

April 3, 2017

Matthew Yates
Peak Reliability
4850 Hahns Peak Drive, Suite 120
Loveland, CO 80537-6001
Email: myates@peakrc.com

RE: 1) Notice of Contract Award - Hosted Advanced Applications (CS-1084)
2) Transmittal - Executed Agreement between the City and County of San Francisco
Public Utilities Commission and Peak Reliability

Dear Mr. Yates:

This letter provides a *notification of contract award* for the following contracted work:

BLANKET PURCHASE ORDER NO: **BPUC17000080**
*- Work may not be charged against this
blanket purchase order number*

SCOPE: To provide services for the Hosted
Advanced Applications system, a set of
reliability tools to provide enhanced
situational awareness of pre- and post-
contingency system conditions that help
Transmission Operators to reliably
monitor their system and to meet their
compliance obligations.

EFFECTIVE DATE: **April 3, 2017 to December 31, 2017**

CONTRACT TO DATE: Total value of contract not to exceed
\$86,250.00

Invoices must be charged against specific task orders only after a *Notice to Proceed* has
been issued.

Should you have any questions, please do not hesitate to contact Rosiana Angel at (415)
554-1549.

Enclosure: Executed Agreement

cc: Margaret Hannaford
File/NCA-CS-1084

Edwin M. Lee
Mayor

Anson Moran
President

Ike Kwon
Vice President

Ann Moller Caen
Commissioner

Francesca Vietor
Commissioner

Vince Courtney
Commissioner

Harlan L. Kelly, Jr.
General Manager



HOSTED ADVANCED APPLICATIONS AGREEMENT

This Hosted Advanced Applications Agreement (the "**Agreement**"), dated as of April 1, 2017 (the "**Effective Date**"), is by and between the City and County of San Francisco ("**Customer**"), a municipal corporation, acting by and through its Public Utilities Commission ("SFPUC"), and Peak Reliability, a Utah non-profit Corporation with offices located at 7600 NE 41st Street, Vancouver, WA, and 4850 Hahn's Peak Drive, Loveland, CO ("**Peak**").

WHEREAS, Peak is willing to provide the Services in accordance with the terms of this Agreement and Customer wishes to procure them; and

WHEREAS, the Services will enable the SFPUC to transmit power reliably in accordance with good utility practice consistent with San Francisco Administrative Code Sections 21.04(a)(6) and 12B5-1(f); and

WHEREAS, the SFPUC surveyed available tools and determined that there is no other tool currently available that meets SFPUC's needs cost-effectively;

Now, THEREFORE, the parties agree as follows:

1. Definitions.

"**Authorized Users**" means all Persons authorized by Customer to access and use the Services through Customer's account under this Agreement each of which shall be identified by Customer's written notice to Peak as set forth in Schedule A as the same may be amended by Customer from time to time. Each Customer shall ensure that any Authorized User is approved for access to real-time transmission and generation information. Access to this information is governed by the Peak Reliability Universal Data Sharing Agreement executed by each Customer or any subsequent version thereof as may be amended, revised, renewed or some combination the preceding(the "Universal Data Sharing Agreement"). Information accessed through or available via use of the Services may not be shared with individuals associated with the marketing of energy.

"**Business Day**" means a day other than a Saturday, Sunday or any federally recognized holiday.

"**Documentation**" means all generally available documentation relating to the Services, including all user manuals, operating manuals and other instructions, specifications, documents and materials, in any form or media, that describe any component, feature, requirement or other aspect of the Services, including any functionality, testing, operation or use thereof.

"Intellectual Property Rights" means any and all rights comprising or relating to: (a) patents, patent disclosures and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith; (c) authorship rights, copyrights and copyrightable works (including computer programs) and rights in data and databases; (d) trade secrets, know-how and other confidential information; and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection provided by applicable Law in any jurisdiction throughout the world.

"Law" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement or rule of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

"Loss" means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

"Person" means an individual, corporation, partnership, joint venture, Limited Liability Company, governmental authority, unincorporated organization, trust, association or other entity.

2. Services.

2.1 Services. Throughout the Term and at all times in connection with its actual or required performance under this Agreement, Peak shall, in accordance with all terms and conditions set forth in this Agreement and any applicable Service Order, provide to Customer through Customer's Authorized Users the following services ("**Services**"):

(a) Peak will host, manage and operate the Services and other services for remote electronic access and use by the Customer and its Authorized Users as described herein. More specifically, Peak will make available to Customer read only Supervisory Control and Data Acquisition information (SCADA), network information results, and output as determined by the Peak state estimator (RTNET) and real-time contingency analysis (RTCA). Additionally, Peak will make available its study network applications (STNET) for those Customers that have demonstrated their possession of an appropriate license from Alstom Grid, Inc. ("Alstom");

(b) To facilitate providing the Services, Peak will make available to Customer appropriate Clones, sometimes referred to as Seats, as agreed to with Peak's Energy Management System vendor Alstom. Alstom defines a Clone to be an EMS instance of

an application and the associated databases required to run an application. For purposes of this Agreement, Peak and Customer agree on this definition of the term Clone. The Customer study Clones will reside on a single operating system instance to facilitate the sharing of data and savecases amongst the Customers. The Customer network application sharing environment will have the following requirements associated with the use of study application Clones:

- (i) If a Customer is approved for STNET access as indicated by Customer's possession of an appropriate license from Alstom, such Customer's will be allocated up to four STNET Clones that allow for study functionality.
- (ii) Alstom PERMIT application will be used as necessary to model different user roles to ensure that Customer Authorized Users have access to the appropriate application clones.

(c) RTNET – Peak RTNET executes every minute. Peak will create a savecase once for each five (5) minute interval that results in a “Valid” or “Solved with Mismatch” solution. Except for Scheduled Downtime, Peak will transfer to a shared environment and upload into RTNET the “Valid” or “Solved with Mismatch” savecase. Customer will be able to use RTNET application displays to review solution quality, solution input, and solution output.

(d) RTCA - The Peak RTCA tool runs every five (5) minutes. Except for Scheduled Downtime, Peak will transfer and upload to a shared environment the most current RTCA result at least every five (5) minutes. The RTCA results transferred to a shared environment are subject to the following parameter(s):

- (i) Peak's RTCA uses the single facility contingencies (SFC), the multiple facility contingencies (MFC), and the Remedial Action Schemes (RAS) models that Peak uses in real-time operations thus any simulations Peak transfers to Customer will have resulted from simulations using these parameters, factors, or inputs.

(e) Study Network Applications or STNET Capability – Peak STNET includes both Power Flow (PF) and Study Contingency Analysis (STCA). Except for Scheduled Downtime, Peak will provide access to its STNET for those Customers that have demonstrated their possession of a valid and appropriate license from Alstom.

- (i) Peak will provide the capability for appropriately licensed Customers to retrieve RTNET cases into their respective STNET clone.

- (ii) Peak will provide to Customer Peak's STNET one-line diagrams, both substation and area overview, for ease of reviewing STNET solution information.
 - (iii) The STCA will provide simulation results for all the single facility contingencies (SFC), the multiple facility contingencies (MFC), and the Remedial Action Scheme (RAS) models that are used by Peak for use in real-time operations, however, Customer can alter or add to, at Customer's discretion those SFC, MFC, or RAS within Customer's STNET Clone.
 - (iv) The STCA available from Peak will also provide a user interface that allows the Customer to disable groups of contingencies or individual contingencies.
- (f) Peak will provide Customer capability to share certain studies including among Customer Clones. Peak shall meet the following requirements for case sharing:
- (i) Except for Scheduled Downtime, Peak will automatically move a RTNET savecase as previously described to the Customer's shared file system every five (5) minutes. For appropriately licensed customers as described in this Agreement, the RTNET savecase will be able to be loaded into a Customer's STNET application using standard STNET user interfaces.
 - (ii) Peak will provide the ability for Customers to create their own STNET savecases and make those available to other Customers on a common, shared file system.
 - (iii) Customers are prohibited from using other Customer's Clones, however, STNET functionality will allow any Customer to initialize its STNET session from another Customer's STNET clone.
 - (iv) Peak will provide for RTNET savecases to be available for upload to STNET via Alstom Savecase Manager for thirty (30) consecutive days.
- (g) Peak will enable the export of STNET study cases into Alstom's bus branch PTI version 30 format and in whatever current version of Csv – Flat File format that Peak currently produces.
- (h) SCADA – Peak will transfer and upload to a shared environment the most current SCADA data at least every five (5) minutes to enable Customers to utilize SCADA substation online displays and overview displays that are used by Peak in real-time operations

(i) Time Format - Savecase and other export timestamps will be provided in MST.

2.2 License to Use the Services. In accordance with the Services provided by Peak and described herein, and subject to the terms and conditions of this Agreement and any and all applicable Service Orders, Peak hereby grants to Customer a nonexclusive, non-transferable, non-assignable, royalty-free, worldwide, cost free license to access and use the Services during the Term of the Agreement subject to termination by Customer or Peak in accordance with Section 6.

2.3 Service Orders. Service Orders will be effective only when signed by Customer and Peak. Any modifications or changes to the Services under any executed Service Order will be effective only if and when memorialized in a mutually agreed written change order ("**Change Order**") signed by both Parties, provided, however, that for any Services provided on a limited basis (for example, on a per user, server, CPU or named-user basis), Customer may, request additional services from Peak hereunder subject to a corresponding forward-going adjustment of the Fees to reflect these changes in accordance with any necessary pricing change or otherwise in an applicable Service Order. Any Services Orders executed by Customers are by this reference incorporated in and made a part of this Agreement.

2.4 Compliance with Laws. Peak shall comply with all applicable Laws as they concern this Agreement or the subject matter hereof, including by securing and maintaining all required and appropriate visas, work permits, business licenses and other documentation and clearances necessary for performance of the Services.

2.5 Subcontracting. Peak may subcontract any Services, in whole or in part without Customer's prior written consent, provided, however, that any such subcontractors or contractors will be bound by confidentiality obligations consistent with Peak's confidentiality obligations expressed herein or in other agreements specifically including the Universal Data Sharing Agreement.

3. Commencing Service and Access Paths.

3.1 Commencing Service.

(a) Peak will not provide access to the Services for Customer's Authorized Users unless Customer has in place the Universal Data Sharing Agreement. Additionally, each Customer shall ensure that any Authorized User is approved for access to real-time transmission and generation information by Customer.

(b) Peak will define and maintain a process for receiving requests for access to the tool and implementation of those access requests. Peak will use the same access process for the Services as is used for access to the confidential materials available at

Peakrc.org as that access process may be modified from time to time. Upon a Party's execution of a Service Order, Peak shall take all steps necessary to make the Services procured thereunder ready and available for Customer's use in accordance with the Service Order and this Agreement, including any applicable milestone date or dates set forth in such Service Order.

3.2 Access Paths. Customer will be able to access the Services via two different connectivity paths. One path will be via Customer's general internet connectivity. The other will be via a secure wide area network interconnection provided by Harris Corporation similar to the wide area network utilized for the Western Interconnection Synchrophasor Program.

4. Service Availability.

4.1 Availability Requirement. **Available**" means the Services are available and operable for access and use by Customer and its Authorized Users. "**Availability**" has a correlative meaning. Peak will use best efforts to ensure that the Services are Available such that down time does not exceed nine (9) hours cumulative in a twelve (12) month period with no single instance of unavailability exceeding sixty (60) consecutive minutes. This includes any down time related to patching, upgrades and hardware maintenance but expressly excludes application unavailability due to solution quality issues. Additionally, the Services are Available as long as the Services are accessible at either Peak location even if Customers are required to log out and log in to a different Peak location to access the Services and Availability of the Services is measured by the Harris wide area network access path rather than a general internet connectivity path.

(a) RTNET shall have a minimum solution availability of ninety-seven percent (97%) of the five (5) minute intervals over the course of a calendar year. For purposes of RTNET, "RTNET solution availability" is defined as a converged state estimator solution that results in either a "valid" or "solved with excessive mismatch" solution. RTNET solution availability will be measured on the Peak RC production environment.

(b) RTCA shall have a minimum solution availability of ninety-seven percent (97%) of fifteen (15) minute intervals over the course of a calendar year. For purposes of RTCA, "RTCA Solution Availability" is defined as any converged RTCA basecase and the completed execution of the desired set of Peak contingencies. RTCA solution availability will be measured on the Peak RC production environment.

4.2 Peak will communicate to Customer via an automated email message any failure to transfer cases that lasts greater than five (5) minutes.

4.3 Exceptions. The following circumstances or actions shall not be included in the calculation of Availability:

- (a) Customer's misuse of the Services;
- (b) failures of Customer's or its Authorized Users' internet or other broadband data service connectivity;
- (c) internet or other network traffic problems other than problems arising in or from networks actually or required to be provided or controlled by Peak or its Subcontractor;
- (d) Customer's or any of its Authorized Users' failure to meet any minimum hardware or software requirements necessary to access the Services; or
- (e) Scheduled Downtime as set forth in **Section 4.4**.

4.4 Scheduled Downtime. Peak shall notify Customers at least twenty-four (24) hours in advance of planned outages for patching, upgrades, hardware upgrades, Model updates and other foreseeable maintenance. Outage communication will be provided to the Customer's control center or other designated personnel (Authorized Users), provided that Peak may request for Customer's approval extensions of Scheduled Downtime above one (1) hour and such approval by Customer may not be unreasonably withheld or delayed.

4.5 Service Availability Reports. Commencing thirty (30) days from the end of the first quarter following the Effective Date, Peak shall report Services Availability to Customers within 30 days of the end of each calendar quarter unless otherwise agreed to by Peak and Customers. The report shall be in electronic form.

5. Support and Maintenance Services. Peak shall provide the following support:

5.1 Telephone technical support, excluding engineering support, that includes being available during the hours of 8 a.m. to 6 p.m. PST on Business Days;

(a) Provide online access to technical support bulletins and other user support information and forums, to the full extent Peak makes such resources available to its other customers; and

(b) Respond in a timely manner to Support Requests submitted electronically but, in any case, not later than one (1) Business Day after receipt of such message.

5.2 Service Monitoring and Management. Peak shall continuously monitor and manage the Services to optimize Availability as set forth in section 4.1 that meets or exceeds the Availability Requirement. Such monitoring and management shall include:

(a) proactively monitor on a twenty-four (24) hour by seven (7) by three-hundred and sixty-five (365) day basis all servers, firewall and other components of Services security;

(b) if such monitoring identifies, or Peak otherwise becomes aware of, any circumstance that is reasonably likely to threaten the Availability of the Services, taking all necessary and reasonable remedial measures to promptly eliminate such threat and ensure full Availability;

(c) if Peak receives knowledge that the Services or any Services function or component is not Available including by written notice from Customer pursuant to the procedures set forth herein:

- (i) confirming (or disconfirming) the outage by a direct check of the associated facility or facilities;
- (ii) if Peak's facility check in accordance with clause (i) above confirms a Services outage in whole or in part: (A) notifying Customers via any available method that the Services are currently unavailable and providing such details as may be available, including a Peak trouble ticket number, if appropriate, and time of outage; and (B) working all problems causing and caused by the outage until they are resolved, or, if determined to be an internet provider problem, open a trouble ticket with the internet provider; and
- (iii) notifying Customer that Peak has fully corrected the outage and any related problems, along with any pertinent findings or action taken to close the trouble ticket.

5.3 Service Maintenance. Peak shall continuously maintain the Services to optimize Availability that meets or exceeds the Availability requirement set forth in Section 4.1. Such maintenance services shall include providing to Customer and its Authorized Users:

(a) all updates, bug fixes, enhancements, new releases, new versions and other improvements to the Services that Peak provides at no additional charge to its other similarly situated customers; and

(b) all such services and repairs as are required to maintain the Services or are ancillary, necessary or otherwise related to Customer's or its Authorized Users' access to or use of the Services, so that the Services operate properly in accordance with this Agreement and the Documentation.

5.4 Maintenance (Model) - Peak will update the transmission network or other Models used by its SCADA, RTNET, RTCA, and STNET as needed and as determined at Peak's sole discretion. Peak will incorporate into its transmission network and other

Models Customer provided updates only if Peak agrees that the update is appropriate for use for its real-time operations and operations planning. Additionally, Peak will implement the following Model changes at its sole discretion:

(a) Peak shall update and deploy contingency definitions provided to it by a Customer that Customer has demonstrated to be incorrectly defined and for which the Customer has provided all relevant information necessary to update Peak's Model.

(b) Peak may add or update RAS definitions provided to it by a Customer, however, Peak will determine at its sole discretion the prioritization of new or updated RAS definition implementation and Peak will provide to Customer an estimated time of implementation.

5.5 Engineering Support - Customer engineering staff will support the use of the network applications within their respective organizations. Peak will provide engineering support to facilitate identifying Model deficiencies, improving Model accuracy and implementing enhancements.

5.6 Application Support for Real-time Operations – Peak will provide support twenty four hours (24) per day, seven (7) days a week to address application availability of RTNET and RTCA only. Customer acknowledges and agrees that Peak will provide this availability support only and that Peak will not provide this level of support for solution quality problems. If possible based on any advanced knowledge or indicators available to Peak, it will notify Authorized Users or Customer generally that Peak is aware of unavailability of RTNET or RTCA only and that Peak is working to make them available. Customer agrees and acknowledges that the level of support described in this section is not provided by Peak as it pertains to solution issues in the study environment (STNET).

5.7 Enhancements and Customization – Customers may request enhancements or customization affecting only the requesting Customer's use of the Services but the expenses of any such enhancements or customization will be borne by the requesting Customer only and will be memorialized in a corresponding Service Order. Customers agree and acknowledge that Peak retains complete and sole authority to deny any enhancements deemed to jeopardize the reliability of the Peak systems or Peak's ability to oversee the reliable operations of the interconnection.

6. Term and Termination.

6.1 Term. The initial term of this Agreement commences as of the later of the Effective Date or the date on which it is executed by Customer and Peak and will continue in effect until and including December 31, 2017 unless and until terminated as provided under this Agreement (the "Initial Term").

6.2 Termination for Cause. In addition to any right of termination set forth elsewhere in this Agreement:

(a) either Party may terminate this Agreement by written notice to the other party effective as of the date specified in such notice, if the other party materially breaches this Agreement and such breach: (i) cannot be cured; or (ii) being capable of cure, remains uncured thirty (30) days after the breaching party receives written notice thereof; and

(b) either party may terminate any and all of this Agreement effective immediately, by written notice to the other party if that other party: (i) becomes insolvent or admits inability to pay its debts generally as they become due; (ii) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven (7) Business Days or is not dismissed or vacated within forty-five (45) days after filing; (iii) is dissolved or liquidated or takes any corporate action for such purpose with no permitted successor or assignee having assumed and given the other party adequate written assurance of its continued full performance of this Agreement; (iv) makes or seeks to make a general assignment for the benefit of creditors; or (v) has or is made subject to the appointment of a receiver, trustee, custodian or similar agent by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

(c) Since Peak has not previously provided the Services and because Peak cannot foresee every possible circumstance that may impact Peak's costs to provide the Services, Peak may terminate this Agreement by written notice to Customer provided sixty (60) days in advance of receipt of an annual payment with termination effective at or on the due date of the annual payment if the annual Customer payments will be insufficient as compared to the planned costs for Peak to provide the Services. Insufficiency will be indicated by the most current measures possible of the total Customer payments compared to the total costs for Peak to provide the Services to Customer. Notwithstanding the preceding, the Parties may negotiate new future Customer payments to address any funding shortfalls previously described without having to amend this Agreement, provided that such new payments are documented in a writing signed by the Parties.

6.3 Termination for Convenience. Customer may terminate this Agreement by written notice to Peak effective as of the date specified in such Notice, however, Customer shall pay to Peak all remaining amounts due in the Initial Term.

6.4 Effect of Termination; Data Retention. Upon and after the termination or expiration of this Agreement for any or no reason:

(a) subject to the continuing rights, licenses and obligations of either party under this Agreement, all licenses granted hereunder will immediately terminate and the

respective Parties shall cease all activities concerning, including all use of, in the case of Customer, the expired or terminated Services;

(b) Customer shall pay to Peak, all undisputed charges and amounts due and payable to Peak, if any, for Services actually performed under the terminated or expired Service Order or Service Orders.

6.5 Survival. The rights, obligations and conditions set forth in this section and Section 1 (Definitions), Section 6.5 (Effect of Termination; Data Retention), Section 8 (Ownership), Section 10 (Indemnification), Section 12 (Limitations of Liability), Section 13 (Representations and Warranties), and Section 15 (General Provisions), and any right, obligation or condition that, by its express terms or nature and context is intended to survive the termination or expiration of this Agreement, shall survive any such termination or expiration hereof.

7. Fees and Expenses.

7.1 Fees. Subject to the terms and conditions of this Agreement and any applicable Service Order, including the provisions of this **Section 7**, Customer shall pay the fees set forth in the applicable Service Order, which shall be determined and invoiced by Peak, subject to such increases and adjustments as may be permitted pursuant to this Agreement including but not limited to agreed upon enhancements or customization.

7.2 Fees During Renewal Terms. Peak's Fees are fixed during the Initial Term.

7.3 Responsibility for Costs associated with Licensing and Utilizing the Services. Customer shall be responsible for all costs and expenses incurred in or incidental to obtaining licensure from Alstom or any other necessary licenses to use the Services and any and all costs of using the Services.

7.4 Taxes. All Fees and amounts set forth this Agreement or any Service Order are inclusive of sale taxes.

7.5 Invoices. Peak shall invoice Customer for all applicable costs, fees, or expenses annually in electronic format, via such delivery means and to such address as are specified by Customer in writing from time to time. If more than one Service Order is in effect, Peak shall provide an aggregate invoice for all amounts invoiced.

7.6 Payment Terms.

(a) Customer shall pay amounts payable and due hereunder within thirty (30) days after receipt of invoice therefor.

(b) All payments hereunder shall be in US dollars and made by check or wire transfer. Payments shall be made to the address or account specified by Peak or such other address or account as is specified by Peak in writing from time to time.

8. Data Ownership. As between Customer and Peak, Peak is and will remain the sole and exclusive owner of all right, title and interest in and to any Peak data and information developed or provided by Peak including but not limited transmission network models such as the West-wide System Model and other Peak processes. Nothing contained in this Agreement shall be construed as granting Customer or any third party any right, title, or interest in or to any Peak data and information unless explicitly stated herein or in another document.

9. Redundancy. Peak shall, in accordance with the provisions of this section maintain or cause to be maintained disaster avoidance procedures designed to sustain the availability of the Services, in each case throughout the Term and at all times in connection with its actual or required performance of the Services hereunder.

9.1 Redundant Hosting and Connectivity. Peak shall simultaneously operate a mirror system at either of Peak's facilities in Vancouver, Washington or Loveland, Colorado. Peak will make the Services available from one location if the other location is or becomes unavailable. Provided that Customers can access the Services from at least one Peak location, even if logging out and logging in again or starting a new session is required, the Services are considered Available for purposes of this Agreement.

10. Indemnification.

10.1 General Indemnification. To the maximum extent allowed by law, including any applicable anti-deficiency statutes, each party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other party and each of the foregoing Persons' respective officers, directors, employees, agents, successors and assigns, (each of the foregoing Persons, a "**Indemnitee**") from and against all Losses arising out of or resulting from any third party claim, suit, action or proceeding (each, an "**Action**") to the extent that such Action does or is alleged to arise out of or result from:

(a) the Indemnifying Party's breach of any representation, warranty, covenant or obligation of the Indemnifying Party under this Agreement; or

(b) any action or failure to take a required action or more culpable act or omission (including recklessness or willful misconduct) in connection with the performance or nonperformance of any Services or other activity actually or required to be performed by or on behalf of the Indemnifying Party under this Agreement,

10.2 Infringement Indemnification by Customer. Customer shall indemnify, defend and hold each and all of the Peak Indemnitees harmless from and against all Losses

arising out of or resulting from any Customer failure to secure or maintain any required license to use the Services granted by a third party including but not limited to Alstom and:

(a) any claim that any Customer provided data or information is unlawful or actually does or threatens to infringe, misappropriate or otherwise violate any United States Intellectual Property Rights or other rights of any third party; or

(b) any use of the Services by Customer or any Authorized User that is beyond the scope of or otherwise fails to conform to this Agreement or any authorization or approval given in writing by Peak to Customer or such Authorized User.

11. No Reliability Standard Compliance Responsibility and Disclaimer.

11.1 Peak expressly disclaims any and all responsibility for demonstrating compliance with any laws or rules to which Customer is subject including but not limited to Customer's compliance with any applicable NERC national or regional reliability standards. Except as provided for herein, Peak will not generate or make available to Customer any documents, data, or other material in any form for purposes of Customer's demonstration of compliance with such laws, rules, or NERC national or regional reliability standards.

11.2 EXCEPT FOR THE EXPRESS WARRANTIES IN THIS AGREEMENT, PEAK HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF

12. Limitations of Liability. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR (A) ANY CLAIMS ASSERTING OR BASED ON THE USE, INABILITY TO USE, LOSS, INTERRUPTION OR DELAY OF THE SERVICES, LOSS OF USE OF FACILITY OR EQUIPMENT, LOST BUSINESS, REVENUES OR PROFITS, LOSS OF GOODWILL, FAILURE TO ACHIEVE COST SAVINGS, FAILURE OR INCREASED COST OF OPERATIONS, LOSS, DAMAGE OR CORRUPTION OF DATA, LOSS RESULTING FROM SYSTEM OR SERVICE FAILURE, MALFUNCTION, DOWNTIME, SHUTDOWN, SERVICE INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION, FAILURE TO ACCURATELY TRANSFER, READ OR TRANSMIT INFORMATION, FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION OR BREACHES IN SYSTEM SECURITY, OR (B) FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL, PUNITIVE OR ENHANCED DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES ARE OTHERWISE FORESEEABLE, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY

(CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

12.1 IN NO EVENT SHALL EITHER PARTY'S LIABILITY UNDER THIS AGREEMENT EXCEED THE AGGREGATE FEES AND REIMBURSABLE EXPENSES UNDER THIS AGREEMENT (INCLUDING AMOUNTS ALREADY PAID AND AMOUNTS THAT HAVE ACCRUED BUT NOT YET BEEN PAID).

13. Representations and Warranties.

13.1 Mutual Representations and Warranties. Each party represents and warrants to the other party that:

(a) it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization or chartering;

(b) it has, and throughout the Term and any additional periods during which it does or is required to perform the Services will retain, the full right, power and authority to enter into this Agreement and perform its obligations hereunder;

(c) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the party; and

(d) when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms except as the enforceability thereof may be limited by bankruptcy and similar Laws affecting creditors' rights generally and by general equitable principles.

14. Force Majeure. Neither party shall be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term hereof, when and to the extent such failure or delay is caused by: acts of God, flood, fire or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, or any passage of law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition, or national or regional shortage of adequate power or telecommunications or transportation facilities (each of the foregoing, a "**Force Majeure Event**"), in each case provided that such event

is outside the reasonable control of the affected party and the affected party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

15. General Provisions.

15.1 Further Assurances. Each party shall, upon the reasonable request of the other party, execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.

15.2 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

15.3 Public Announcements. Neither party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement or, unless expressly permitted under this Agreement, otherwise use the other party's trademarks, service marks, trade names, logos, domain names or other indicia of source, association or sponsorship, in each case, without the prior written consent of the other Party.

15.4 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and addressed to the parties as follows (or as otherwise specified by a party in a notice given in accordance with this Section):

If to Peak:

Peak Reliability

myates@peakrc.com

Attention: Matthew Yates

Title: Acting General Counsel

If to Customer:

Hetch Hetchy Water and Power Division Manager

Facsimile: 209-989-2529

E-mail: mhannaford@sfgwater.org

Attention: Margaret Hannaford

Title: Hetch Hetchy Water and Power Division
Manager

Notices sent in accordance with this section shall be deemed effectively given: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail if sent during normal business hours of the recipient, and on the next business day, if sent after normal business hours of the recipient; or (d) on the 3rd day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

15.5 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

15.6 Entire Agreement. This Agreement, including all Service Orders and other Schedules and Exhibits and any other documents, agreements or instruments incorporated by reference herein, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

15.7 Assignment. Neither party shall assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, by operation of law or otherwise, without the other party's prior written consent, which consent shall not unreasonably be withheld or delayed.

15.8 No Third-party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

15.9 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

15.10 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto

shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

15.11 Governing Law; Submission to Jurisdiction. This Agreement, and all related documents and all matters arising out of or relating to this Agreement, shall be governed by the laws of the state in which all or a substantial part of the cause(s) of action arose, or federal law, or both, to the degree applicable to the cause(s) asserted. In the event of a dispute under this Agreement, venue may be asserted in either the county in which all or a substantial part of the dispute occurred or the county in which the asserting party's principal office is located.

15.12 Equitable Relief. Each party to this Agreement acknowledges and agrees that (a) a breach or threatened breach by such party of any of its obligations under this Agreement would give rise to irreparable harm to the other party for which monetary damages would not be an adequate remedy and (b) in the event of a breach or a threatened breach by such party of any such obligations, the other party hereto shall, in addition to any and all other rights and remedies that may be available to such party at law, at equity or otherwise in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages will not afford an adequate remedy.

15.13 Schedules and Exhibits. All Exhibits that are referenced herein and attached hereto, or are signed by both parties on or after the Effective Date, are hereby incorporated by reference. The following Schedules and Exhibits are attached hereto and incorporated herein:

Schedule A

Service Orders and Pricing

15.14 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement and will become effective and binding upon the parties as of the Effective Date at such time as all the signatories hereto have signed a counterpart of this Agreement. A signed copy of this Agreement delivered by e-mail or other means of electronic transmission (to which a signed PDF copy is attached) shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

15.15 San Francisco Contracting Provisions:

For purposes of this Section 15.14 City means the City and County of San Francisco and Contractor means Peak.

(a) **Certification of Funds:**

1. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification of funds.
2. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse Contractor for, services beyond the agreed-upon contract scope unless the changed scope is authorized by amendment and approved as required by law.
3. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.
4. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

(b) **Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

(c) **Submitting False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be

presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

(d) **Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

(e) **Prohibition on Use of Public Funds for Political Activity.** In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

(f) **Nondiscrimination Requirements**

(i) **Non Discrimination in Contracts.** Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

(ii) **Nondiscrimination in the Provision of Employee Benefits.** San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between

employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

(g) **Minimum Compensation Ordinance.** Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

(h) **Consideration of Criminal History in Hiring and Employment Decisions**

(i) Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

(ii) The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

(i) **Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance,

(San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law. As stated in the definition of Authorized Users herein, access to the information provided pursuant to this agreement is governed by the Peak Reliability Universal Data Sharing Agreement ("UDSA") and in responding to a request for information pursuant to the California Public Records Act and the San Francisco Sunshine Ordinance, the City will proceed in accordance with the UDSA including but not limited to Section VI, 2.

(j) **Government Code Claim Requirement.** No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

(k) **MacBride Principles -Northern Ireland.** By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives.

Peak

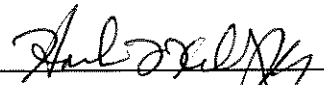
By: 

Name: Marie Jordan

Title: President FCO Peak Reliability

Date: 3/23/2017

Customer

By: 


Name: Archan Kelly

Title: GM S&PUC

Date: 3/29/17

Approved as to Form:

Dennis J. Herrera
City Attorney

By: 
Jeanne M. Solé
Deputy City Attorney

SCHEDULE A

SERVICE ORDERS AND PRICING

With this Service Order, Customer notifies Peak that it has met the requirements necessary to access the Services described in the Agreement. Customer agrees to pay the Fees and Expenses listed below in order to obtain access to the Services. If applicable, Customer also warrants that Customer has obtained an appropriate license from Alstom to access and use the STNET related Services as described in the Agreement.

All payments shall be in US dollars and made by check or wire transfer to Peak pursuant to the payment instructions on the applicable invoice.

SERVICE ORDER NO. 01

This Service Order, effective as of the last signature date set forth below, is a part of and incorporated into the Hosted Advanced Applications Agreement between City and County of San Francisco as Customer and Peak, dated April 1, 2017 ("**Agreement**"). Capitalized terms not defined in this Service Order are as defined in the Agreement. In the event of any conflict between the body of the Agreement and this Service Order, the body of the Agreement shall govern.

- 1. **Additional Services:** None
- 2. **Payment Schedule:**
 - (i) A lump sum payment of \$30,000 (initiation fee).
 - (ii) Upon initiation of the term: a lump sum payment of \$56,250.

Peak

By: 

Name: MARIE JORDAN
Title: President/CEO Peak Reliability
Date: 3/23/2017

Customer

By: 

Name: HARLAN KELLY JR
Title: GM SEDUC
Date: 3/29/17