

**Enterprise Program Agreement**  
**August 31, 2018**  
 ("Effective Date")

OSIsoft, LLC ("OSIsoft")  
 Attn: Legal Department  
 1600 Alvarado Street  
 San Leandro, CA 94577  
 Phone: (510) 297-5800

City of Santa Clara, dba  
Silicon Valley Power ("Licensee")

1500 Warburton Ave.  
Santa Clara, CA 95050

**Contacts:***Business:*

Name: Adele Ward  
 Email: adele@osisoft.com  
 Phone: 1 510 297-5850

**Contacts:***Business:*

Name: Tim Lynch  
 Email: tlynch@svpower.com  
 Phone: 408-615-6689

*Legal:*

Name: Legal Department  
 Email: legal@osisoft.com  
 Facsimile: (510) 295-2444

*Legal:*

Name: City of Santa Clara City Attorney's Office  
 Email: CityAttorney@santaclaraca.gov  
 Phone: (408) 615-2230

This Enterprise Program Agreement ("**Enterprise Agreement**" or "**Agreement**") effective as of the Effective Date specified above incorporates by this reference the terms and conditions of that certain Software License and Services Agreement with an effective date of April 24, 2017 (OSIsoft Agreement # \_\_\_\_\_) (the "**SLA**") by and between OSIsoft, LLC ("**OSIsoft**"), and City of Santa Clara, dba Silicon Valley Power. Unless otherwise specified, all capitalized terms in this Enterprise Agreement have the meaning defined in the SLA.

## 1. COMMERCIAL TERMS

Term	From Effective Date through April 23, 2022
<b>Enterprise Licensed Software</b>	<ul style="list-style-type: none"> <li>Enterprise Infrastructure Version 2.0 as further described on <a href="http://www.osisoft.com/enterprise-agreement-software-services/">http://www.osisoft.com/enterprise-agreement-software-services/</a>,</li> <li>OSIsoft software licensed under the Former Agreement (see next row of this table) not replaced or updated by Enterprise Infrastructure Version 2.0.</li> </ul>
<b>Annual Enterprise Services Fee ("ESRP")</b>	<p>Licensee's annual Enterprise Services subscription price shall be equal to 20.4% ("<b>Enterprise Services Rate</b>") of the License Fee Basis.</p> <p>"<b>License Fee Basis</b>" shall be the License Fees paid under Licensee's Enterprise Program Agreement dated April 24, 2012 (the "Former Agreement," now expired; all licensed OSIsoft software under the Former Agreement is hereby transferred to the terms and conditions of this Agreement), plus any additional license fees paid hereunder for Enterprise Licensed Software</p>
<b>License</b>	Licensee shall receive Enterprise Licensed Software for the Assets specified in <b>Exhibit A ("Licensed Assets")</b>
<b>Net Licensee Fee Due:</b>	\$0

<b>Net Initial Enterprise Services Fee Due:</b>	Years 1 and 2: \$ 195,228
<b>Enterprise Services Fees following initial Term year:*</b>	Year 3: \$97,614* due April 23, 2019 Year 4: \$97,614* due April 23, 2020 Year 5: \$97,614* due April 23, 2021
<b>Initial Invoice Total</b>	<b>\$195,228</b>

\* Subject to adjustments to material changes in Licensed Assets or Licensed Asset Capacities, see Section 4.1., and minimum annual ESRP.

Please check one:

- ☐ Corresponding PO will be submitted and required for invoicing.  
☐ Contract number can be used for invoicing.

## 2. ENTERPRISE SERVICES (“Enterprise Services”)

Remote Monitoring of PI Systems (“Remote Monitoring”). Licensee will permit OSIsoft to remotely monitor certain performance metrics of Licensee’s Enterprise Licensed Software in accordance with the mutually agreed Enterprise Roadmap. The software used to provide the Remote Monitoring service is for use only by OSIsoft in providing the Enterprise Services or by Licensee to monitor the performance of the Enterprise Licensed Software, and may not be used by Licensee for any purpose including, without limitation, to monitor other software programs or equipment. Remote Monitoring services are in no way meant to serve as a safety monitoring service and Licensee shall indemnify OSIsoft against any claims resulting from Licensee’s failure to operate Licensee’s equipment in a safe manner. To be eligible to utilize this service offering, Licensee must grant OSIsoft support staff unattended remote access to the nodes to be monitored. Remote access will be provided via OSIsoft’s remote support software that allows our engineers to properly troubleshoot and remediate alerts regarding the PI System. In the event that Licensee ceases to subscribe to Enterprise Services, Licensee will delete this software upon OSIsoft’s request. OSIsoft may use data collected by the Remote Monitoring service to issue to Licensee recommendations for hardware and software (Enterprise Licensed Software and OS) upgrades and other measures Licensee may implement to increase Enterprise Licensed Software performance as agreed in the Enterprise Roadmap.

**2.1. Software Reliance Program (“SRP”).** As part of Enterprise Services, Licensee and its Contractors will receive the benefits of OSIsoft’s Software Reliance Program (“SRP”) to support the Enterprise Licensed Software. (All references to “OSIsoft Products” within the SRP terms and conditions shall mean the Enterprise Licensed Software.). Contractors will also have facilitated access to OSIsoft’s relevant partner program.

**2.2. Enterprise Program Manager.** A global Enterprise Program Manager (“EPM”) will be assigned to Licensee’s account to provide a reasonable amount of coordination and assistance for questions pertaining to architecture and deployment of Enterprise Licensed Software (as defined in Section 3 below), as well as project management. Licensee will assign its own Program Manager (“*Licensee Program Manager*”) to manage the relationship with OSIsoft. The Licensee Program Manager is responsible for the identification of potential installations globally and to identify and make available the required resources within Licensee. The EPM will strive to understand the business of Licensee and develop domain knowledge to further facilitate collaboration in utilization of the Enterprise Licensed Software. Additionally, the EPM will coordinate between OSIsoft technical staff and Licensee to create and maintain, as part of the Enterprise Roadmap, a central monitoring philosophy for the Enterprise Licensed Software, including alerts, proactive remedial actions and fixes. OSIsoft reserves the right to change the EPM at any time upon notice to Licensee.



- 2.3. Enterprise Roadmap.** OSIsoft, in collaboration with Licensee, will develop a roll out and update plan (“Enterprise Roadmap”) for the Enterprise Licensed Software.

The Enterprise Roadmap will specify what services OSIsoft will provide on an annual basis during the term of the Enterprise Agreement and for what areas Licensee will have primary responsibility. Areas of consideration to be documented in the annual Enterprise Roadmap may include:

- Identification, prioritization and set target timelines for business and technical objectives where OSIsoft’s products or services will be of assistance
- Enterprise architecture considerations such as:
  0. technical architecture diagram,
  1. hardware and software requirements,
  2. remote access requirements and plan,
  3. selection of interfaces,
  4. update and back-up strategy
  5. migration strategy
- Define the necessary technical prerequisite requirements to deploy the Enterprise Licensed Software
- Site/Asset installation schedule, areas of responsibility and frequency of updates
- Identification and scheduling of Learning and Event vouchers, and CoE services
- Administration items such as annual review expectations, true-up process and T&L budget considerations

Taking into account Licensee’s stated business objectives and resources, the Enterprise Roadmap will include a proposed schedule, recommendations on training for Licensee personnel and end users, best practices and other recommendations for operation of the Enterprise Licensed Software.

Prior to providing any services OSIsoft will work jointly with the customer to prioritize the activities defined in the Enterprise Roadmap. This Enterprise Roadmap will be updated annually based on Licensee’s updated business objectives and resources and to account for material changes in the Licensed Assets.

- 2.4. Reviews.** Reviews will be conducted on an as-needed basis by the EPM, Licensee Program Manager and appropriate management personnel. These reviews may be conducted in person at a mutually agreed upon location or virtually, using web-based collaboration tools. These reviews shall be based upon a review report prepared by the OSIsoft team and supervised by the EPM, and will address any concerns identified by the EPM or Licensee Program Manager, and be specifically focused on Licensee’s opportunities and goals. The Enterprise Roadmap may be adjusted and modified at these meetings.
- 2.5. Installation of Enterprise Licensed Software.** OSIsoft will provide a single installation or upgrade service per Licensee Site per year for Enterprise Licensed Software in accordance with the mutually agreed Enterprise Roadmap. These installation services will be performed remotely from OSIsoft’s offices or through an installation manager server installed on Licensee’s network and connected to Licensee’s deployment locations and computers (“*Installation Management System*”). On an exception basis as expressly agreed in the Enterprise Roadmap and subject to the SRP conditions for On-Site Assistance, these installations may be performed manually on-site at Licensee’s facilities. Licensee will provide the Datastream Point configuration in electronic format for configuration of

Interface(s) as set forth in the mutually agreed Enterprise Roadmap.

- 2.6. Center of Excellence.** OSIsoft will provide reasonable assistance and information resources to Licensee in Licensee's application of Enterprise Infrastructure to Licensee's particular needs per the initiatives jointly agreed upon in the annual Enterprise Roadmap. Examples of OSIsoft Enterprise Service offerings are described in the Enterprise Support section of osisoft.com [<http://www.osisoft.com/Legal/ea-service-offerings.pdf>].

The scope of work for each CoE service engagement will be created by the EPM for Licensee's review and approval. The scope of work will include a description of the deliverables, Licensee participation required, and anticipated scheduling. Licensee shall bear complete responsibility for determining whether any concepts, preliminary designs, application recommendations or advice by OSIsoft are appropriate for Licensee's operations. OSIsoft personnel delivering CoE services will strive to understand Licensee's business, but in no event does OSIsoft represent that such personnel are experts in Licensee's particular industry. While Licensee's operational and business data will remain Licensee's Confidential Information, Licensee acknowledges that OSIsoft may utilize deliverables of general applicability which do not include Licensee's Confidential Information, to assist other customers or improve the Enterprise Licensed Software, even if such deliverables are based upon requirements provided by Licensee. These materials may include, but are not limited to, non-confidential application designs, architecture, general engineering or programming methodologies in common use or within a particular industry, algorithms, sample screens or enhancements to the Enterprise Licensed Software.

- 2.7. Migration of Third Party Historical Data.** OSIsoft will provide one-time assistance at the beginning of this Agreement, as agreed in the Enterprise Roadmap, for Licensee in migrating data from third party historian software to the Enterprise Infrastructure. Data from the third-party historian must be provided by Licensee to OSIsoft in a format compatible with an existing OSIsoft interface. OSIsoft will supply Licensee with the technical requirements to prepare such data files. OSIsoft will convert the data supplied by Licensee into a data file that is compatible with the Enterprise Infrastructure. The data will not be validated by OSIsoft. Data validation is the sole responsibility of the Licensee. The migration scope does not include migration of calculations or applications.

**2.8. Vouchers.**

Licensee will receive two different types of Vouchers:

- (i) **Learning Vouchers:** Licensee will receive (1) one learning voucher per \$5,000 paid to OSIsoft for Enterprise Services per year. These Services Vouchers may be used for standard training courses at OSIsoft training locations at a rate of (1) one voucher per (1) one seat per training day. Licensee may request that a standard or custom training course be conducted onsite at one of licensee's facilities. Twelve (12) learning vouchers are required for onsite training, per day, regardless of the number of students. Onsite training is limited to a maximum of (12) twelve students per day. An additional (6) six learning vouchers (not per day; in total) will be required for a custom training course, to cover OSIsoft's additional preparation time.
- (ii) **Event Vouchers:** These Services Vouchers may only be redeemed for admission to an OSIsoft user's events at a rate of one (1) seat per \$40,000 paid to OSIsoft for Enterprise Services per year.

From time to time OSIsoft may make other services or admission to other events available for purchase with these vouchers. Vouchers are valid for one (1) year from each anniversary date of the Effective Date of this Enterprise Agreement and cannot be carried over to subsequent years. In no event may vouchers be redeemed for anything other than the foregoing including, without limitation, software products, professional services or cash, unless otherwise



expressly agreed by the parties.

Vouchers cannot be sold, bartered, swapped or exchanged.

**2.9. Travel and Living Expenses.** Licensee will reimburse OSIsoft for all reasonable out of pocket travel or living expenses incurred in connection with mutually agreed upon services provided by OSIsoft under this Enterprise Agreement, including without limitation onsite installations, onsite training sessions, kickoff meetings, periodic reviews or any other visit to Licensee's premises by OSIsoft services personnel. Travel and living expenses will be charged in addition to any Service Vouchers redeemed or services fees paid for such services. OSIsoft will incur such expenses in compliance with its then-current field services travel policy, which will be provided to Licensee upon request.

**2.10. Additional Services.** For clarification, any services beyond the scope of Enterprise Services including, without limitation, providing on-site installation services beyond those expressly provided in the Enterprise Roadmap or additional services or time required as a result of Licensee not meeting any Technical Prerequisites (such as not having the appropriate hardware prepared as specified by OSIsoft), will be subject to OSIsoft's then-current field services rate. As of the Effective Date this rate is \$2,000/person/day. OSIsoft will provide an estimate using the then-current applicable rates upon request.

### 3. ENTERPRISE LICENSING

#### 3.1. Enterprise Licensed Software Definitions.

**"Licensee's Enterprise"** means Licensee's business activities comprised of power trading, power generation and electric transmission and distribution.

**"Asset"** means Licensee's power trading, generation and distribution assets (including substations), including utility operations devices, utility network infrastructure, Meters, and phasor measurement units (PMUs) concentrators, owned and operated by Silicon Valley Power, all as identified on Exhibit A.

**"Meter"** means a physical device which measures and analyzes for energy usage in time differentiated registers, including 5 minute reads as required by Licensee's power trading operation or quarter-hourly or such interval as is specified by Licensee's SVP Meter Connect program. Specifically, a **Meter** is a single device connected to Licensee's owned and operated power trading assets, customers' home devices, including appliances, thermostats, water heaters, pool pumps, etc., which receives data from such devices, and which data is then read from the single Meter by remote access and control, either by Licensee or a third-party service provider for the purpose of customizing and monitoring home energy consumption.

**"Licensed Asset Capacity"** means the capacity of each Asset measured as specified in Exhibit A. On the Effective Date, there are 54,309 Meters and 534 MWs of generation, transmission and distribution Assets. (Licensed Asset Capacity is not applicable to power trading activities and to substations.)

**"Operating Data"** is (i) data generated directly by operation of the Assets, including all analyses, calculations and derivatives thereof, and (ii) market, environmental, meteorological data or other information that is used to operate the Assets.

**"Enterprise Licensed Software"** is OSIsoft's commercial proprietary software system comprised of certain database, visualization, analytic and interface OSIsoft Products as described in the then-current accompanying documentation and specified in Section 1.

### 3.2. Scope of License.

- (a) **Qualified Assets Only.** Licensee may use the Enterprise Licensed Software only for the purpose of processing the Operating Data generated by the Assets identified in **Exhibit A** as “*Licensed Assets*”.
- (b) **Additional Licensed Assets.** Licensee may add additional Licensed Assets to **Exhibit A** upon written notification to OSIsoft or in connection with each Annual Review as provided below.
- (c) **Usage by Licensee.** Licensee may use unlimited copies and quantities of Enterprise Licensed Software (including Datastream Points) for the purpose of:
  - (i) processing Operating Data generated by the Assets up to the Licensed Asset Capacity as may be revised in accordance with this Enterprise Agreement; and
  - (ii) redundancy and failover options, development systems, test systems, research and development, pilot plants, analysis of financial data pertaining to the Asset, and operation of a central Enterprise Licensed Software system to monitor other Enterprise Licensed Software systems installed throughout Licensee’s organization.
- (d) **Limitations on Scope.** Enterprise Licensed Software may not be used to process Operating Data: (i) generated by non-Licensed Assets, even if such Operating Data is stored in equipment located within a Licensed Asset or (ii) in any automated metering initiative or similar customer direct billing or metering initiatives.

**3.3. Enterprise Services Maintenance.** As a condition to retaining its licenses to Enterprise Licensed Software, Licensee agrees to maintain a current Enterprise Services subscription for all Enterprise Licensed Software purchased hereunder.

## 4. ENTERPRISE PROGRAM PRICING

### 4.1. Licensing and Enterprise Services Rate Adjustments.

- (a) **Licensed Asset Capacities.** Licensed Asset Capacities are measured in megawatts generated by SVP owned & operated assets (“MW”) and number of Meters.
- (b) **Material Change in Licensed Asset Capacities:** A material change in the Licensed Asset Capacity shall be defined as 2% increase or decrease in; MW, or Meter increments.
- (c) **Annual Review.** If the annual review performed in accordance with this Enterprise Agreement reveals that Licensee is using any Enterprise Infrastructure to process data generated by additional Assets or there is a material increase in the Licensed Asset Capacity of an Asset, Licensee shall purchase the required Enterprise Infrastructure licenses at the License fee specified below and OSIsoft will include such new Licensed Assets in the Enterprise Services calculation for the new Review Period:



Pricing Table

Asset Description	Licensing fee	Enterprise Services Annual fee
• Total Generation Capacity	• \$1,020/MW	• 208/MW
• Meter	• \$5.10/Meter	• \$1.04/Meter

If Licensee has ceased operating a Licensed Asset and all use of the Enterprise Licensed Software containing the Operating Data generated therefrom or there is otherwise a material decrease in the Licensed Asset Capacity, then Licensee's annual Enterprise Services fee will be reduced by the Enterprise Services Rate multiplied by the applicable Licensing Fee specified in the table above in OSIsoft's Enterprise Services calculation for the then-currently Licensed Assets in and for the new License Year. **Notwithstanding the foregoing, in all events if Licensee retains at least one Asset under this Agreement, Licensee will pay a minimum of \$90,000 for Enterprise Services per Review Period.**

- 4.2. Agreement Term.** This Enterprise Agreement will remain in effect for a period of five (5) years from the Effective Date ("**Initial Term**"). OSIsoft and Licensee each has the right to terminate the Enterprise Agreement, for any or no reason and with immediate effect, at the end of the Initial Term or any one-year successive anniversary for which it continues (each year the "**Renewal Period**"), by providing thirty days' prior written notice of its intent to terminate. Following the Initial Term, for so long as Licensee renews its Enterprise Services subscription, and this Enterprise Agreement is not otherwise terminated in accordance with its terms, it will renew for successive Renewal Periods. In the event of termination or expiration in accordance with this section, the Enterprise Conversion Procedure in subsection 4.2(b) shall apply.

**Pricing Protection.** During the Renewal Period, and for so long as Licensee does not allow any lapse in its Enterprise Services subscription fees for the Enterprise Licensed Software, OSIsoft will increase Licensee's Enterprise Services Rate and Enterprise Licensed Software license fees via a one-time step change of 7.5% for the first Renewal Period (year 6) and for each annual subsequent Renewal Period by the percentage increase in the monthly Consumer Price Index for All Items, U.S. City Average, All Urban Consumers (base year 1982-84=100) over the rates and fees applicable from the beginning of the immediately preceding Renewal Period (subject to a minimum increase of 3% and maximum increase of 6% in each Renewal Period).

- (a) Licensee's Enterprise Services subscription must remain current to maintain the license rights set forth in this Enterprise Agreement. Should this subscription lapse at any time during the Initial Term or Renewal Period, the Enterprise Conversion Procedure set forth in subsection 4.2(b) shall apply. Additionally, all Enterprise License Fee payments under any payment plan shall be accelerated and become immediately due and payable. All License fees and Enterprise Services fees paid are nonrefundable.
- (b) **Enterprise Conversion Procedure:** After the Initial Term, in the event Licensee does not maintain Enterprise Services or if this Agreement is otherwise terminated in accordance with this Section 4.2, Licensee's usage limits for Enterprise Licensed Software will be inventoried as further described below, and converted to the license levels then-currently in use by Licensee, using the license units as defined in Licensee's SLA and the nearest OSIsoft Product sizes in OSIsoft's then-current applicable price list. Licensee will no longer be eligible to receive any Enterprise Services and all pricing, except as set forth below, shall be canceled. Licensee shall provide OSIsoft an inventory of all OSIsoft Software that has been installed, including the number of PI Servers, number of Datastream Points configured within each



Server, number of Individual Users and Interface Nodes. OSIsoft will have the opportunity to perform an audit to validate this inventory and Licensee will pay OSIsoft's then-current field service rates for the time required to complete this audit should it reveal that Licensee has underreported by 5% of the final agreed upon audit outcome. For the inventoried OSIsoft Products, Licensee may purchase annual SRP at OSIsoft's then-current applicable list price. Any future expansions of these systems or any additional OSIsoft Products will be available from OSIsoft at OSIsoft's then-current applicable list price, under the terms of Licensee's SLA.

#### 4.3. **Ordering and Delivery.**

- (a) **Annual License Review.** OSIsoft and Licensee will perform an OSIsoft Product license review at each successive Review Period. Licensee will provide OSIsoft with all reasonably requested information necessary to determine whether Licensee is using the Enterprise Licensed Software within the purchased license limits. Unless otherwise agreed, the initial Review Period shall commence with the Effective Date.
- (b) **Additional Licensed Assets Through Review.** OSIsoft and Licensee have agreed to the Licensed Assets specified in **Exhibit A**. The Licensed Assets will be modified at the end of each Review Period as necessary. At the end of each Review Period, Licensee will submit an order to OSIsoft for the Enterprise Licensed Software licenses and corresponding Enterprise Services fees required to cover any additional Assets or material increase in the Licensed Asset Capacity at the prices stated in this Enterprise Agreement.
- (c) **Fulfillment.** Licensee or Licensee Affiliates may submit requests for additional copies of any Enterprise Licensed Software without payment of additional license fees. Such requests may be submitted in any form mutually agreeable to both parties. Electronically delivered is the default method.
- (d) **Availability.** Enterprise Licensed Software is only available from OSIsoft directly and not through any third party distributor or sales channel.

### 5. GENERAL CONDITIONS

- 5.1. **Affiliate Eligibility.** "*Licensee Affiliate*" means any entity that controls, is controlled by, or is under common control with Licensee. For purposes of this Enterprise Agreement, "control" of an entity means having ownership of at least fifty percent (50%) of the voting equity or beneficial interest of such entity. Licensee Affiliates that Licensee would like to add to this Enterprise Agreement are listed in the attached **Exhibit A**. Licensee may add Licensee Affiliates to this Enterprise Agreement by providing OSIsoft with written or electronic notice containing the contact information for each relevant Licensee Affiliate specified in **Exhibit A**. Upon OSIsoft's consent, not to be unreasonably withheld or delayed, such Licensee Affiliates will be added to this Enterprise Agreement and **Exhibit A** will be deemed amended accordingly. Licensee Affiliates on **Exhibit A** are entitled to use and order Enterprise Licensed Software and shall be bound by this Enterprise Agreement as a "Licensee". Notwithstanding the foregoing, any such Licensee Affiliate shall remain eligible to receive the benefits of this Enterprise Agreement only so long as it continues to qualify as a Licensee Affiliate as defined in this Section. Should a Licensee Affiliate no longer qualify as such under this Enterprise Agreement, then Licensee will notify OSIsoft and such change of ownership or control shall be considered an assignment, subject to subsection 5.2 below, of the OSIsoft Products then being used by such Licensee Affiliate for purposes of this Enterprise Agreement, and such Licensee Affiliate will no longer be eligible to order any Enterprise Licensed Software or receive Enterprise Services under this Enterprise Agreement. Licensee and any Licensee Affiliate that purchases OSIsoft Product



licenses shall be jointly and severally liable for any breach of this Enterprise Agreement by any Licensee Affiliate.

- 5.2. Assignment.** Licensee may assign Enterprise Licensed Software licensed under this Enterprise Agreement provided that Licensee provides prior written notice to OSIsoft. The usage limits for any assigned Enterprise Licensed Software will be converted to the license levels then-currently in use by Licensee, using the license units as defined in OSIsoft's then-current standard Software License and Services Agreement and the nearest Server sizes in OSIsoft's then-current applicable price list ("**Converted Software**"). Licensee will provide OSIsoft with all information reasonably necessary to determine the appropriate license sizes for the Converted Software. Licensee hereby acknowledges that as a condition to any assignment OSIsoft may require the assignee to: (i) purchase up to one year of support and maintenance services at OSIsoft's then-current rate; (ii) pay OSIsoft's then-current license fees for the software assigned; and (iii) execute OSIsoft's then-current standard Software License and Services Agreement. Except as otherwise specified in writing by OSIsoft, Orders submitted by the assignee will be in accordance with OSIsoft's then current list price. Any attempted assignment or transfer of the Enterprise Licensed Software or this Enterprise Agreement, whether by operation of law, as a result of any change in control (as defined in paragraph 5.1) of Licensee or otherwise without complying with this Section shall be null and void.
- 5.3. Scope of Enterprise Agreement.** Unless otherwise specified, this Enterprise Agreement supersedes all prior agreements, understandings or arrangements with respect to the subject matter hereof and any existing OSIsoft software products within Licensee's possession or control shall be subject to the terms and conditions of the SLA and this Enterprise Agreement, as applicable. Any pricing provided herein cannot be combined with any other discounts including, without limitation, any discounts for volume purchases. OSIsoft may refuse any Orders submitted by Licensee or a Licensee Affiliate pursuant to any other pricing agreement, understanding or arrangement.
- 5.4. Marketing Participation.** Licensee agrees to send a management representative to an OSIsoft User's Conference occurring within twelve (12) months following the Effective Date, or a subsequent User's Conference as mutually agreed, to present Licensee's use of the Enterprise Licensed Software. Licensee will provide reasonable information and cooperation to OSIsoft to provide OSIsoft with an understanding of Licensee's application of the Enterprise Licensed Software. OSIsoft may use Licensee's non-stylized name in its customer lists.

IN WITNESS WHEREOF, the parties have executed this Enterprise Agreement as of the Effective Date through their duly authorized representatives. Each individual signatory below hereby represents and warrants that they have full corporate power and authority to execute this agreement and bind the respective parties to the terms and conditions of this Enterprise Agreement.

OSIsoft, LLC

Licensee City of Santa Clara, dba  
Silicon Valley Power

Signature: 

Name: Robert Guilbault

COO

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

Date: 6/20/18

Signature: 

Name: Deanna J. Santana

Title: City Manager

Date: 8/31/18

APPROVED AS TO FORM:  
SANTA CLARA CITY ATTORNEY'S OFFICE



**Exhibit A****Initial Licensee Affiliates, Licensed Assets and Asset Capacities****Power Generation and Distribution Assets:**

<b>1) Site Name:</b>	Fiber Central Office (FCO)	<b>2) Site Name:</b>	Trading Central Office (TCO)
Licensee Legal Name:	City of Santa Clara dba Silicon Valley Power	Licensee Affiliate Legal Name:	City of Santa Clara dba Silicon Valley Power
Contact Name, phone & email:	Tim Lynch, 408-615-6689 tlynch@svpower.com	Contact Name, phone & email:	Tim Lynch, 408-615-6689 tlynch@svpower.com
Physical Street Address:	1705 Martin Avenue	Physical Street Address:	1601 Civic Center Drive
City, State, Zip Code:	Santa Clara, CA 95050	City, State, Zip Code:	Santa Clara, CA 95050
Country:	USA	Country:	USA
Baseline No of Licensed Assets:	52,377 Electric Meters (maximum of 10 Data Streams per meter)	Licensed Asset Capacity:	Energy Trading Activities
<b>3) Site Name:</b>	Donald Von Raesfeld Power Plant (DVR)	<b>4) Site Name:</b>	Stony Creek Hydroelectric System
Licensee Affiliate Legal Name:	City of Santa Clara dba Silicon Valley Power	Licensee Affiliate Legal Name:	City of Santa Clara dba Silicon Valley Power
Contact Name, phone & email:	Tim Lynch, 408-615-6689 tlynch@svpower.com	Contact Name, phone & email:	Tim Lynch, 408-615-6689 tlynch@svpower.com
Physical Street Address:	850 Duane Avenue	Physical Street Address:	Various
City, State, Zip Code:	Santa Clara, CA	City, State, Zip Code:	Santa Clara, CA
Country:	USA	Country:	USA
Licensed Asset Capacity:	147 MW	Licensed Asset Capacity:	11.63 MW
<b>5) Site Name:</b>	Cogeneration Plant #1	<b>6) Site Name:</b>	Gianera Generating Station
Licensee Affiliate Legal Name:	City of Santa Clara dba Silicon Valley Power	Licensee Affiliate Legal Name:	City of Santa Clara dba Silicon Valley Power
Contact Name, phone & email:	Tim Lynch, 408-615-6689 tlynch@svpower.com	Contact Name, phone & email:	Tim Lynch, 408-615-6689 tlynch@svpower.com
Physical Street Address:	560 Robert Ave	Physical Street Address:	2339 Gianera Street
City, State, Zip Code:	Santa Clara, CA	City, State, Zip Code:	Santa Clara, CA
Country:	USA	Country:	USA
Licensed Asset Capacity:	7 MW	Licensed Asset Capacity:	49.5 MW

(Exhibit A continued next page)



Eligible Silicon Valley Power Substation Assets		
TRANSMISSION SUBSTATIONS		
Operating Company "SVP"=Silicon Valley Power (Licensee)	Name	Location (City of Santa Clara, CA)
SVP	Kifer Receiving Station	2970 Lafayette
SVP	Northern Receiving Station	4857 Centennial Blvd.
SVP	Duane Electric Substation	901 Comstock St.
SVP	Scott Receiving Substation	1205 Space Park Drive
SVP	Northern Receiving 230Kv Station	4857 Centennial Blvd.
SVP	Silicon Valley Power Switching Station	810 Thomas Foon Chew Way
Total:		
DISTRIBUTION SUBSTATIONS		
Operating Company	Name	Location (City of Santa Clara, CA)
SVP	Agnew Electric Substation	2375 Agnew Road
SVP	Brokaw Electric Substation	349 Brokaw Road
SVP	CCA Electric Substation	2700 De La Cruz Blvd
SVP	Central Electric Substation	3370 Bowers Ave.
SVP	De La Cruz Junction Substation	510 Mathew Street
SVP	Fiberglas Electric Substation	2850 Lafayette St.
SVP	Homestead Electric Substation	2831 Homestead Road
SVP	Juliette Electric Substation	3750 Juliette Lane
SVP	Kenneth Substation	1234 Space Park Drive
SVP	Lafayette Electric Substation	2960 Lafayette St.
SVP	Mathew Electric Substation	600 Mathew Ave.
SVP	Mission Electric Substation	2929 Mission College Boulevard
SVP	Norman Avenue Junction Substation	1515 Norman Ave.
SVP	Northwestern Electric Substation	2690 Condensa Street
SVP	Orland Junction Substation	4585 County Road 99W
SVP	Palm Substation	4211 North Lafayette Street
SVP	Raymond Substation	1255 Space Park Drive
SVP	Serra Electric Substation	5301 Stevens Creek Blvd.
SVP	Fairview Substation	2930 Coronado Way
SVP	Uranium Electric Substation	2705 Bowers Ave.
SVP	Walsh Electric Substation	1600 Walsh Ave.
SVP	Zeno Electric Substation	3050 Semiconductor Drive
Total:		

GENERATION SUBSTATIONS		(City of Santa Clara, CA)
SVP	Cogeneration Plant No. 1	524 Robert Ave.
SVP	Don Von Raesfeld Power Plant	850 Duane Ave
SVP	Gianera Power Plant	2339 Gianera St.
SVP	Stony Gorge Hydroelectric Plant	2550 County Road 306
SVP	Black Butte Hydroelectric Plant	19227 Newville Road
SVP	High Line Hydroelectric Plant	5640 County Road 200
SVP		
Total:		

---

**Initial Number of Meters:** 54,309 by City of Santa Clara dba Silicon Valley Power on Effective Date



**Exhibit B****INSURANCE COVERAGE REQUIREMENTS**

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall purchase 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, purchase 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 [\*insert City department name here]  
P.O. 12010-S2 or 151 North Lyon Avenue  
Hemet, CA 92546-8010 Hemet, CA 92543

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.



Cert of Insurance for OSIsoft LLC 2017-2018  
Cert of Insurance for OSIsoft LLC 2018-2019

**Encl: Certificate of Insurance (embedded PDF document)**

**(current year's certificate of insurance is also available at <https://osisoft.com/legal-notices> )**

OSI



OSIsoft Agreement # 1029798

## Corporate Family Software License and Services Agreement

August 31, 2018  
("Effective Date")

OSIsoft, LLC ("OSIsoft")  
Legal Department  
1600 Alvarado Street  
San Leandro, CA 94577 USA  
Phone: +1 (510) 297-5800

**Contacts:***Business:*

Name: Adele Ward  
Email: [adele@osisoft.com](mailto:adele@osisoft.com)  
Phone: 510 297-5850

*Legal:*

Name: Legal Department  
Email: legal@osisoft.com  
Facsimile: +1 (510) 295-2444

City of Santa Clara, dba Silicon Valley Power ("Licensee")  
1500 Warburton Ave.  
Santa Clara, CA 95050

**Contacts:***Business:*

Name: Tim Lynch  
Email: tlynch@svpower.com  
Phone: 408-615-6689

*Legal:*

Name: City of Santa Clara City Attorney's Office  
Email: CityAttorney@santaclaraca.gov  
Phone: 408-615-2230

OSIsoft and Licensee hereby agree as follows:

1. **License**

1.1 **License Grant.** Subject to the terms and conditions of this **Agreement**, OSIsoft grants to Licensee a perpetual nonexclusive, nontransferable (except as specified in Section 10.1) license to use in accordance with the Product Usage Terms as specified at [www.osisoft.com](http://www.osisoft.com) that correspond to the OSIsoft products and related documentation ordered by Licensee (the "**OSIsoft Products**"). Licensee may make a reasonable number of copies of any OSIsoft Product documentation for internal business use. Any OSIsoft Software received by Licensee via FTP or other electronic delivery method will be governed by this Agreement even if no reference to this Agreement is made in connection with such electronic delivery, unless OSIsoft states another agreement applies. Any OSIsoft online services that Licensee purchases or uses will be governed by the agreement presented to you when you register for the applicable service.

1.2 **License Restrictions.** Except as expressly provided in this Agreement, Licensee agrees that it has no right to: (i) modify the OSIsoft Products or to permit any third party to do so; (ii) copy the OSIsoft Products, except as strictly required to install the OSIsoft Software and make a reasonable number of copies for archival or backup purposes, or (iii) use the OSIsoft Products to provide service-bureau, software rental, time-sharing or any data

services to any third party that is not a Licensee Affiliate. Any OSIsoft Products ordered by Licensee and licensed by OSIsoft as a bundled unit must be used by Licensee as a bundled unit. Licensee acknowledges that OSIsoft Products contain trade secrets of OSIsoft, and in order to protect such trade secrets, Licensee agrees not to disassemble, decompile or reverse engineer the OSIsoft Products, nor permit any third party to do so, except to the extent such restrictions are prohibited by applicable law. Licensee may only write programs that make calls to OSIsoft's Data Access Software under the following circumstances: (i) pursuant to an appropriate development license from OSIsoft; (ii) to extend the functionality of an OSIsoft Product that is designated by OSIsoft as including "Programmatic Extensions", or a similar designation, and only as expressly permitted by the accompanying documentation; or (iii) as expressly permitted by a previously purchased OSIsoft Product license.

1.3 **Limited Rights.** Licensee's rights in the OSIsoft Products will be limited to those expressly granted in this Section 1, and OSIsoft reserves all other rights, title, interest and licenses therein. All OSIsoft Products provided to the U.S. Government are provided with the commercial license rights and restrictions described in this Agreement. Further, all OSIsoft Products provided to the U.S. Government are provided with Restricted Rights as



provided for in FAR 52.227-19 (DEC 2007) and DFARS227-7202 or their successors, as applicable.

1.4. **Audit Rights.** Upon OSIsoft's written request, Licensee shall furnish OSIsoft with a certification signed by an officer of Licensee verifying that the OSIsoft Products are being used pursuant to the terms of this Agreement. In addition, upon prior written notice, OSIsoft may audit Licensee's use of the OSIsoft Products to ensure that Licensee is in compliance with the terms of this Agreement. Any such audit shall be conducted during regular business hours at Licensee's facilities and shall not unreasonably interfere with Licensee's business activities. Licensee shall provide OSIsoft access to the relevant Licensee records and facilities. If an audit reveals that Licensee has underpaid fees to OSIsoft, Licensee shall be invoiced for such underpaid fees based on OSIsoft's price list in effect at the time the audit is completed. Licensee shall promptly deliver to OSIsoft any unpaid fee for any errors or omissions disclosed by such audit. Licensee shall pay OSIsoft an additional fee of twenty-five percent (25%) of the applicable unpaid fee disclosed by the audit to compensate for Licensee's over use of the OSIsoft Products. If the underpaid fees exceed five percent (5%) of the license fees previously paid by Licensee, then Licensee shall also pay OSIsoft's reasonable costs of conducting the audit.

## 2. **Ordering and Delivery.**

2.1 **Order Process.** Licensee or a Licensee Affiliate may submit written orders containing the information and in the format reasonably requested by OSIsoft ("Orders") to OSIsoft or OSIsoft's authorized distributor for the purchase of new or additional licenses of OSIsoft Products or for Software Reliance Program services (as described in Section 4). All OSIsoft Products will be delivered DAP Licensee location.

2.2 **Licensee Affiliate.** "**Licensee Affiliate**" means any entity that controls, is controlled by, or is under common control with Licensee. For purposes of this Agreement, "control" of an entity means having ownership of more than fifty percent (50%) of the voting equity or beneficial interest of such entity. Licensee Affiliates that Licensee would like to add to this Agreement can be added by a form provided on osisoft.com. Licensee may add or subtract Licensee Affiliates from this Agreement by providing OSIsoft with written or electronic notice containing the contact information for each relevant Licensee Affiliate. Authorized Licensee Affiliates are entitled to use and order OSIsoft Products and shall be bound by this Agreement. Licensee is obligated to promptly notify OSIsoft of the change in status of any Licensee Affiliate. Licensee and any Licensee Affiliate that purchases OSIsoft Product licenses shall be jointly and separately liable for any breach of this Agreement by any

Licensee Affiliate. Licensee and Licensee Affiliates may be collectively referred to as Licensee.

2.3 **Contractor.** Licensee may designate one or more contractors that may interact with OSIsoft on its behalf for purposes of accessing Licensee's OSIsoft technical support account, ("**Contractors**"). Licensee may add or subtract Contractors from this Agreement by providing OSIsoft with written or electronic notice containing the contact information for each Contractor and Licensee Affiliates with which the Contractor is working. Licensee may permit Contractors to access and use the OSIsoft Products, without notice to OSIsoft, in accordance with this Agreement and so long as the Contractor is subject to confidentiality obligations no less protective than this Agreement. All Contractors shall be bound by this Agreement, and shall only have the right to act for the sole benefit of the Licensee. Licensee is obligated to promptly notify OSIsoft of any change in status of Contractors. Licensee and any Licensee Affiliate who benefits from a Contractor hereunder shall be jointly and severally liable for any breach of this Agreement by the Contractor.

2.4 **Order Submission and Acceptance.** Orders submitted directly to OSIsoft will not be deemed binding on OSIsoft until an authorized representative of OSIsoft expressly accepts such Order in writing or until Licensee receives the OSIsoft Products, whichever first occurs. Licensee must notify OSIsoft prior to using any OSIsoft Product at a location other than the one specified in the applicable Order. Except for information necessary to place an Order, such as identification of the OSIsoft Product, quantity and other similar information, any terms and conditions of any Order that are inconsistent with or in addition to the terms and conditions of this Agreement will be deemed stricken from such Order, and OSIsoft hereby expressly rejects such terms and conditions even if OSIsoft fulfills such Order. Licensee will be responsible for any contractors submitting Orders to OSIsoft on Licensee's behalf. OSIsoft reserves the right to refuse, cancel or delay shipment to Licensee if Licensee (i) fails to make any payment as provided herein or under the terms of payment set forth in any invoice or otherwise agreed to by OSIsoft and Licensee, (ii) fails to meet the credit or financial requirements established by OSIsoft, or (iii) otherwise fails to comply with the terms and conditions of this Agreement. Without interference with the licenses to OSIsoft Products previously ordered by and delivered to Licensee under this Agreement, OSIsoft, reserves the right to discontinue the distribution of any or all OSIsoft Products at any time and to cancel any orders therefor without liability of any kind to Licensee or any other person. No such cancellation, refusal or delay will be deemed a termination (unless OSIsoft so advises Licensee) or breach of this Agreement by OSIsoft.



3. **Payment of OSIsoft Invoices.** Provided that Licensee meets OSIsoft's then-current credit standards and policies, payment of all fees and expenses pursuant to OSIsoft's invoices will be due and payable within thirty (30) days of the date of invoice, otherwise invoices will be due upon receipt. All fees are non-cancelable, non-contingent and non-refundable except as expressly stated in this Agreement. Licensee will pay all amounts due under OSIsoft's invoices in U.S. currency, free of any and all currency controls or other restrictions. All past due amounts under OSIsoft's invoices will incur interest at a rate equal to the lower of 1.5% per month or the highest rate permitted by law, beginning as of forty (40) days after the applicable due date. Except for taxes paid by OSIsoft on its net income, all amounts due pursuant to OSIsoft's invoices are net of, and Licensee will be solely responsible for, any shipping charges, withholding, use, sales, value-added, import and any other taxes, fees, tariffs or duties associated with this Agreement or Licensee's use of the OSIsoft Products and Software Reliance Program. This section will not apply when an authorized OSIsoft distributor invoices Licensee for Orders submitted to such distributor. However, Licensee will comply with any payment terms agreement Licensee may have with such distributor.

#### 4. **Support, Maintenance and Services**

4.1 **Software Reliance Program.** Subject to Licensee's advance payment of the applicable Software Reliance Program subscription fees, Licensee will be enrolled in OSIsoft's then-current Software Reliance Program ("**Software Reliance Program**"). OSIsoft's current terms of Software Reliance Program will be provided on request and are also available through OSIsoft's description of services section at <http://www.osisoft.com>.

4.2 **Replacement Software.** Promptly following its use of any Updates, Bug Fixes or other replacement software as designated by OSIsoft and accepted by Licensee ("**Replacement Software**"), except for archival copies, Licensee will return or destroy the OSIsoft Software replaced by the Replacement Software. Licensee will not receive any credit for software replaced by Replacement Software.

4.3 **Services.** If Licensee purchases OSIsoft's services, OSIsoft warrants that the results of such services will comply with mutually agreed upon specifications for a period of 90-days following delivery of the services by OSIsoft. Licensee agrees to supply OSIsoft with access to and use of all information and facilities reasonably necessary for OSIsoft to render any on-site services pursuant to this Agreement. OSIsoft will comply with all reasonable safety rules and procedures provided by Licensee to OSIsoft personnel in advance.

#### 5. **Warranties.**

5.1 **Limited Warranty.** OSIsoft warrants that, for a period of one (1) year after delivery of the OSIsoft Products, the OSIsoft Products will function in accordance with OSIsoft's accompanying documentation in all material respects. As Licensee's sole and exclusive remedy and OSIsoft's entire liability for any breach of the foregoing warranty, OSIsoft will repair or replace, at no additional charge to Licensee, any OSIsoft Products that fail to meet this limited warranty. The limited warranty set forth herein shall automatically become null and void if a party other than OSIsoft modifies the OSIsoft Products in any way. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, OSIsoft MAKES NO WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED, AND OSIsoft EXPRESSLY DISCLAIMS ANY AND ALL SUCH OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT AND NONINFRINGEMENT.

#### 6. **Indemnity**

6.1 **OSIsoft Indemnity Obligation.** OSIsoft will defend any action brought against Licensee to the extent that it is based upon a claim that the OSIsoft Products infringe any U.S. patent, copyright or trade secret, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are finally awarded or paid in settlement in any such action, provided that: (i) Licensee promptly notifies OSIsoft in writing of the claim; (ii) Licensee grants OSIsoft sole control of the defense and settlement of the claim; and (iii) Licensee provides OSIsoft with all assistance, information and authority reasonably required for the defense and settlement of the claim, at OSIsoft's expense.

6.2 **Injunction.** If Licensee's use of any of the OSIsoft Products hereunder is, or in OSIsoft's opinion is likely to be, subject to the type of infringement claim specified in Section 6.1, OSIsoft may, at its sole option and expense: (i) procure for Licensee the right to continue using such OSIsoft Products, as applicable under the terms of this Agreement; (ii) replace or modify such OSIsoft Products so that it is non-infringing, but retains substantially the same functionality; or (iii) if options (i) and (ii) above cannot be accomplished despite OSIsoft's reasonable efforts, then OSIsoft may terminate Licensee's rights and OSIsoft's obligations hereunder with respect to such OSIsoft Products and refund to Licensee the unamortized portion of the fees paid for such OSIsoft Products,



based upon a straight-line three (3) year depreciation commencing as of the date Licensee received such OSIsoft Products.

6.3 **OSIsoft Indemnity Exclusions.** OSIsoft will have no liability for infringement claims of any kind arising from: (i) any use of the OSIsoft Products beyond the scope of this Agreement; (ii) Licensee's use of the OSIsoft Products in combination with any products not developed by OSIsoft, if the basis for the claim is such combined use; (iii) Licensee's failure to use updated or modified versions of the OSIsoft Products provided or made available by OSIsoft without additional charge; or (iv) OSIsoft's compliance with designs or specifications of a published standard or as provided by Licensee. THE PROVISIONS OF THIS SECTION 6 SET FORTH OSIsoft's SOLE AND EXCLUSIVE OBLIGATIONS AND LICENSEE'S SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

7. **Limitations of Liability.** EVEN IF ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE AND REGARDLESS OF WHETHER A CLAIM ARISES UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTY, STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT OSIsoft HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES, IN NO EVENT SHALL OSIsoft BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGES OF ANY KIND (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS) NOR SHALL OSIsoft's TOTAL CUMULATIVE LIABILITY HEREUNDER EXCEED THE TOTAL LICENSE FEES PAID BY LICENSEE TO OSIsoft UNDER THIS AGREEMENT DURING THE TRAILING 12 MONTH PERIOD OR TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000), WHICHEVER IS GREATER. The parties expressly agree that the allocation of risk contained in this Section is an essential basis of this Agreement.

8. **Confidential Information.** "***Confidential Information***" means the OSIsoft Products and any business (including any pricing information provided by OSIsoft) or technical information that is marked by a disclosing party as "confidential" or "proprietary" at the time of disclosure. Licensee's Confidential Information shall also include information related to Licensee's operations that Licensee discloses to OSIsoft in connection with this Agreement in whatever form. OSIsoft's Confidential Information shall also include, without limitation, any interfaces developed using OSIsoft's Software. The receiving party will not use or disclose any Confidential Information of the other party except as expressly permitted herein or as required by California state law.

Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information designated by a Disclosing Party as Confidential Information, the Receiving Party as soon practical but within three (3) business days of receipt of the request, shall notify the Disclosing Party that such request has been made, by telephone call, letter sent via facsimile, email and/or by US Mail to the legal address and/or facsimile number listed at the beginning of the Agreement. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action within ten (10) days after receiving the foregoing notice from the Receiving Party, or sooner if the Requestor's demand is for sooner disclosure by governmental, administrative or judicial order or decree, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it.

Notwithstanding the foregoing, if the Requestor is an individual and/or an entity who has a written confidentiality agreement with the Receiving Party containing confidentiality obligations at least as protective of the Disclosing Party's Confidential Information as are the Parties' obligations in this Agreement, and if such Requestor has a need to know the Confidential Information in order for the Receiving Party to perform its rights and obligations under this Agreement in a commercially reasonable and timely manner, then the preceding paragraph shall not apply to the disclosure of Confidential Information to the Requestor.

Confidential Information will not include information which: (i) is or becomes publicly available without fault of the receiving party; (ii) is independently developed by the receiving party without use or access to the Confidential Information; or (iii) was known to the receiving party prior to its receipt of the Confidential Information from the disclosing party and is not subject to other restrictions on disclosure or use.

9. **Term and Termination.** This Agreement will remain in effect perpetually unless and until terminated pursuant to this Section. Either party may terminate this Agreement if the other party breaches any material term, and such breach remains uncured for thirty (30) days after receiving notice thereof. In the event of any termination of this Agreement, the parties agree to return or at the other party's request destroy all of the other party's Confidential Information within three (3) business days, and without limiting the foregoing, Licensee will return or at OSIsoft's request destroy all copies of the OSIsoft Products within its possession or control. Licensee may terminate its license to the OSIsoft Products under



this Agreement at any time, with or without cause, by destroying all copies of the OSIsoft Products and Confidential Information associated with the OSIsoft Products within its possession or control, and in such event as it elects to terminate all licenses hereunder, Licensee shall notify OSIsoft in writing that the Agreement is terminated. Termination of this Agreement by either party will be a nonexclusive remedy for breach without prejudice to any other right or remedy of such party. The rights and obligations of the parties contained in Sections 3, and 6 through 10 will survive the termination of this Agreement.

## 10. General

**10.1 Assignment, Independent Contractors, Notices and Force Majeure.** Licensee must obtain OSIsoft's written consent prior to: (i) moving the OSIsoft Software from the location designated in the corresponding Order or (ii) assigning this Agreement or any licenses to OSIsoft Products granted hereunder to any third party or Licensee Affiliate. Licensee hereby acknowledges that as a condition to such consent OSIsoft may require Licensee or the proposed assignee, if applicable, to agree to update the OSIsoft Software to the then-current version, pay OSIsoft's then-current license fees and purchase a one year subscription of Software Reliance Program services at OSIsoft's then-current rate. In the case of an assignment or transfer to a third party or a Licensee Affiliate, OSIsoft may require the assignee to execute its then-current Software License and Services Agreement. Except as otherwise specified in writing by OSIsoft in its consent, Orders submitted by any assignee will be in accordance with OSIsoft's then-current list price. Any attempted assignment, whether by operation of law, as a result of any change in control (as control is defined in Section 2) of Licensee or otherwise without complying with this Section shall be null and void. The parties to this Agreement are independent contractors and neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent. All notices required or permitted under this Agreement will be sent to the address specified above (or such other address specified by the receiving party) in writing and will be deemed effective upon receipt. OSIsoft will not be responsible for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control.

**10.2 Disputes and Governing Law.** Any dispute arising out of or relating to this Agreement, including without limitation its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Commercial Rules of the American Arbitration Association (the "AAA"). The arbitration panel shall consist of a single arbitrator experienced in the enterprise software industry, selected and agreed to by the parties. If the

parties cannot agree upon selection of an arbitrator, then the AAA shall appoint the arbitrator. The place of the arbitration will be San Francisco, California. The arbitration will be conducted in English. The arbitrator shall apply the substantive law of California. The arbitrator shall provide detailed written findings of fact and conclusions of law in support of any award. Judgment upon any such award may be enforced in any court of competent jurisdiction. Notwithstanding the foregoing, OSIsoft may file an action in any court of competent jurisdiction to enforce its intellectual property rights in the OSIsoft Products without first submitting its claim to arbitration, Licensee hereby submits to the jurisdiction and venue of the federal or state courts located in San Francisco, California for this purpose. This Agreement will be governed by and construed in accordance with the laws of the State of California, excluding that body of law pertaining to conflicts of law and the United Nations Convention on Contracts for the International Sale of Goods. The prevailing party in any action arising from or relating to this Agreement shall be entitled to recover all attorneys' fees and costs including, without limitation, arbitration fees and fees of experts.

**10.3 Compliance with Laws; Government Approvals and Severability.** Licensee's use of the OSIsoft Products will comply with all laws, rules, and regulations of the United States and other countries that may be applicable to the OSIsoft Products. Without limiting the generality of the foregoing, Licensee acknowledges that the distribution and use of OSIsoft Products and any technical data related thereto (collectively "OSIsoft Technology") may be subject to U.S. export control laws and regulations including, but not limited to, the U.S. Export Administration Act of 1979, as amended, and the regulations promulgated there under. Licensee will not export or re-export, directly or indirectly, any OSIsoft Technology, to any destination for any use that is restricted by U.S. export control laws and regulations including, without limitation, to any party that is involved in sensitive or unguarded nuclear activities, or activities related to chemical or biological weapons or missiles, unless Licensee first obtains the required authorizations from the U.S. Department of Commerce or other appropriate governmental agencies. Licensee may not use the OSIsoft Products to operate or control any inherently dangerous application. Notwithstanding the preceding sentence, Licensee may use the OSIsoft Products in a commercial nuclear power facility so long as Licensee does not use the OSIsoft Products: (i) in any manner where failure of the OSIsoft Products would affect the operability of Licensee's facility or affect Licensee's ability to safely cease all operations of the facility; (ii) to control any safety related system or in any safety related application; or (iii) in any manner that would violate applicable laws or regulations. Licensee shall indemnify and hold OSIsoft harmless from any and all claims, liability, costs, damages and losses arising out of or related use of

the OSIsoft Products in violation of this section. OSIsoft shall have no responsibility to test, certify, validate or to take any other action regarding the OSIsoft Products with the Nuclear Regulatory Commission or any other governmental agency. Obtaining such approvals, if any, will be the sole responsibility of Licensee. Within ninety (90) days of the Effective Date, Licensee must, at Licensee's expense, obtain and arrange for the maintenance of all government approvals, if any

that may be necessary to make this Agreement effective in the locations where the OSIsoft Products are used by Licensee. If for any reason any part of this Agreement is found unenforceable, the remainder of this Agreement will be enforced to the maximum extent permissible.

10.4 **Use of Name in Customer List.** Licensee consents to OSIsoft's use of Licensee's non-stylized corporate name

in its marketing literature and customer lists. Licensee may withdraw such consent at any time with reasonable notice.

10.5 **Entire Agreement, Waiver and Language.** This Agreement is the entire agreement between OSIsoft and Licensee with respect to all OSIsoft products and services and their use, superseding any prior agreements or understandings related to any OSIsoft products or services, except for such other agreements OSIsoft expressly specifies. The Agreement contains the entire agreement between the parties with respect to the OSIsoft Products and services Ordered and delivered hereunder, and supersedes any prior or contemporaneous agreements, understandings, representations or warranties relating thereto. Except for the online Product Usage Terms and Software Reliance Program terms and conditions, this Agreement cannot be amended except by a writing which specifically references this Agreement and is signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date through their duly authorized representatives. Each individual signatory below hereby represents and warrants that they have full corporate power and authority to execute this agreement and bind the respective parties to the terms and conditions of this Agreement.

OSIsoft, LLC

Signature: \_\_\_\_\_

Name: Robert Guilbault  
COO

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

Date: 6/20/18

Licensee: City of Santa Clara dba Silicon Valley Power

Signature: \_\_\_\_\_

Name: Deanna J. Santana

Title: City Manager

Date: 8/31/18

APPROVED AS TO FORM:  
SANTA CLARA CITY ATTORNEY'S OFFICE

\_\_\_\_\_  
*Deanna J. Santana*