, Licensor warrants that the PMCI Licensed Product will be free from physical defects.
- b. **Licensee's Remedies.** Upon receipt by Licensor of Licensee's written notice of any breach of the Limited Warranty set forth above, Licensor's entire liability and Licensee's sole and exclusive remedy shall be to use reasonable commercial measures at Licensor's expense to (i) in the case of a physical defect in the PMCI Licensed Products correct the physical defect, replace the PMCI Licensed Product, or provide a work-around, and (ii) in the case of the unsatisfactory performance or delivery of the Services, re-perform or correct the performance or delivery of the Services so that it meets the standards set forth in the Limited Warranty defined above.
- c. **Disclaimer of Other Warranties.** THE LICENSED PRODUCTS AND THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS. USE OF THE LICENSED PRODUCTS AND THE SERVICES, AND THE RELIANCE ON ANY DATA CONTAINED THEREIN, ARE AT LICENSEE'S OWN RISK. LICENSOR CAN MAKE NO WARRANTY THAT USE OF THE LICENSED PRODUCTS OR ACCESS TO THE SERVICES WILL BE CONTINUOUS, UNINTERRUPTED, BUG-FREE, ERROR-FREE, VIRUS-FREE, FREE OF DEFECTS, FREE OF TECHNICAL PROBLEMS, THAT THEY WILL MEET ALL OF LICENSEE'S NEEDS, NOR THAT THE DATA OR CALCULATIONS WILL BE UP-TO-DATE, ACCURATE, COMPLETE, OR OF ANY PARTICULAR QUALITY. LICENSOR, HOWEVER, WILL USE REASONABLE CARE TO PROVIDE UNINTERRUPTED, BUG-FREE, ERROR-FREE, ACCURATE AND COMPLETE SERVICES. WITH THE EXCEPTION OF THE LIMITED WARRANTY STATED IN SECTION IX (a) ABOVE. LICENSOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, CONDITIONS, GUARANTEES, OR REPRESENTATIONS WITH RESPECT TO THE LICENSED PRODUCTS, THE SERVICES, AND THE DATA, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY OR SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF THIRD-PARTY RIGHTS, OR ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. LICENSOR DOES NOT WARRANT THAT ALL ERRORS, BUGS, OR DEFECTS CAN OR WILL BE CORRECTED OR THAT THE LICENSED PRODUCTS OR SERVICES WILL OPERATE BUG-FREE, ERROR-FREE, CONTINUOUSLY, OR UNINTERRUPTED.

X. Consequential Damages; Limitation of Liability.

- a. **No Liability for Consequential Damages.** IN NO EVENT SHALL LICENSOR BE LIABLE TO LICENSEE FOR ANY CONSEQUENTIAL, PUNITIVE, EXEMPLARY, SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOSS OF DATA OR PROFITS, LOSS OF BUSINESS OPPORTUNITIES, COSTS OF PROCUREMENT OR REPLACEMENT GOODS AND SERVICES, COVER, OR RELIANCE DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE DELIVERY, USE, PERFORMANCE, OR INTERRUPTION OF THE LICENSED PRODUCTS, THE SERVICES, OR ANY DATA ACCESSED THROUGH THE LICENSED PRODUCTS AND THE SERVICES, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) STRICT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE

PARTIES AGREE THAT THESE LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CONSEQUENTIAL DAMAGES; THIS SECTION APPLIES ONLY TO THE EXTENT AVAILABLE BY APPLICABLE LAW.

- b. **Limitation of Liability.** Licensor's total cumulative liability to Licensee from all causes of action and under all theories of liability will be limited to and will not exceed the total amount of fees incurred by Licensee for the twelve (12) month period immediately preceding any claim giving rise to the liability. This limitation shall apply notwithstanding the failure of the essential purpose of any remedy hereunder. Notwithstanding the foregoing, this limitation shall not apply to death, or bodily injury.

XI. Hold Harmless/Indemnification.

- a. To the extent permitted by law, Licensor agrees to protect, defend, hold harmless and indemnify Licensee, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees (collectively, "Claim(s)") in providing a defense to any Claim arising therefrom, for which Licensee shall become liable arising from (i) Licensor's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the Services performed by Licensor pursuant to this Agreement, or (ii) a third-party Claim alleging that Licensee's use of the PMCI Licensed Product constitutes an infringement of a United States patent, copyright, or trade secret. In the event Licensee seeks indemnification, Licensee shall (i) notify Licensor promptly in writing of the Claim; (ii) provide reasonable assistance in connection with the defense and/or settlement thereof, at the expense of Licensor; and (iii) permit Licensor to control the defense and/or settlement of the Claim. Licensee shall have the right to participate in the defense and/or settlement of any Claim, suit, or proceeding, with counsel of its own choosing and at its own expense.
- b. To the extent permitted by law, Licensee agrees to protect, defend, hold harmless and indemnify Licensor, its directors, officers, employees, independent contractors and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which Licensor shall become liable arising from Licensee's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with this Agreement. In the event Licensor seeks indemnification, Licensor shall (i) notify Licensee promptly in writing of the claim; (ii) provide reasonable assistance in connection with the defense and/or settlement thereof, at the expense of Licensee; and (iii) permit Licensee to control the defense and/or settlement of the claim. Licensor shall have the right to participate in the defense and/or settlement of any claim, suit, or proceeding, with counsel of its own choosing and at its own expense.

XII. General.

- a. **Entire Understanding.** This Agreement, along with the exhibits attached hereto, contains the entire understanding of the Parties with respect to the subject matter contained herein, and shall supersede all prior agreements and understandings, whether written or oral. There are no restrictions, promises, covenants, or understandings other than those expressly set forth herein, and no rights or duties on the part of either Party are to be implied or inferred beyond those expressly provided for.
- b. **Export Control.** Licensee may not use or otherwise export or re-export the Licensed Products except as authorized by United States law and the laws of the jurisdiction in which the Licensed Products was/were obtained. In particular, but without limitation, the Licensed Products may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated

Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the Licensed Products and the Services, Licensee represents and warrants that Licensee is not located in any such country or on any such list. Licensee also agrees that it will not use the Licensed Products or the Services for any purposes prohibited by United States law.

- c. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of law principles.
- d. **Severance.** If any provision of this Agreement is held unenforceable or in conflict with the law of any jurisdiction, the validity of the remaining provisions shall not be affected by such holding. The Parties agree to negotiate and amend in good faith such provision in a manner consistent with the intentions of the Parties as expressed in the Agreement, if any invalid or unenforceable provision affects the consideration of either Party.
- e. **Modifications and Additions.** No modifications or additions to the terms and conditions of this Agreement shall be binding unless in writing and signed by both Parties.
- f. **Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns; provided that, however, Licensee shall not assign this Agreement or any other duty, obligation, or right arising hereunder without the prior written approval of Licensor. Notwithstanding the foregoing, Licensee may transfer this Agreement to a successor government entity, and Licensor may transfer this Agreement to a successor in the event of a merger or purchase of all of Licensor's assets or all or substantially all of the assets pertaining to a division or a group of Licensor, but such transfer may only occur if the assignee in each case agrees to be bound by each of the terms of this Agreement.
- g. **Force Majeure.** Except with respect to obligations to pay compensation when due, if either Party is delayed or prevented from fulfilling any of its obligations under this Agreement by reason of any cause beyond its reasonable control, including but not limited to Acts of God, fire, strike, flood, riot, war, pandemic, earthquake, delay of transportation, or inability to obtain necessary materials through normal commercial channels, then that Party shall not be liable under this Agreement for damages as a result of such delay or failure.
- h. **Notices.** All legal notices provided in connection with this Agreement will be in writing and will be delivered by (i) certified or registered mail, postage prepaid and return receipt requested, or in the alternative, regular mail or (ii) courier, and will be deemed effective upon receipt by the principal or CEO at the address set forth above, or at such other address that the Parties may designate by written notice to each other.
- i. **Survival.** Obligations, which by their nature survive, shall survive any expiration or termination of this Agreement. Without limiting the generality of the foregoing, the following provisions shall survive any expiration or termination of this Agreement: Articles I through III, VI, VIII, X through XII, and Sections VIIId and IXc.
- j. **Insurance.** Licensor shall provide insurance in accordance with the requirements of Exhibit C. Any references to Contractor within that exhibit refer to Licensor.
- k. **Waiver.** No waiver by either Party of any breach of this Agreement, no matter how long continuing or how often repeated, shall be deemed a waiver of any subsequent breach thereof, nor shall any delay or omission on the part of either Party to exercise any right, power, or privilege hereunder be deemed a waiver of such right, power, or privilege.
- l. **Irreparable Harm.** Licensee acknowledges that any breach of Section VIII to this Agreement may cause irreparable harm to Licensor. Licensee therefore agrees that Licensor shall be entitled to injunctive relief in the event of such breach.
- m. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument. Acceptance of this Agreement may be evidenced by facsimile or electronic

transmission.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date first set forth above.

CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation

APPROVED AS TO FORM:

City Attorney	City Manager 1500 Warburton Avenue Santa Clara, CA 95050 Telephone: (408) 615-2210 Fax: (408) 241-6771

“LICENSEE”

POWER MARKET CONSULTING, INC.
a California corporation

By: _____
 (Signature of Person executing the Agreement on behalf of Licensor)

Name: _____

Title: _____

Local Address: 300 Spectrum Center Drive, Suite 400

 Irvine, CA 92618

Telephone (714) 635-7650

Fax: (714) 494-8001

“LICENSOR”

Exhibit A

List of Available Modules and Associated Fees

Effective August 20, 2022

I. OASISLive modules available for subscription:

- a. **Base Module.** This module provides all market clearing prices and derived prices from the CAISO OASIS data, except for the Congestion Revenue Rights (“CRR”) market clearing prices.
- b. **CRR Module.** This module provides CRR market clearing prices and quantities from the CAISO OASIS system.
- c. **Market Intelligence Module.** This module provides all transmission, system demand, energy, and ancillary data from the CAISO OASIS system and CRR Offsets from the CAISO Market and Results Interface (CMRI”).
- d. **LMP Forecast Module.** This module provides third-party CAISO Day-Ahead Market (DAM) locational marginal price (“LMP”) forecasts at monthly and seasonal time-of-use basis to correspond with CRR products.
- e. **Short-Term DAM LMP Forecast Module.** This module provides the hourly CAISO DAM LMP forecasts for all market resources on daily-basis 1 to 5 trade dates prior to the operating day.

II. Annual Subscription Fees (Annual Site License Fee for OASISLive Database and OASISLive Subscription Fees):

- a. OASISLive Database Site Licenses shall be provided for each module at the annual rates in Table A-1.

Table A – 1 Site License Fees

Modules	Annual Site License Fee for OASISLive Database
Base	\$ 31,988
CRR	\$ 34,709
LMP Forecast	\$ 39,678
Market Intelligence	\$ 25,593
All 4 modules except Short-Term LMP Forecast	\$ 131,968
20% Discount	(\$ 26,394)
All 4 modules with 20% Discount	\$ 105,574
Short-Term LMP Forecast	\$ 26,481

- b. OASISLive Database Subscriptions shall be provided at the rates in Table A-2 and are invoiced annually per user.

Table A – 2 – Subscription Fees

Modules	Annual OASISLive Subscription Fee (Per User)
Base	\$ 1,293
CRR	\$ 1,616
LMP Forecast	\$ 1,616
Market Intelligence	\$ 1,616
Short-Term DAM LMP Forecast	\$ 2,207

III. Annual Third-Party Software License Fee:

Annual Quantrix software licenses shall be provided at the rates in Table A – 3 and are invoiced annually per installation for Quantrix Modeler and per Quantrix Enterprise user for Quantrix Enterprise.

Table A – 3 – Annual Third-Party Software License Fee

Software Name	Annual Fee
Quantrix Modeler	\$2,640 per Installation
Quantrix Enterprise	\$3,233 per User

Exhibit B
Additional Services

I. Additional Services

Upon request of the Licensee and subject to the work authorization process in this Exhibit B, Licensor may be requested to perform additional services such as, but not limited to consulting, training, and customization.

II. Project Quotes and Authorization of Work

- a. When Additional Services are required by Licensee other than work to support Licensee's day-to-day CRR business processes, Licensee shall request a quote or task order from Licensor for such services.
- b. Licensor shall submit a quote or task order for the required services in advance of commencing work. Licensor's quote or task order shall include the following details:
 - i. Specific service(s) to be performed including any assumptions used to determine quote or task order;
 - ii. Project schedule (if requested by Licensee);
 - iii. Estimated maximum cost for the requested services including consulting fees, travel, and any other anticipated expenses. Costs not included in the quote or task order are assumed to be included in the hourly rate.
 - iv. For Training Services, a training plan or agenda
- c. Where the terms of any quote or task order are in conflict with this Agreement, the terms of this Agreement shall prevail.
- d. All submitted pricing shall be in accordance with the rates authorized in this Agreement.
- e. If accepted by Licensee, Licensee shall authorize work in writing (e-mail acceptable). Licensor shall not commence work unless Licensor has received such authorization.
- f. Licensee's written authorization may only be provided by a Division Manager, Senior Division Manager, Assistant Director of the Electric Utility, Electric Utility Chief Operating Officer, or Chief Electric Utility Officer.
- g. Changes to quotes or task orders for Additional Services
 - i. Licensor shall notify Licensee immediately when a situation occurs that may result in a change to the quoted project cost.
 - ii. Licensor shall submit an updated quote or task order and provide reason for the change specific to each work authorization.
 - iii. Licensor shall not continue work until Licensee approves the change in writing (e-mail acceptable).
- h. Licensor shall not initiate any project assignment that (1) will result in total costs exceeding the maximum compensation in Section VI.a. or (2) is anticipated to extend past the Term of this Agreement.
- i. Licensee shall not be required to pay a deposit or any other form of pre-payment prior to the Licensor beginning work on Additional Services.

III. Consulting Services Rates

Consulting Services shall be provided at the following rates:

<u>Role</u>	<u>Hourly Rate</u>
Modeler	\$318
Manager	\$302
Consultant	\$280
Analyst/Developer	\$237

IV. REIMBURSABLE EXPENSES

- a. No reimbursable expenses shall be paid or incurred by Licensee without Licensee’s prior written approval.
- b. Licensor Requested Expenses. Outside services such as, but not limited to third-party licenses not already listed in Exhibit A, subcontractor services, outside reprographic services, materials and equipment, will be invoiced at cost.
- c. Expenses shall be reimbursable only to the extent that Licensor submits sufficient documentation to Licensee that the expenses were directly incurred in providing the requested services and that such costs are not already included in the fee or hourly rate.
- d. Travel and Per Diem. Travel and Per Diem will be invoiced at cost.
 - i. Unless approved in writing (e-mail acceptable) in advance, meals, lodging, and related Per Diem shall not exceed the rates outlined by United States General Services Administration (GSA) <https://www.gsa.gov/travel-resources>
 - ii. Mileage. Personal automobile travel from portal to portal or between locations will be charged at IRS mileage rates per mile in place at the time of travel.
 - iii. Travel Expenses. Airfare, car rental, taxi, parking, tolls, and incidental expenses will be invoiced at cost, with receipts provided for any expenses. Airfare, if required, shall be at economy class.
- e. An estimate for any anticipated reimbursable expenses shall be included in Licensor’s response to any request by City for Additional Services.
- f. Licensor shall provide supporting documentation such as invoices or receipts for all Reimbursable Expenses.

Exhibit C

Insurance Coverage Requirement

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 each occurrence
\$1,000,000 general aggregate
\$1,000,000 products/completed operations aggregate
\$1,000,000 personal injury

2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.

3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:

- a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
- b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
- c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01, with minimum policy limits of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with the following limits: at least one million dollars (\$1,000,000) policy limit Illness/Injury by disease, and one million dollars (\$1,000,000) for each Accident/Bodily Injury.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).

3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
 - b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.

2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third-party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.	
City of Santa Clara	
Electric Department	
P.O. Box 100085 – S2	or
Duluth, GA 30096	1 Ebix Way
	John's Creek, GA 30097

Telephone number: 951-766-2280
Fax number: 770-325-0409
Email address: ctsantaclara@ebix.com

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.