

LICENSE AND SOFTWARE SERVICES AGREEMENT (NON-EXCLUSIVE)

THIS LICENSE AND SOFTWARE SERVICES AGREEMENT (this “Agreement”) is made and entered into this _____, by and between Power Settlements Consulting and Software, LLC (hereinafter “Power”), a California limited liability company; and the City of Riverside (hereinafter “Licensee”), a California charter city and municipal corporation duly authorized and existing under the laws of the State of California.

RECITALS

WHEREAS, Licensee and Power entered into the Consulting Service Agreement (Non-Exclusive) effective as of January 15, 2009 (the “2009 Agreement”), and an Amendment to the 2009 Agreement effective as of July 16, 2009 (the “First Amendment”), and a Statement of Work effective as of November 20, 2009 (the “SOW 2009”), and an Amendment to the 2009 Agreement effective as of July 16, 2010 (the “Second Amendment”), and an Amendment to the 2009 Agreement effective as of June 15, 2011 (the “Third Amendment”), and an Amendment to the 2009 Agreement effective as of June 7, 2012 (the “Fourth Amendment”), and the SettleCore BI Module License Agreement effective as of November 1, 2012 (the “SettleCore BI Module Agreement”), and an Amendment to the 2009 Agreement effective as of July 1, 2013 (the “Fifth Amendment”), and an Amendment to the 2009 Agreement effective as of July 1, 2015 (the “Sixth Amendment”), and an Amendment to the 2009 Agreement effective as of July 1, 2017 (the “Seventh Amendment”); and

WHEREAS, Licensee and Power wish to enter into this License and Software Services Agreement (Non-Exclusive) to supersede the 2009 Agreement, and the First Amendment, and the SOW 2009, and the Second Amendment, and the Third Amendment, and the Fourth Amendment, and the SettleCore BI Module Agreement, and the Fifth Amendment, and the Sixth Amendment, and the Seventh Amendment; and

WHEREAS, Licensee and Power are entering into this License and Software Services Agreement (Non-Exclusive) for Licensee’s use and Software services of the Software for managing their CAISO (“California Independent System Operator, Inc.”) data; and

WHEREAS, Power is the owner of all right, title and interest in and to the software, documentation and related information, including the intellectual property rights embodied therein, known as the SettleCore System (collectively the “Software”) and as further defined in Section 1.1, below; and

WHEREAS, Licensee desires to install and operate the Software pursuant to the rights and licenses granted herein for Licensee’s non-exclusive use of the Software, and use of the documentation and related information for permissible purposes; and

WHEREAS, Licensee desires that Power provide additional services to remotely operate the Software as Software Services (the “Software Services”) as further described in Exhibit A, attached hereto and incorporated by reference herein; and

WHEREAS, Power is willing to grant such rights and licenses under the terms and conditions of this Agreement;

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

Article 1

DEFINITIONS

When used in this Agreement the capitalized terms listed below shall have the following meanings:

- 1.1 **“CAISO Allocations Module.”** The functionality within the SettleCore system that is used to disaggregate the CAISO’s charge codes, which are settled by the CAISO at the scheduling portfolio level. This module disaggregates these charge codes to the Licensee’s scheduling coordinator’s resources, to enable the users to review the charge code quantity, price, and amount by resource at the charge code’s time interval.
- 1.2 **“CAISO Bidding Module.”** The functionality within the SettleCore System that is used to create bidding formulas and bidding strategies which auto-create bid strings to be submitted to the CAISO’s SIBR system in the CAISO Scheduling Module.
- 1.3 **“CAISO ISO Downloader Module.”** The functionality within the SettleCore system that is used to download from the CAISO APIs and interfaces the Licensee’s (including entities to which Licensee is assigned as the scheduling coordinator by the CAISO) SIBR, CMRI, Master File, MRI-S, OASIS, ADS, and OMS files, in the CAISO-issued XML format, and to export the data to spreadsheets.
- 1.4 **“CAISO Outage Module.”** The functionality within the SettleCore System that is used to enter generation derates and outages that Licensee is required to submit to the CAISO’s OMS outage system. This module has a direct API interface to upload the generation outages to the CAISO’s OMS system.
- 1.5 **“CAISO Scheduling Module.”** The functionality within the SettleCore System that is used to schedule power schedules, including ancillary service self-provision and inter-SC trade quantities, as well as the ability to enter energy and ancillary service bid strings. This module has a direct API interface to the CAISO’s SIBR scheduling system, which allows the Licensee to automate the upload of their self-schedules, bid strings, and inter-SC trades to the CAISO’s SIBR system, and then to automate the download of the status and error messages from the CAISO’s SIBR system.
- 1.6 **“CAISO SettleCore Software.”** SettleCore System for the CAISO Market is comprised of the CAISO ISO Downloader Module, the CAISO Settlements Analyzer Module, the CAISO Shadow Settlements Modules, the CAISO Allocations Module, the CAISO Scheduling Module, the CAISO Outage Module, the Deal Capture Module, and, to the

extent Licensee subscribes pursuant to Sections 5.3(c), (d), (e), and (f), respectively, the CAISO Bidding Module, the Etag Module, the CAISO Visual Analytics Module, and the CAISO What-If Shadow Settlement Module. The SettleCore system for the CAISO market is further described in Exhibit A, and is used to interface with the CAISO. Software is comprised of Object Code and Documentation that is installed on a server(s) and accessed by the users on client computers.

- 1.7 **“CAISO Settlements Analyzer Module.”** The functionality within the SettleCore system that is used to load the Licensee’s (including entities to which Licensee is assigned as the scheduling coordinator by the CAISO) CAISO settlement files and invoices, in the CAISO-issued XML format, to review and analyze the CAISO settlement file data, and to export the CAISO settlement file data to spreadsheets.
- 1.8 **“CAISO Shadow Settlements Module.”** The functionality within the SettleCore system that is used to “shadow” (i.e., independently produce) an estimate and/or validation of a CAISO settlement file and to identify potentially disputable transactions, which occur when the shadow estimates do not match the CAISO settlement file charges and payments.
- 1.9 **“CAISO Software Services Fee.”** Consists of the Scheduling Software Fee and the Settlements Software Fee per Exhibit B.
- 1.10 **“CAISO Visual Analytics Module.”** The functionality within the SettleCore system that is used to graphically view Licensee’s CAISO resources and their components, including schedule, meter, dispatch, and deviation in an historical screen and a real-time screen.
- 1.11 **“CAISO What-If Shadow Settlement Module.”** The functionality within the SettleCore system that is used to enable Licensee’s users to import a pre-defined template with their provided “what-if” values that are then used in the shadow settlements routine to produce a what-if shadow settlement that may be compared to either the results of the CAISO Shadow Settlements Module or the CAISO settlement file charges and payments.
- 1.12 **“Code.”** Computer programming code. If not otherwise specified, Code shall include both Object Code and Source Code. Code shall include Maintenance Modifications and Enhancements thereto if, when, and to the extent that such Maintenance Modifications and/or Enhancements are delivered to Licensee by Power under this Agreement or under any other agreement or arrangement between the parties.
- 1.13 **“Deal Capture Module.”** The functionality within the SettleCore System that is used to enter and update power deals transacted between Licensee and its counterparties for the purchase and sale of power, ancillary services, transmission, and natural gas, including the Licensee’s counterparty, the term of the deal, the volume of the deal, the price of the deal, and the delivery point or location of the deal.
- 1.14 **“Discounts.”** As defined in Section 5.7 and Exhibit B.

- 1.15 “Documentation.”** User manuals and other written materials that relate to particular Object Code, including materials useful for operation (for example, user guides and training materials). Documentation shall include Maintenance Modifications and Enhancements thereto if, when, and to the extent that such Maintenance Modifications and/or Enhancements are delivered to Licensee by Power under this Agreement or under any other agreement or arrangement between the parties.
- 1.16 “Effective Date.”** The date in which this Agreement is fully executed as indicated in the first paragraph of the first page of this Agreement.
- 1.17 “Enhancements.”** Modifications, additions, or substitutions, other than Maintenance Modifications, made by Power to Code or Documentation that accomplish incidental, performance, structural, or functional improvements. Enhancements may consist of Basic Enhancements or Major Enhancements, as defined below:
- a. **“Basic Enhancements.”** Enhancements that result from warranty or maintenance services or that otherwise accomplish incidental, structural, functional, or performance improvements for which Power does not generally impose a separate charge on Licensee.
 - b. **“Major Enhancements.”** Enhancements that result in substantial performance, structural, or functional improvements or additions, including substantial redesign or replacement of any parts of the Source Code, for which Power does generally impose a separate charge on Licensee.
- 1.18 “Etag Module.”** The functionality within the SettleCore System that is used by Purchase Selling Entities (“PSEs”) to submit NAESB electronic tags (“Etag”). This module includes the functionality to create and submit Etags for North American bulk power transactions that are scheduled between balancing authorities, as required by NERC, via an Etag Agent Service.
- 1.19 “Initial Term.”** As defined in Section 9.1.
- 1.20 “Maintenance Modifications.”** Modifications, updates, or revisions made by Power to Code or Documentation that correct errors, support new releases of operating systems, or support new models of input-output (“I/O”) devices with which the Code is designed to operate.
- 1.21 “Object Code.”** Code in machine-readable form generated by compilation of Source Code and contained in a medium that permits it to be operated by Licensee. Includes the database and database design and layout provided in the Software.
- 1.22 “Power Recognized Holidays.”** In-service work days affecting Power’s availability in which Power will provide forty-eight (48) hours prior notice to licensee.
- 1.23 “Renewal Term.”** As defined in Section 9.1.

- 1.24 “Scheduling Software.”** Consists of the CAISO Scheduling Module, CAISO Outage Module, and the Deal Capture Module, and, to the extent Licensee subscribes pursuant to Sections 5.3(c) and (d), respectively, the CAISO Bidding Module, and the Etag Module.
- 1.25 “Scheduling Software Fee.”** The Fee per Exhibit B for the Scheduling Software.
- 1.26 “Settlements Software.”** Consists of the CAISO ISO Downloader Module, CAISO Settlements Analyzer Module, CAISO Shadow Settlements Module, and the CAISO Allocations Module, and to the extent Licensee subscribes pursuant to Sections 5.3 (e) and (f), respectively, the CAISO Visual Analytics Module and the CAISO What-If Shadow Settlement Module.
- 1.27 “Settlements Software Fee.”** The fee per Exhibit B for the Settlements Software.
- 1.28 “Software.”** Software means “CAISO SettleCore Software”.
- 1.29 “Source Code.”** Code in programming languages such as “C#” and “JavaScript”, including all database operations and procedures such as “SQL” and “SQL stored procedures”, plus all related development documents such as flow charts, schematics, statements of principles of operations, end-user manuals, architectural standards, and any other specifications that are used to create or that constitute the Software. Source Code shall also include the database tables and their design and layout, which are used by the Software.
- 1.30 “Term.”** Consists of the Initial Term and each Renewal Term collectively.

Article 2

LICENSE

- 2.1 Grant.** In consideration of the fees payable to Power pursuant to Article 5 hereof, and subject to the terms and conditions of this Agreement, Power hereby grants to Licensee a revocable, non-sublicensable, non-transferable, non-exclusive limited right and license (the “License”) to use and operate the Software.
- 2.2 Restrictions.** Licensee agrees to the following restrictions on the Software. Failure to adhere to these restrictions may result in the revocation of the License at the sole and unilateral discretion of Power if such failure is not cured by Licensee within a commercially reasonable period of time under the circumstances, in no case exceeding 60 days following Power’s notice to Licensee of such failure, except as specifically set forth herein:
- a.** The Software may be installed by the Licensee at only one site to be approved in writing in advance by Power. Such installation may be on Licensee’s network or in an off-

premise hosted environment, such as through Microsoft Azure or another hosting provider.

- b. Licensee may not reproduce or transfer the Software, or any copy, adaptation, transcription, or merged portion thereof, except as expressly permitted in writing by Power. Licensee's rights are non-exclusive and non-assignable. If Licensee transfers possession of any copy, adaptation, transcription, or merged portion of the Software to any other party, including, but not limited to, a successor in interest of Licensee's business that assumes all of the Licensee's obligations with respect to the Software, the Licensee's rights in the Software are automatically terminated.
- c. Licensee may (1) make a maximum of three copies of the Software in machine-readable form solely for testing, disaster recovery or archival purposes; and (2) use the Software only for internal purposes (and not for service bureau work, multiple-user licenses or time-sharing arrangements). Any copy of the Software made by Licensee: (a) will remain the exclusive property of Power; (b) be subject to the terms and conditions of this Agreement; and (c) must include all copyright or other notices contained in the original.
- d. Licensee does not and will not have or acquire under or in connection with this Agreement any ownership interest in the Software. Power is and will remain the sole and exclusive owner of all right, title, and interest in and to the Software and all modifications, customizations, and enhancements thereof (including ownership of all trade secrets and copyrights pertaining thereto and/or any rights in derivative works or improvements relating thereto), subject only to the rights and privileges expressly granted by Power hereunder.
- e. By accepting delivery of the Software Licensee acknowledges that Power claims and reserves all rights and benefits that are afforded under federal copyright law in the Software.
- f. The Source Code for the Software (and the information therein, excluding all of Licensee's data from the CAISO downloaded by the CAISO ISO Downloader Module into the Software's database(s), to the extent not otherwise apparent in the Object Code and the Documentation) is a trade secret of Power. Licensee is not entitled to receive Source Code, and under no circumstances may Licensee reverse-compile or reverse-assemble the Object Code.
- g. Licensee's obligations hereunder remain in effect for as long as it continues to possess or use the Software.
- h. Licensee shall not modify, correct, adapt, translate, enhance or otherwise prepare derivative works or improvements of any Software, nor make any updates to the database used by the Software, including but not limited to updates to the data, tables, layouts, or schema, as long as the Term of this Agreement is in effect. However, at any time during or after the Term of the Agreement, Licensee is permitted to add additional

tables to the database, using the customer's schema which does not overlap with the Software's database schemas.

- i. Licensee agrees that only employees of the Licensee shall be permitted to operate the Software and to access the database used by the Software. Any requests to operate the Software, or to access the database used by the Software, by non-employees of the Licensee (including but not limited to consultants or other agents), must be approved by Power in writing (with email being acceptable).
- j. Licensee shall be responsible for maintaining Licensee's hardware and software (installed on the server and client) are in proper working order.
- k. Licensee agrees that if the Agreement is terminated, as further described in Section 9.2, that the Software license is immediately revoked as of the termination date, and that the Licensee must permit Power to immediately uninstall the Software, including any and all copies made pursuant to Section 2.2(c), above.
- l. In consideration of the CAISO Software Services Fee paid pursuant to Section 5.3, the Software may be used by a maximum of thirty (30) named users of Licensee. During the Term of the Agreement, (a) the maximum number of named users will increase by ten (10) to forty (40) total users as long as Licensee continues to authorize the Customer List as described in Section 12.16 and (b) the maximum number of named users will increase by an additional ten (10) to fifty (50) total users as long as Licensee continues to authorize the Customer Quote as described in Section 5.7(a). Should Licensee revoke authorization of Customer List or the Customer Quote, or should Licensee desire to have more than fifty (50) named users while providing Customer List and Customer Quote, additional named users may be added at the rate of Two Thousand and no/100 Dollars (\$2,000.00) per year to the Software Services Fee, for each additional one (1) named user. In the event that Licensee reaches sixty (60) named Software users, then no additional fees will be assessed by Power to Licensee for additional named users thereafter. Notwithstanding the foregoing, only the Contract Management Module, as defined in Section 4.2(c) below, may be used by more than fifty (50) named users of Licensee at no additional cost to licensee.
- m. Licensee agrees that Licensee's Software users will not share Software accounts with any other individuals. Each Software user shall have their own login and password.

Article 3

SOFTWARE MAINTENANCE

- 3.1 CAISO Initiated Changes.** As indicated in Exhibit A, Power shall deliver to Licensee an updated version of the Software each time that the CAISO initiates a change that affects the Licensee and the existing functionality of the Software.

- 3.2 Bugs Identified by the Licensee.** As indicated in Exhibit A, each time that the Licensee reports an error in the functionality of the Software (“Bug”), and Power verifies the validity of the Bug, the Bug fix shall be included in the next scheduled delivery of the Software to Licensee, if feasible as determined by Power, provided that Licensee has reported the Bug to Power more than twenty-one (21) calendar days before the delivery date of the Software.
- 3.3 Bugs Identified by Other Customers of Power.** From time to time, Power shall issue updated versions of the Software which include Bug fixes identified by customers other than the Licensee identified in this Agreement. In the event any newly released Software, Module or Major Enhancement does not function properly, and to the extent Licensee spends time debugging any part of the Software, Module or Major Enhancement together with Power, and Power subsequently spends additional time fixing the problem, none of such time spent by Power shall count against Licensee’s free annual customization hours defined in Section 4.2 (a).
- 3.4 Complimentary Training.**
- a. Power shall provide Licensee with complimentary quarterly training at the Licensee’s request. Power will provide at least one of the quarterly trainings in person with the remaining trainings being a ninety (90) minute WebEx training.
 - b. Within a month of the execution of this agreement, Power shall provide Licensee with a complimentary training at the Licensee’s site.
 - c. For the avoidance of doubt, any and all training provided by Power under Section 3.4 shall be complimentary and shall not count against Licensee’s free annual customization hours defined in Section 4.2 (a).
- 3.5 Delivery of Maintenance Modifications and Basic Enhancements.** Power shall deliver to Licensee, when and as prepared by Power in the course of its business, all Basic Enhancements and Maintenance Modifications arising from time to time, for inclusion in the Software. However, Major Enhancements will not be included within the Software or Software Services.
- 3.6 User Guide.** Power shall provide a user guide to Licensee that describes navigating the various screens within the Software. Power shall provide updates to the user guide at least annually.

Article 4

SOFTWARE SERVICES

- 4.1 Software Services.** As further described in Exhibit A, Power shall provide the following Software Services to the Licensee on each business day, excluding federal holidays, CAISO holidays, and Power Recognized Holidays: ensure that all required CAISO files are loaded into the Software. Power is not required to perform a minimum number of hours to complete the Software Services. The Software Services shall also include the following:

- a. Power shall perform the Software Services, offsite, through a secure VPN or through a Citrix connection.
- b. Power shall perform all Software upgrades and patches (i.e., new versions of the Software) for Licensee unless Licensee elects in writing to have its internal IT group perform such Software upgrades and patches.

4.2 Software Customization.

- a. **CAISO Software Service Free Annual Customization Hours.** In consideration of the CAISO Software Services, Power shall provide two hundred (200) hours per year of software enhancement or report customizations requested by the Licensee, at no additional cost. Licensee may carryover a maximum of one hundred twenty-five (125) unused hours into the next Renewal Term. During the Term of the Agreement, the maximum number of carryover hours shall increase by an additional twenty-five (25) hours for each of the following additional modules subscribed to by the Licensee: (a) the CAISO Bidding Module as described in Section 5.3(c), (b) the Etag Module as described in Section 5.3(d), and (c) the CAISO Visual Analytics Module as described in Section 5.3(e). Power shall track and keep records regarding used, unused, and carried-over customization hours on a monthly basis, and will make such records available to Licensee upon Licensee's reasonable written request.

Furthermore, it is agreed by the Licensee, that any report customizations or enhancements made by Power, in consideration of the two hundred (200) hours per year, are solely owned by Power and may be incorporated into versions of the Software which is distributed to other customers of Power.

- b. **Additional Customization Hours.** Licensee requires Power to provide the option for Licensee to use Power's services for additional report development related to Licensee's data in the Software. This service shall be available to Licensee at the rate of Two Hundred and no/100 (\$200.00) per hour. This service shall be utilized only by the following steps: (a) Licensee requests an estimate from Power for the number of hours to complete the requested deliverable(s), (b) Power shall provide an estimate of the number of hours of development work that is estimated to be required to complete the deliverable(s), and (c) Licensee at its sole discretion may authorize Power to proceed with the development, with the understanding that the actual number of hours of development by Power may be more or less than the estimated number of hours.
- c. **Legacy Projects.** During the Initial Term, Power shall develop and provide to Licensee at no cost (i) a customized browser-based contract database and tickler system ("Contract Management Module"), and (ii) customized enhancements to the Scheduling Software ("Scheduling Software Enhancements"). Power and Licensee will work together in good faith to define the requirements of and development and delivery timeline for each of the Contract Management Module and the Scheduling Software Enhancements ("Scope of Work") by December 31, 2018. The Contract Management

Module and Scheduling Software Enhancements will be solely owned by Power and licensed to Licensee pursuant to this Agreement. For the avoidance of doubt, all time spent by Power in developing the Contract Management Module and the Scheduling Software Enhancements shall not constitute and/or count against Licensee's Free Annual Customization Hours defined in Section 4.2(a).

Article 5

PAYMENTS

- 5.1 Software License Fee.** The license fee that is assessed by Power to Licensee for the license of the Software (the "Software License Fee") will not be assessed by Power to Licensee in consideration of the CAISO Software Services Fee.
- 5.2 Software Installation Fee.** In consideration of payment for the CAISO Software Services Fee, the one-time Software installation fee will not be assessed by Power to the Licensee.
- 5.3 Software Services Fee.** For the Term of the Agreement and any subsequent extensions to the Term of the Agreement, Licensee shall pay CAISO Software Services Fee to Power less any Discounts as specified in Exhibit B under Annual Subscription Fee. The CAISO Software Services Fee includes the license of the Software and all maintenance and service support of the Software as described in Articles 3 and 4 above, and the functionality further described in Exhibit A.
- a. Inflation.** The CAISO Software Services Fee, as described in Exhibit B, will increase three (3%) percent upon the start of the first Renewal Term, July 1, 2019. The CAISO Software Service Fee will not increase during the second (2nd) and third (3rd) Renewal Terms. Upon the start of the Fourth (4th) Renewal Term, July 1, 2022, and each Renewal Term thereafter, the CAISO Software Services Fee shall increase two (2%) percent.
- b. Large Number of Resources.** In the event that Licensee (or that Licensee in combination with those entities to which Licensee is assigned as scheduling coordinator by the CAISO) schedules an average of forty-five (45) or more scheduling Resource IDs, including Transaction IDs as scheduled in SIBR, during a calendar month of the Term then the CAISO Software Services Fee for that month shall be increased by an additional three-hundred fifty and no/100 dollars (\$350.00) per additional Resource ID in excess of forty-five (45), up to a cap of five-thousand and no/100 dollars (\$5,000.00).
- c. Optional CAISO Bidding Module.** Power shall provide Licensee a sixty (60) day free trial of the CAISO Bidding Module for testing. Licensee may subscribe to the CAISO Bidding Module with written notice to Power provided to the email address in Section 12.4. Power shall install and provide training within thirty (30) days of Licensee's notice. After the end of the sixty (60) day free trial of the CAISO Bidding Module,

subscription to the CAISO Bidding Module shall increase the CAISO Software Services Fee by the amount specified in Exhibit B. Licensee may terminate subscription of this module with thirty (30) days written notice or upon mutual agreement. Subscription to the CAISO Bidding Module shall allow Licensee to carryover an additional twenty-five (25) hours of CAISO Software Service Free Annual Customization Hours as described in Section 4.2(a), which additional hours shall be forfeited if unused at the time Licensee terminates its subscription to this module.

- d. Optional Etag Module.** Power shall provide Licensee a sixty (60) day free trial of the Etag Module for testing. Licensee may subscribe to the Etag Module with written notice to Power provided to the email address in Section 12.4. Power shall install and provide training within thirty (30) days of Licensee's notice. After the end of the sixty (60) day free trial of the Etag Module, subscription to the Etag Module shall increase the CAISO Software Services Fee by the amount specified in Exhibit B. Licensee may terminate subscription of this module with thirty (30) days written notice or upon mutual agreement. Subscription to the Etag Module shall allow Licensee to carryover an additional twenty-five (25) hours of CAISO Software Service Free Annual Customization Hours as described in Section 4.2(a), which additional hours shall be forfeited if unused at the time Licensee terminates its subscription to this module.
- e. Optional CAISO Visual Analytics Module.** Power shall provide Licensee a four (4) month free trial of the CAISO Visual Analytics Module for testing. Licensee may subscribe to the CAISO Visual Analytics Module with written notice to Power provided to the email address in Section 12.4. Power shall install and provide in person training at Licensee's site within thirty (30) days of Licensee's notice. After the end of the four (4) month free trial of the CAISO Visual Analytics Module, subscription to the CAISO Visual Analytics Module shall increase the CAISO Software Services Fee by the amount specified in Exhibit B. Licensee may terminate subscription of this module with sixty (60) days written notice or upon mutual agreement. Subscription to the CAISO Visual Analytics Module shall allow Licensee to carryover an additional twenty-five (25) hours of CAISO Software Service Free Annual Customization Hours as described in Section 4.2(a), which additional hours shall be forfeited if unused at the time Licensee terminates its subscription to this module.
- f. Optional CAISO What-If Shadow Settlement Module.** Power shall provide Licensee a sixty (60) day free trial of the CAISO What-If Shadow Settlement Module for testing. Licensee may subscribe to the CAISO What-If Shadow Settlement Module with written notice to Power provided to the email address in Section 12.4. Power shall install and provide training within thirty (30) days of Licensee's notice. After the end of the sixty (60) day free trial of the CAISO What-If Shadow Settlement Module, subscription to the CAISO What-If Shadow Settlement Module shall increase the CAISO Software Services Fee by the amount specified in Exhibit B. Licensee may terminate subscription of this module with thirty (30) days written notice or upon mutual agreement.

5.4 Continued Use of Software after Term. In the event that this Agreement expires or is terminated per the conditions in Section 9.2, or the Licensee fails to pay the CAISO Software Services Fee for a period of 60 days after such fee is due, then Power shall not have any obligation to provide any support or maintenance of the Software to Licensee (including but not limited to Maintenance Modifications, Enhancements, Software Services, and Software Maintenance as further described in Article 3 and Article 4, and the services described in Exhibit A).

5.5 Medium of Payment. All payments are payable in U.S. dollars.

5.6 Payment Due Dates; Late Fees; Interest.

a. Software Services Fees for Initial Term. Licensee shall pay to Power a monthly CAISO Software Services Fee as described in Section 5.3 and Exhibit B. The monthly CAISO Software Services Fee shall be due starting with the first of the month following the execution of this Agreement and continuing on the first of each month throughout the Initial Term. For the avoidance of doubt, the monthly CAISO Software Services Fee shall be the column "Riverside Total Monthly Software Services Fees" in Exhibit B.

b. Software Services Fees for Renewal Term(s). Licensee shall pay to Power an annual CAISO Software Services Fee as described in Section 5.3 and Exhibit B. The annual CAISO Software Services Fee payment will be comprised of twelve (12) individual Licensee Monthly Fee, less any Discounts, due on the first day of each month beginning with the first monthly payment due on July 1, 2019. For the avoidance of doubt, the monthly CAISO Software Services Fee shall be the column "Riverside Total Monthly Software Services Fees" in Exhibit B.

b. Fees for Additional Customization Hours. Any Additional Customization Hours utilized by Licensee pursuant to Section 4.2(a) will be invoiced at the end of each calendar month in which Power performs the development of the Additional Customization Hours. Payment is due within 15 calendar days of invoicing.

c. Late Fees; Interest. In the event that any payment due to Power is not paid within five days of its due date, a late fee of 10% of the amount owed shall be due and payable to Power. Additionally, interest at the rate of ten percent (10%), or the greatest amount authorized by California statute, per annum shall accrue on the unpaid payment from the date due until paid.

5.7 Discounts. Power offers the following Discounts to Licensee.

a. Referral Discount. Licensee shall receive a referral discount of two and a half (2.5%) percent of the CAISO Software Service Fee, as specified in Exhibit B, for introducing Power to other potential Power customers which license various modules of the Software. Licensee shall receive a referral discount for a maximum of two potential Power customers that license Software with Power for a maximum total referral discount

of five (5%) percent. Licensee shall receive such referral discount as long as Power's Software is licensed by that Power customer. In no case may this discount result in any payments due from Power to Licensee.

- b. Legacy Discount.** Licensee shall receive a discount of two and a half (2.5%) of the CAISO Software Services Fee for continued extension of the software license. In no case may this discount result in any payments due from Power to Licensee.

5.8 Hosting Costs. In the event that Licensee elects to have the Software installed in an off-premise hosted environment, such as through Microsoft Azure or another hosting provider, Licensee shall be responsible for payment of all of the external hosting provider's fees ("Hosting Costs"). Licensee may, in its discretion, either: (a) create its own hosting provider account and pay the hosting provider's fees directly to the hosting provider; or (b) use Power's Microsoft Azure hosting account for the hosting services, in which case Power will invoice all of Licensee's hosting fees on Microsoft Azure at cost and Licensee will be responsible for the payment of the hosting fees within 30 days of being invoiced by Power.

5.9 Sales Tax. In the event that a municipal, county, state, or federal instrumentality or agency levies a sales or use tax on software or services provided by Power to Licensee under this Agreement, then Licensee shall be responsible for the payment of all such sales or use taxes. To the extent that sales or use tax on software or services provided by Power to Licensee under this Agreement is levied, if and only if Power collects sales or use tax in the state of the license, then Power will bill same to Licensee and separate out the sales or use tax on the invoice and Licensee will pay the sales or use tax amount to Power, and Power will then remit the same amount to the instrumentality or agency that levies the sales or use tax. If Power is not registered in the state of the license to collect sales or use tax then Licensee will remit the sales or use tax directly to the applicable governmental authority.

5.10 CAISO EIM Market Participation. In the event that Licensee transitions into the CAISO Energy Imbalance Market ("EIM") or into any other Independent System Operators ("ISOs") or Regional Transmission Organizations ("RTOs") other than the CAISO market, then the Software license will require an increase to the Software License Fee and the CAISO Software Services Fee for the additional functionality and support that will be needed. This fee will be negotiated in the future by the Parties.

Article 6

AUDITS

6.1 Audit Procedure. Power may, upon Power's request and with reasonable notice, inspect and audit Licensee's use of the Software under this Agreement at any time during the Term. Licensee shall make available all such equipment, information and personnel, and provide such cooperation and assistance, as may reasonably be requested by Power with respect to

such audit. Power shall reimburse Licensee for any unreasonable costs incurred.

- 6.2 Results of Audit.** If the audit determines that Licensee's use of the Software does not comport with the usage permitted by this Agreement and/or Licensee's obligations under this Agreement as set forth in Exhibit A, Licensee shall take immediate steps to bring itself into compliance with the Agreement. Licensee's failure to do so will constitute grounds for Power to terminate the Agreement for cause as set forth in Article 9.

Article 7

CONFIDENTIAL INFORMATION

- 7.1 Confidential Information.** Confidential Information means all information in the possession of Power or Licensee (each individually a "Party") which has value to that Party (or to a third party to whom the Party in possession owes a duty of confidentiality), which is not generally known in the industry, which is kept reasonably confidential by the Party in possession and which is known or should be known to the other Party to be of a confidential nature. By example and without limitation, Confidential Information includes any and all information concerning teaching techniques, processes, software, database designs, formulas, trade secrets, inventions, discoveries, improvements, research or development and test results, specifications, data, know-how, formats, marketing plans, business plans, strategies, forecasts, unpublished financial information, budgets, projections, and customer and supplier identities, characteristics, and agreements.
- 7.2 Non-Confidential Information.** Notwithstanding the other provisions of this Agreement, nothing received by either Party from the other Party will be considered to be Confidential Information if (i) it has been published or is otherwise readily available to the public other than by a breach of this Agreement; or (ii) it has been rightfully received by the non-disclosing Party from a third party without confidential limitations.
- 7.3 Protection of Confidential Information.** During the term of this Agreement and for five (5) years thereafter, each Party agrees to take all steps reasonably necessary to hold in trust and confidence the other Party's Confidential Information. Each Party agrees to hold such Confidential Information in strict confidence, not to disclose it to third parties or to use it in any way, commercially or otherwise, other than as permitted under this Agreement. Each Party agrees not to allow any unauthorized person access to such Confidential Information, either before or after termination of this Agreement, without the prior written consent of the other Party and without court order. Each Party agrees to limit the disclosure of Confidential Information to employees or independent contractors with a need to know, who have been advised of the confidential nature thereof, and who have acknowledged in writing the express obligation to maintain such confidentiality. Each Party further agrees to promptly notify the other Party of any unauthorized use or disclosure of Confidential Information and to take all reasonable steps in cooperation with the other Party to prevent further unauthorized use or disclosure.

Notwithstanding any other provisions of this Agreement, the Receiving Party's obligations under this Article 7 with respect to any Confidential Information that constitutes a trade secret under any applicable Law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable Laws other than as a result of any act or omission of the Receiving Party or any of its Representatives

- 7.4 Compelled Disclosures.** If either Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information of the other Party then, to the extent permitted by applicable Law, the receiving Party shall: (a) promptly, and prior to such disclosure, notify the disclosing Party in writing of such requirement so that the disclosing Party can seek a protective order or other remedy or waive its rights under Section 7.3; and (b) provide reasonable assistance to the disclosing Party in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the disclosing Party waives compliance or, after providing the notice and assistance required under this Section 7.4, the disclosing Party fails to obtain a timely protective order or other limitation on disclosure, the receiving Party remains required by Law to disclose any Confidential Information, the receiving Party shall disclose only that portion of the Confidential Information that the receiving Party, in its sole discretion, determines that it is legally required to disclose.

Article 8

REPRESENTATIONS AND WARRANTIES

- 8.1 Mutual Representations and Warranties.** Each Party represents, warrants and covenants to the other Party that:
- (a) it is duly organized, validly existing and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization;
 - (b) it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses and authorizations it grants and is required to grant under this Agreement;
 - (c) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such Party; and
 - (d) when executed and delivered by both Parties, this Agreement will constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

8.2 Power's Representations and Warranties.

a. Right and Authority. Power represents and warrants that:

- (i) it is the owner of the Software and Documentation (including all intellectual property rights therein under copyright, patent, trademark, trade secret, and other applicable law);
- (ii) it has the full and sufficient right and authority to grant the rights and licenses granted herein;
- (iii) the Software and Documentation have not been published under circumstances that have caused loss of any U.S. copyright therein; and
- (iv) the Software and Documentation, to the best of Power's knowledge, do not infringe any copyright or other intellectual property right of any third party.

b. Adequacy of Software and Documentation. Power represents and warrants that:

- (i) the Software and Documentation are and shall be reasonably understandable and reasonably usable by the Licensee's users.

c. Conformity, Performance, and Compliance. Power represents and warrants that:

- (i) the Software to be delivered by Power hereunder have been prepared in a workmanlike manner and with professional diligence and skill,
- (ii) such Software will reasonably function on the machines and with operating systems for which they are designed, as further explained in Exhibit A,
- (iii) such Software conform to the specifications and functions relating thereto, and
- (iv) Power shall trouble-shoot and provide timely repair for any software bugs.

8.3. Limitation of Warranties. Power does not assume any responsibility for any processes performed by Licensee utilizing the Software or the Software Services. Power shall not be deemed to make, or to have made, any express or implied warranties of any kind, character or description, including, but not limited to, fitness for a particular purpose or the warranty of merchantability concerning the Software or the Software Services, except as expressly stated in this Agreement.

Article 9

TERM

- 9.1 Term of Agreement.** This Agreement shall commence upon the Effective Date and continue until June 30, 2019 (“**Initial Term**”), unless earlier terminated pursuant to Section 9.2. Subject to Section 9.2, after the end of the Initial Term, and after the end of each subsequent one (1) year period from July 1 through June 30 (each a “**Renewal Term**”), this Agreement will automatically renew for an additional Renewal Term. The Initial Term and each Renewal Term collectively make up the “Term” of this Agreement. Except as otherwise provided in Section 9.2(a), the Software License Fees and the CAISO Software Services Fees provided for under this Agreement are fully earned by Power when due and payable hereunder and are not subject to refund or offset notwithstanding the early termination of this Agreement by either Power or Licensee.
- 9.2 Termination.** This Agreement may be terminated upon the occurrence of any of the following events:
- a. Termination At Will, Without Cause. Power may terminate the Agreement without cause upon ninety (90) days written notice to Licensee. Licensee may terminate the Agreement without cause upon ninety (90) days written notice to Power, provided that the notice is issued no fewer than ninety (90) days after the beginning of the Initial Term.
 - b. Termination by Mutual Agreement. Licensee and Power may terminate or modify the terms of this Agreement by written agreement executed by both parties.
 - c. Termination For Cause. In addition to the foregoing, either Party may terminate this Agreement, or modify the Agreement, at any time for just cause, herein defined as the happening of any of the following occurrences or acts:
 - (i) A receiver for either Party is appointed or applied for, or a petition under any bankruptcy chapter is filed by or against either Party, or either Party becomes insolvent or makes an assignment for the benefit of creditors, or is unable to pay its debts as they become due, or, if there is any levy, attachment or similar action that is not vacated or removed by payment or bonding within ten (10) days of such levy or attachment; or
 - (ii) Either Party is charged with unethical or illegal practices or acts thereby jeopardizing, the other Party’s good name and good will; or
 - (iii) Either Party fails to perform a material condition or delegation of this Agreement that adversely and substantially affects the interests of the other Party, by giving written notice of termination to the other Party. The Party in breach shall have thirty (30) days from written notification to cure such breach or the other Party may terminate.

- 9.3 Survival.** In the event of the termination of this Agreement, in whole or in part, the provisions of Articles 2, 7, 8, 10, and 11 shall survive and continue in effect.

Article 10

LIMITATIONS ON LIABILITY

- 10.1 Exclusion of Consequential Damages, Etc.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY (a) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY OR (b) CONSEQUENTIAL, INDIRECT, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO FAILURES OR LIMITATIONS OF THE SOFTWARE OR SOFTWARE SERVICES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.
- 10.2 Limit on Damages.** EXCEPT FOR THE PARTIES' OBLIGATIONS PROVIDED IN ARTICLES 7 AND 11, EACH PARTY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT OF ONE HUNDRED AND NO/100 U.S. DOLLARS (\$100.00).

Article 11

INDEMNIFICATION

- 11.1 Indemnification by Licensee.** Licensee shall indemnify, defend, and hold harmless Power and its officers, directors, shareholders, members, employees, agents, representatives, and customers (collectively, "Power Indemnitee") against all liability, claims, costs, damages, and expenses incurred by Power Indemnitee relating to or arising from: (a) a claim that Licensee's use of the Software in combination with any hardware, software, system, network, service or other matter whatsoever that is neither provided by Power nor authorized by Power in this Agreement (including the Documentation), infringes any patent, copyright, trademark, trade secret, or other proprietary right of a third party; (b) a breach by Licensee of any representation, warranty, covenant or obligation under this Agreement; (c) negligence, abuse, misapplication, misuse or more culpable act or omission (including recklessness or willful misconduct) by or on behalf of Licensee or any of its Representatives with respect to the Software or Documentation or otherwise in connection with this Agreement, including without limitation failure to appropriately service, support, or maintain the Software after the term of this Agreement; or (d) use of the Software or Documentation by or on behalf of Licensee or any of its Representatives that is outside the purpose, scope or manner of use authorized by this Agreement or the Documentation, or in any manner contrary to Power's instructions.

- 11.2 Indemnification by Power.** Power shall indemnify, defend, and hold harmless Licensee and its officers, directors, shareholders, members, employees, agents, representatives, and customers (collectively, “Licensee Indemnatee”) against all liability, claims, costs, damages, and expenses incurred by Licensee Indemnatee relating to or arising from a claim that the Software, or any use of the Software in accordance with this Agreement (including the Documentation), infringes any patent, copyright, trademark, trade secret, or other proprietary right of a third party.

Notwithstanding the foregoing, Power will have no obligation under this Agreement to indemnify or defend a Licensee Indemnatee against an intellectual property infringement claim relating to or arising from: (a) open-source components or other third-party materials; (b) incorporation by the Software of, or combination, operation or use of the Software in or with, any technology (including any software, hardware, firmware, system or network) or service not provided by Power or specified for Licensee’s use in the Documentation or this Agreement, unless otherwise expressly permitted by Power in writing; (c) modification, support, or maintenance of the Software other than: (i) by Power in connection with this Agreement; or (ii) with Power’s express written authorization and in strict accordance with Power’s written directions and specifications; (d) failure to timely implement any Maintenance Release, modification, update or replacement of the Software made available to Licensee by Power; (e) use of the Software after Power’s notice to Licensee of such activity’s alleged or actual infringement, misappropriation or other violation of a third party’s rights; (f) negligence, abuse, misapplication or misuse of the Software or Documentation by or on behalf of Licensee; (g) use of the Software or Documentation by or on behalf of Licensee that is outside the purpose, scope or manner of use authorized by this Agreement or in any manner contrary to Power’s instructions; or (h) events or circumstances outside of Power’s commercially reasonable control (including any third-party hardware, software or system bugs, defects or malfunctions).

- 11.3 Indemnification Procedure.** Each Party shall promptly notify the other Party in writing of any Action for which such Party believes it is entitled to be indemnified pursuant to Section 11.1 or Section 11.2. The Party seeking indemnification (the “Indemnatee”) shall cooperate with the other Party (the “Indemnitor”). The Indemnitor may in its sole discretion take control of the defense and investigation of such Action and employ counsel of its choice to handle and defend the same. The Indemnatee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

Article 12

MISCELLANEOUS

- 12.1 Freedom of Action.** This Agreement shall not be construed to limit Licensee’s right to obtain services or software programs from other sources, nor shall this Agreement be construed to limit Power’s right to grant others any further non-exclusive right or license of the Software and Documentation. This Agreement alone establishes the rights, duties, and obligations of Licensee and Power with respect to the subject matter hereof. Licensee

shall have no right or interest whatsoever in any software of Power other than the rights and licenses in the Software and Documentation granted herein, whether such software is conceived or developed by Power before, during, or after the course of Power's performance of this Agreement.

- 12.2 Independent Contractor.** With respect to all duties performed by Power pursuant to this Agreement, Power shall be deemed to be an independent contractor.
- 12.3 Rights and Obligations After Notice of Termination.** If Power gives notice of termination of this Agreement, or if it becomes known that this Agreement will otherwise terminate in accordance with its provisions, Licensee shall return to Power all Software, Documentation, and other items of property owned by Power forthwith after termination.
- 12.4 Notices.** Unless otherwise stated herein, all notices or other communications required or permitted hereunder shall be in writing including email form, and shall be personally delivered including through email or sent by registered or certified mail, postage prepaid, return receipt requested, delivered or sent by overnight courier and shall be deemed received upon the earlier of: (i) If personally delivered or delivered through email, the date of delivery to the address of the person to receive such notice; (ii) If mailed, three (3) business days after the date of posting by the United States post office; and (iii) If sent by overnight courier, when delivered to the specified address.

To Power: Power Settlements Consulting and Software, LLC
2011 East Financial Way
Suite # 116
Glendora, CA 91741
Telephone Number: (626) 676-9387
Facsimile: N/A
Electronic Mail: david.dan@powersettlements.com

To Licensee: **City of Riverside Public Utilities Department**
Contracts and Projects Manager
3435 14th Street, Suite 100
Riverside, CA 92501
Electronic Mail: mochotorena@riversideca.gov

Notice of change of address shall be given by written notice in the manner detailed in this section. Rejection or other refusal to accept, or the inability to deliver because of changed address of which no notice was given, shall be deemed to constitute receipt of the notice, demand, request or communication.

- 12.5. Required Actions of Power and Licensee.** Power and Licensee agree to effectuate the intent of this Agreement.

- 12.6 Captions.** Any captions to, or headings of, the section or subsections of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.
- 12.7 No Obligations to Third Parties.** Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties hereto, to any person or entity other than the parties hereto.
- 12.8 Amendment.** The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.
- 12.9 Waiver.** The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.
- 12.10 Applicable Law and Venue.** The terms and provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflicts of laws' provisions. Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in the Superior Court, County of Riverside, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.
- 12.11 Entire Agreement.** This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Power and Licensee as to the subject matter hereof. No subsequent agreement, representation or promise made by either Party hereto, or by or to any employee, officer, agent or representative of either Party shall be of any effect unless it is in writing and executed by the Party to be bound thereby.
- 12.12 No Presumption.** Each provision of this Agreement has been independently and freely negotiated by both Parties as if this Agreement were drafted by both Parties. In the event of any ambiguity in this Agreement, the parties waive any presumption or rule requiring or permitting interpretation of said ambiguity against or in favor of either Party.
- 12.13 Severability.** If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.
- 12.14 Attorney's Fees.** In the event either Party hereto shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition of this Agreement, it is mutually agreed that each Party will bear their own attorney's fees and costs.

- 12.15 Binding on Successors; Assignment.** This Agreement and the benefits and obligations hereunder shall be binding upon and inure to the benefit of the representatives, assigns and successors of the parties hereto. This Agreement may not be assigned by either Party without the prior written consent of the other Party.
- 12.16 Customer List.** Power may disclose Licensee as a customer of Power's on Power's website.
- 12.17 Testimonial.** Licensee agrees to provide a testimonial about the benefits of the Software, which Power may post on its website and use in its marketing materials.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

POWER:

Power Settlements Consulting and Software, LLC

By:



David Dan, President

LICENSEE:

City of Riverside

By:

Printed Name: _____

Title: _____

CERTIFIED AS TO FUNDS AVAILABILITY:

BY:



Chief Financial Officer/ City Treasurer

APPROVED AS TO FORM:

BY:



ASSISTANT CITY ATTORNEY

EXHIBIT A

Article 1

SOFTWARE SERVICES

The Software Services are comprised of the CAISO Software Services.

- 1.1 CAISO Software Services.** Power shall provide the following daily Software services to the Licensee on each business day, excluding federal holidays, CAISO holidays, and Power Recognized Holidays:
- a. Ensure that the CAISO ISO Downloader has downloaded the Licensee's CAISO files (or the CAISO files of those entities to which Licensee is assigned as scheduling coordinator by CAISO) (see definition of "CAISO ISO Downloader Module"); and
 - b. Run the shadow settlement routine and validation routine; and
 - c. Communicate, via email or verbally, with a Licensee user that the CAISO Software Service has been performed.
- 1.2 Limitation of the CAISO Software Services.** Power shall provide the CAISO Software Services within the following manner:
- a. Power is not required to perform a minimum number of hours to complete the CAISO Software Services.
 - b. Power shall perform the CAISO Software Services, offsite, through a secure VPN or Citrix connection.
- 1.3 CAISO Software Service Software Maintenance and Support.** Power shall provide the Software Maintenance Software Services, as described below:
- a. Power shall perform, or provide to Licensee's IT group if preferred by Licensee, all Software Maintenance Modifications (i.e., updated versions of the Software, which are issued to the customers of Power; include bug fixes) for the Licensee, including updates to the Software that are required after CAISO market changes which are considered Basic Enhancements; and
 - b. Power shall only perform the Software Maintenance Modifications in one test environment, one market simulation environment, and one production environment.

Article 2

OBLIGATIONS OF THE LICENSEE FOR THE SOFTWARE SERVICES AND SOFTWARE

2.1 Obligations of the Licensee. In order for Power to perform the Software Services and for the Software to function as required, the Licensee shall be required to fulfill the following obligations. Failure of the Licensee to meet the obligations below, (1) may result in adverse performance of the Software and Software Services, and (2) shall not relieve the Licensee of any obligations of Payment for the Software and/or Software Services for the Term.

a. Licensee shall be responsible for providing a production environment, which the Software will be installed on, which is comprised of:

- Two servers, which the Software is installed on in a production environment. The first server's hardware shall be comprised of (1) a minimum of four Intel Xeon core processors or a higher version, (2) a minimum of sixty-four (64) gigabytes of RAM, and (3) twelve terabyte hard drives, where one of the hard drives is the primary hard drive and the other hard drive is a backup hard drive. The second server's hardware shall be comprised of (1) a minimum of four Intel Xeon core processor or a higher version, (2) a minimum of sixty-four (64) gigabytes of RAM, and (3) one terabyte of space on the primary hard drives and two terabytes of space on the backup hard drives.
- The following software shall be installed on the server with the Software (1) an operating system that is one of the following: Microsoft Windows Server 2012R2 or higher, (2) a database consisting of Standard SQL Server 2008R2 or 2012 edition or higher, or the Enterprise SQL Server 2008R2 or 2012 edition or higher including SQL Server Analysis Services, and SQL Server 2016 beginning in the first quarter of 2019 and (3) the Microsoft .Net Framework version 4.5 or higher.
- Each client that accesses the server with the Software shall have the following hardware: (1) an Intel processor, which shall be a Pentium P4 processor or a higher version, (2) have a minimum of two gigabytes of RAM, and (3) a hard drive with at least twenty gigabytes of free space.
- Each client terminal that accesses the server with the Software shall have the following software: (1) an operating system that is one of the following: Microsoft Windows 2008 or higher, (2) the Microsoft .Net Framework version 4.5 or a higher version, (3) the Chrome browser, and (4) Microsoft Excel 2007 or higher version.

b. Licensee shall be responsible for installing and maintaining the hardware and software described above, not including the Software modules. Such offsite hosted or on-premise servers utilized by Licensee shall provide all administrative rights and privileges

required by Power to install, test and maintain the Software.

- c. Licensee, or Licensee's hosting provider if an off-premise installation is selected by Licensee, shall be responsible for the availability of the hardware and software described above, not including the Software modules.
- d. Licensee shall be responsible for performing and retaining the Software database backups.
- e. Licensee shall be responsible for ensuring that Power has full administrative privileges to the server with the Software (includes full administrative access to the Microsoft SQL Server 2008 or 2012 database or higher version; and SQL Server 2016 beginning in the first quarter of 2019).
- f. Licensee shall be responsible for installing and maintaining a secure VPN (virtual private network) or for providing a secure Citrix connection for Power to provide the Software Services.
- g. Licensee, or Licensee's hosting provider if an off-premise installation is selected by Licensee, shall be responsible for ensuring that the hardware is in proper working order.
- h. Licensee shall be responsible for providing a minimum bandwidth of 0.5 Mbps on the VPN, or Citrix connection, at all times.
- i. Licensee shall be responsible for providing that the VPN or Citrix connection is secure.
- j. Licensee shall be responsible for ensuring that Power has access through the VPN or Citrix connection during normal business hours, five days a week.
- k. Licensee shall be responsible for providing the certificates required by the CAISO to access the files that are uploaded and downloaded by the CAISO SettleCore Software.
- l. Power shall be reasonably available to provide support to Licensee during normal business hours between 8:00 a.m. through 6:00 p.m. Pacific Prevailing Time on all business days excluding federal and CAISO holidays.
 - (1) During normal business hours, Power shall be available for Licensee's users via email at support@powersettlements.com.
 - (2) During normal business hours, Power shall be available for Licensee's users via telephone at Power's office phone number 626.385.6893 extension 1.
 - (3) Power shall provide extended support for the Scheduling Software on non-business days, including federal holidays, CAISO holidays, and Power Recognized Holidays, as needed to address critical issues preventing Licensee from submitting power schedules via the Software.

EXHIBIT B

SOFTWARE SERVICES FEE

As of October 22, 2018

CAISO Software Services Fee		Annual Software Services Fees	Riverside Subscribed Annual Software Services Fee	Riverside Monthly Software Services Fee	Less 2.5% Referral Discount (Pasadena Customer)	Less 2.5% Referral Discount (Vernon Customer)	Less 2.5% Referral Discount (Legacy Customer)	Riverside Total Monthly Software Services Fees
Settlements Services Fee includes the following modules: CAISO ISO Downloader Module CAISO Settlements Analyzer Module CAISO Shadow Settlements Module CAISO Allocations Module		\$ 132,502.00	\$ 132,504.00	\$ 11,042.00	\$ (276.05)	\$ (276.05)	\$ (276.05)	\$ 10,213.85
	Scheduling Software Fee includes the following modules: CAISO Scheduling Module CAISO Outage Module Deal Capture Module	\$ 94,421.00	\$ 94,421.00	\$ 7,868.42	\$ (196.71)	\$ (196.71)	\$ (196.71)	\$ 7,278.29
	CAISO Bidding Module	\$ 18,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	Etag Module	\$ 18,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	Visual Analytics Module	\$ 10,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	What-if Shadow Settlements Module	\$ 10,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total		\$ 282,923.00	\$ 226,925.00	\$ 18,910.42	\$ (472.76)	\$ (472.76)	\$ (472.76)	\$ 17,492.14

This Exhibit shall be updated to reflect price changes per Section 5.3(a) and any subscription changes per Section 5.3(c), Section 5.3(d), Section 5.3(e), or Section 5.3(f). For the avoidance of doubt, if Licensee selects any of the optional modules in these sections, then for these modules, the column "Riverside Total Monthly Software Services Fees" which currently does not have values in the above table for these modules, for each optional module subscribed by Licensee will be equal to the column "Annual Software Services Fees" divided by 12, and then each of the three 2.5% discounts will be subtracted from this amount.