

CONTRACT NO. 473-19-00007
BETWEEN
THE PUBLIC UTILITY COMMISSION OF TEXAS,
POTOMAC ECONOMICS, LTD.,
AND
ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.

The parties to this contract are the Public Utility Commission of Texas, an agency of the State of Texas, located at 1701 N. Congress Ave., Austin, Texas 78701, Potomac Economics, Ltd., a Virginia corporation, located at 9990 Fairfax Boulevard, Ste. 560, Fairfax, Virginia 22030, and Electric Reliability Council of Texas, Inc. (ERCOT), a Texas nonprofit corporation, located at 7620 Metro Center Drive, Austin, Texas 78744.

Article 1. DEFINITIONS

When used in this contract, the following terms have the following meanings:

1.1 **“PUCT,”** means the Public Utility Commission of Texas, an agency of the state of Texas, acting through its Executive Director and the agency’s designated contract administrator.

1.2 **“Commission”** means the governing body of the PUCT.

1.3 **“Contractor,” “Independent Market Monitor,”** or **“IMM”** includes Potomac Economics, Ltd., and any successors, heirs, and assigns.

1.4 **“Business day”** means a day the PUCT is open for business and is not observing a holiday.

1.5 **“May”** means “is authorized to.”

1.6 **“Services”** means any and all services performed and any and all goods and products delivered by Contractor as specified in the Statement of Work.

1.7 **“Statement of Work”** means the description of goods and services to be provided under this contract found in Attachment A to this contract.

1.8 **“ERCOT”** means Electric Reliability Council of Texas, Inc., a Texas non-profit.

1.9 **“Parties”** means PUCT, ERCOT and Contractor. **“Any Party”** means PUCT, ERCOT, or Contractor.

Article 2. COMPENSATION

2.1 **Compensation.** Contractor agrees to provide all Services (including labor, expenses, and any other services) described in the Statement of Work, for the fixed price of \$16,535,000. The fee by year and the monthly payment is included in the Statement of Work. Contractor understands that the PUCT and ERCOT are not responsible for payment of any costs or expenses exceeding this amount.

If Contractor believes that changes in the scope of Services to be performed will require Contractor to increase its fee, it must request the PUCT’s written authorization to increase its fee. Contractor must document the changes in the scope of Services and why they will require

additional effort. The PUCT must approve the increase in fee by written amendment to this contract before Contractor performs any Services or may invoice the increased fee.

2.2 Payment Process. Contractor must submit an invoice to the PUCT contract administrator with a copy to the ERCOT contract administrator no later than the 15th business day after the month that the Services were performed. The invoice must contain the name of the person performing Services and a brief description of work performed. No payment will be made for administrative overhead, overtime, or other charges outside of the fixed price.

On the statement or invoice, Contractor must include a statement that the invoice accurately describes the Services performed and the Services were performed in compliance with the contract. The statement or invoice must include the vendor identification number issued by the Texas Comptroller or Contractor's federal taxpayer identification number, a description of the Services provided, and the name and division of the PUCT contract administrator.

Contractor must submit the invoice to the PUCT as follows:

By email to: Payables@puc.texas.gov, with a copy to ContractOversight@puc.texas.gov

Or by mail to: Accounts Payable
Public Utility Commission of Texas
P.O. Box 13326
Austin, TX 78711-3326

Within five business days of receiving the invoice, the PUCT contract administrator will review the invoice and any other relevant documentation to ensure the Services were performed in compliance with the contract. If the invoice does not contain required information or documentation, or if the PUCT disputes that the Services were performed in compliance with the contract, the PUCT will reject the invoice and give the contractor its reasons and the opportunity to submit a corrected invoice.

Upon approval of the invoice, the PUCT contract administrator will notify the contractor and submit the invoice to ERCOT for payment. ERCOT must pay all PUCT approved and undisputed amounts within thirty days of initial receipt of Contractor's invoice from Contractor.

2.3 Release of Claims. Contractor's acceptance of payment releases the PUCT and ERCOT of all claims for compensation owed in connection with this contract.

2.4 Refund. Contractor will promptly refund or credit within thirty calendar days any funds erroneously paid by ERCOT which are not expressly authorized under the contract.

2.5 Payments Made to Subcontractors. Contractor must pay any subcontractor hereunder the appropriate share of payments received not later than the 10th day after the date Contractor receives the payment. The subcontractor's payment is overdue on the 11th day after the date Contractor receives the payment. The PUCT must approve Contractor's use of any subcontractor before Contractor engages the subcontractor (see Section 5.1 of this contract).

2.6 Records. Contractor and its subcontractors, if any, must maintain records and books of account relating to Services provided under this contract. Contractor must, for a period of seven (7) years following the expiration or termination of this contract, maintain its records (electronic

and paper) of the work performed under this contract. Records include, but are not limited to: correspondence concerning the subject of this contract between Contractor and the PUCT or ERCOT; Contractor's internal correspondence; and correspondence between Contractor and any third party. Contractor must make all records that support the performance of Services and payment available to any of the following PUCT, ERCOT, PUCT's or ERCOT's designees, or the State Auditor during normal business hours with reasonable notice, upon the request of the PUCT contract administrator or the ERCOT contract administrator.

2.7 Sole Compensation. Payments under this Article are Contractor's sole compensation under this contract. Contractor must not incur expenses not contemplated under the Statement of Work, with the expectation that ERCOT, the PUCT, or the state of Texas will pay the expense.

Article 3. CONTRACT ADMINISTRATION

3.1 PUCT Contract Administration. The PUCT designates Mick Long to serve as its primary point of contact and contract administrator throughout the term of this contract. Contractor and ERCOT acknowledge that the PUCT contract administrator does not have any authority to amend this contract on behalf of the PUCT, except as expressly provided herein. Contractor and ERCOT further acknowledge that such authority is exclusively held by the Commission exercising its authority through a vote in an open meeting, or the Executive Director of the PUCT as the Commission's authorized designee.

3.2 ERCOT Contract Administration. ERCOT designates Jimmy Ramirez to serve as its primary point of contact and contract administrator throughout the term of this contract. Contractor and the PUCT acknowledge that the ERCOT contract administrator does not have any authority to amend this contract on behalf of ERCOT, except as expressly provided herein. Contractor and the PUCT further acknowledge that such authority is exclusively held by the ERCOT President and Chief Executive Officer or his or her authorized designee.

3.3 Contractor Contract Administration. Contractor designates its contract administrator as follows: David Patton, Ph.D.

3.4 Reporting. Contractor must report directly to the PUCT contract administrator and must perform all activities in accordance with the reasonable instructions, directions, and requests conveyed to Contractor by the PUCT contract administrator.

3.5 Cooperation. The Parties' respective contract administrators must handle all communications between them in a timely and cooperative manner. The Parties must timely notify each other by email or other written communication of any change in designee or contact information.

3.6 Inquiries and Prompt Referral. Contractor will promptly refer all inquiries regarding this contract received from state legislators, other public officials, the media, or anyone else not a Party to this contract to the PUCT contract administrator.

Article 4. REPORTS AND RECORDS

4.1 Written Reports. Contractor must provide written reports to the PUCT in the form and with the frequency specified in the Statement of Work, or as otherwise agreed in writing between the Parties.

4.2 Distribution of Consultant Reports. Contractor agrees the PUCT has the right to distribute any consultant report associated with this contract, or to allow another Texas state agency or the Texas legislature to distribute it. The PUCT will also have the right to post any consultant report associated with this contract to the PUCT's website or to the website of a standing committee of the legislature. This provision does not waive any right to confidentiality that the PUCT may assert for the report or any portion thereof.

Article 5. SUBCONTRACTING PARTIES

5.1 Use of Subcontractors. The Parties acknowledge and agree that, at the time of execution of this contract, Contractor intends to perform the Services required under this Contract using its own employees. Contractor will notify the PUCT contract administrator of any other proposed subcontract and will work with the PUCT HUB Coordinator to procure such other subcontractor and to submit appropriate subcontractor selection documentation for approval prior to engaging any other subcontractor, such approval not to be unreasonably withheld. Any subcontract not contemplated at the initiation of this contract and any subsequent substitution of a subcontractor must be approved by an amendment according to the terms of Article 7.

5.2 Sole Responsibility. Contractor is solely responsible for the quality and timeliness of the work produced by all subcontractors that Contractor may engage to provide Services hereunder and for the timely payment for all work produced by all subcontractors that the PUCT accepts and ERCOT pays for in accordance with the terms of this contract.

5.3 Prime Vendor Contract. The Parties expressly agree that this Contract is intended to constitute a prime vendor contract, with Contractor serving as the prime vendor for delivery of the Services made the subject hereof. Contractor acknowledges and agrees that it is fully liable and responsible for timely, complete delivery of the Services described in this Contract, notwithstanding the engagement of any subcontractor to perform an obligation under this Contract.

Article 6. TERM AND TERMINATION

6.1 Term. The term of this Contract will begin on January 1, 2020, and will continue in effect until December 31, 2023 unless sooner terminated under Sections 6.2 or 6.3 of this Contract.

6.2 Termination for Cause by the PUCT. If Contractor fails to provide the goods or services contracted for according to the provisions of the contract, or fails to comply with any terms or conditions of the Contract, the PUCT may serve upon Contractor written notice requiring Contractor to cure such default. Unless within thirty (30) days after receipt of said notice by Contractor, said default is corrected or arrangements satisfactory to the PUCT, as applicable, for correcting the default have been made by Contractor, the PUCT may terminate this contract for default and will have all rights and remedies provided by law and under this contract. If the PUCT terminates Contractor for a violation of Section 18.12, of this contract, the PUCT need not

provide any notice or opportunity for curing the default. The PUCT will not be liable for any damages or loss to Contractor as a result of termination for convenience.

6.3 Termination for the Convenience of the PUCT. The PUCT may, upon thirty (30) days written notice to Contractor, terminate this contract whenever the interests of the PUCT so require. The PUCT will only reimburse those expenses already incurred at the time the notice is provided or expenses approved in writing, prior to Contractor incurring those expenses, for the purpose of wrapping up the contract. The PUCT will not be liable for any damages or loss to Contractor as a result of termination for convenience.

6.4 Transfer of Duties. In the event of termination, Contractor will provide reasonable cooperation to transfer its duties under the contract to another entity without disruption to the provision of Services.

6.5 Remedies for Breach. All remedies available to the PUCT for breach or anticipatory breach of this contract by Contractor are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy will not be deemed an election of such remedy to the exclusion of other remedies. Actual damages, liquidated damages, cost projections, and injunctive relief may also be invoked either separately or combined with any other remedy in accordance with applicable law.

6.6 Survival. In the event that this Contract expires or is terminated pursuant to its terms, the rights and obligations of the Parties under it will end; provided that the provisions of Sections 2.3 through 2.6, 3.6, 4.2, 6.4 through 6.6, 7.5, 9.2, 9.4 through 9.7, 17.2 and 19.1 through 19.5, 19.10 through 19.12, and Articles 1, 10, 12, 14, 15, 16, 20, 21, 23, 28, and 29 will survive in their entirety.

Article 7. ASSIGNMENT, AMENDMENTS, AND MODIFICATIONS

7.1 Material Change Requests. The PUCT or ERCOT may propose changes to the Statement of Work. Upon receipt of a written request from the PUCT or ERCOT for a change to the Statement of Work, Contractor must, within the deadline specified in the request, or if no deadline is specified within a reasonable time thereafter, submit to the PUCT and ERCOT a detailed written estimate of any proposed price and schedule adjustments to this contract. No changes to the Statement of Work, will occur without the Parties' written consent as provided in accordance with the terms stated in this contract.

7.2 Changes in Law, Rules, or Rulings. Changes in federal or state legislation, rules and regulations or rulings by the PUCT after the effective date of this contract may require modification of the terms of this contract, including an increase or decrease in Contractor's duties or compensation. In the event of changes to statutes, rules, or regulations affecting the terms of this contract, the PUCT and Contractor must negotiate the terms of a contract modification in good faith and incorporate the modification into this Contract by written amendment.

7.3 No Assignment of Duties. This contract will be binding upon and inure to the benefit of the permitted successors and assigns of any Party (including by merger of Contractor or otherwise by operation of law); provided, however, that Contractor may not otherwise, without the prior

written consent of the PUCT, assign or transfer this contract or any obligation incurred under this contract. Any attempt by Contractor to assign or transfer this contract or any obligation incurred under this contract, in contravention of this article, will be voidable at the PUCT's sole discretion.

7.4 Amendments and Modifications. This contract may not be amended or modified in any manner except by written instrument executed by authorized representatives of the Parties in accordance with the terms of this contract.

7.5 Binding on Successors. The terms of this contract will be binding on any successor organization of any of the Parties.

Article 8. REPRESENTATIONS, WARRANTIES AND COVENANTS

8.1 Warranty of Performance. Contractor represents, warrants, and covenants that it will perform the Services outlined in the Statement of Work, in a professional and workmanlike manner, consistent with professional standards of practice in the professional industry.

8.2 Warranty of Services. Contractor warrants that the Services will be rendered by the qualified personnel named in Section 19.8 of this contract. If Services provided under this contract require a professional license, then Contractor represents, warrants, and covenants that the activity will be performed only by duly licensed personnel.

Article 9. RISK OF LOSS AND PROPERTY RIGHTS

9.1 Risk of Loss. The risk of loss for all items to be furnished hereunder will remain with Contractor until the items are delivered to and accepted by the PUCT, at which time the risk of loss will pass to the PUCT.

9.2 Ownership. Except for materials where any intellectual property rights are vested in a third party, such as software or hardware, in which case such rights remain the property of the third party, all finished materials, deliverables, conceptions, or products created or prepared for or on behalf of the PUCT and purchased by the PUCT, or on behalf of the PUCT, that the PUCT has accepted as part of the performance of Services hereunder, will be the PUCT's property exclusively and will be given to the PUCT either at the PUCT's request during the term of the Contract or upon termination or expiration of the contract. Notwithstanding the foregoing, materials created, prepared for, or purchased exclusively by the PUCT or on behalf of the PUCT are the PUCT's exclusive property regardless of whether delivery to the PUCT is effectuated during or upon termination or expiration of this contract.

9.3 Licensed Software. With PUCT's advanced written consent, Contractor may obtain software licenses as an agent of the PUCT for software that is used by Contractor solely for the purpose of providing Services under this contract. Contractor must provide the PUCT and ERCOT with a copy of any software license obtained by Contractor as an agent for the PUCT for the purpose of providing Services under this contract.

9.4 PE Software. "PE Software means software that has been developed by the Contractor to produce the indices, metrics, and screens used by Contractor to monitor the ERCOT markets. PE Software includes all revisions, modifications, and enhancements to PE Software that may be

delivered to ERCOT pursuant to this Contract, as well as all documentation concerning the PE Software, all media on which such PE Software resides, and all copies of the above.

Notwithstanding anything in this contract to the contrary, ERCOT and PUCT agree that with respect to the PE Software and Contractor's proprietary and confidential materials developed prior to commencing, or outside of the scope of, the Services that are proprietary to Contractor, and all associated intellectual property rights and any enhancements and modifications to such materials, whether or not such enhancements and modifications are developed as part of the Services, Contractor will retain all ownership thereof, including, without limitation, all right, title and interest in the PE Software.

9.5 Prior Works. Except as provided herein, all previously owned materials, conceptions, or products remain the property of Contractor and nothing contained in this contract will be construed to require Contractor to transfer ownership of such materials to the PUCT.

9.6 Trademarks. The Parties agree that no rights to any trademark or service mark belonging to another Party or to any non-Party are granted to any other Party by this contract, unless by separate written instrument. The PUCT and ERCOT acknowledge and agree that use of any trademark associated with any software provided by Contractor under this contract does not give the PUCT or ERCOT any rights of ownership in the trademark or the software.

9.7 Program Information. Program information, data, and details relating to Contractor's Services under this contract must be maintained separately from Contractor's other activities. Contractor must undertake all reasonable care and precaution in the handling and storing of this information.

9.8 Provision to be Inserted in Subcontracts. Contractor must insert a provision containing Sections 9.2 and 9.7 of this contract in all subcontracts hereunder except altered as necessary for proper identification of the contracting Parties, ERCOT, and the PUCT under this contract.

Article 10. PUBLIC INFORMATION

10.1 Texas Public Information Act. (Texas Government Code Chapter 552). The Parties acknowledge that notwithstanding any other provisions of this contract, the Texas Public Information Act ("PIA") governs the treatment of all information held by or under the control of the PUCT. The PUCT will notify Contractor of requests for Contractor's information as required under the PIA. The PUCT will also notify ERCOT of requests for ERCOT's information as required under the PIA.

10.2 Agreement Not Confidential. The Parties acknowledge that not all terms of this contract may be confidential under the PIA, regardless of whether those terms are marked "Proprietary," "Trade Secret," or "Confidential." Contractor further acknowledges that in the event of a dispute over the release of a proposal or part of a proposal the PUCT is bound by the decision made by the Office of the Attorney General of Texas.

10.3 Contractor's Duty to Provide Public Information. Contractor is required, at no additional cost to the state, to make available in a format that is accessible by the public any information created or exchanged with either the state, or ERCOT, or both the state and ERCOT, pursuant to this contract. For the purpose of Section 10.3 of this contract, paper documents,

Adobe Portable Document Format files (.pdf), Microsoft Excel spreadsheets (.xls), Microsoft Word documents (.docx), and Hypertext Markup Language (.html) files will be considered “accessible by the public,” unless another format is specified by the PUCT, at the PUCT’s sole discretion. If information created or exchanged with the state pursuant to this contract is excepted from disclosure under the PIA, Contractor will not be required to make the information available to the public, but may be required to facilitate the PUCT’s provision of the information to the Texas Attorney General for a decision on the information’s confidentiality. The PUCT has no duty or responsibility to argue a defense of confidentiality to Contractor’s information or data; it will be Contractor’s sole responsibility to do so.

Article 11. CONFLICTS OF INTEREST AND EMPLOYMENT RESTRICTION

11.1 No Conflicting Relationships. Contractor certifies to the PUCT and ERCOT that no existing or contemplated relationship exists between Contractor and the PUCT or ERCOT that interferes with fair competition or is a conflict of interest, and that no existing or contemplated relationship exists between Contractor and another person or organization, whether or not located within the State of Texas, that constitutes or will constitute a conflict of interest for Contractor with respect to the PUCT or ERCOT.

11.2 Prohibition on Transactions with Parties Adverse to the PUCT or ERCOT. Contractor agrees that during the term of this contract and any extensions or renewals thereof, it will neither provide contractual services nor enter into any agreement, oral or written, to provide services to a person or organization that is regulated or funded by the PUCT or that has interests that are directly or indirectly adverse to those of the PUCT or ERCOT. The PUCT may waive this provision in writing if, in the PUCT’s sole judgment, such activities of the Contractor will not be adverse to the interests of the PUCT. Similarly, ERCOT may waive this provision, as it relates to ERCOT, in writing if, in ERCOT’s sole judgment, such activities of the Contractor will not be adverse to the interests of ERCOT. Neither ERCOT nor the PUCT may waive the other’s right to prohibit a transaction between Contractor and any person or organization that is regulated or funded by the PUCT or that has interests that are directly or indirectly adverse to those of the PUCT or ERCOT.

11.3 Notice of Conflict. Contractor agrees to promptly notify the PUCT and ERCOT of any circumstance that may create a real or perceived conflict of interest, whether arising prior to or during the term of the contract. Contractor agrees to use its best efforts to resolve any real or perceived conflict of interest to the satisfaction of the PUCT and ERCOT. If Contractor fails to do so, it will be grounds for termination of this contract for cause, pursuant to Section 6.2 of this contract.

11.4 Prohibited Employment. Contractor agrees that it will not hire any person whose employment with Contractor would violate any of the employment restrictions in Texas Government Code Chapter 572 or Texas Utilities Code Chapter 12.

Article 12. INDEMNIFICATION

Contractor and its directors, officers, employees, and agents will not be liable to any person or entity for any act or omission, other than an act or omission constituting gross negligence or intentional misconduct, including but not limited to, liability for any financial loss, loss of

economic advantage, opportunity cost, or actual, direct, indirect, or consequential damages of any kind resulting from or attributable to any such act or omission of Contractor, as long as such act or omission arose from or is related to matters within the scope of Contractor's authority in its role as Independent Market Monitor arising under or relating to PURA § 39.151 and Public Utility Commission Substantive Rule §25.365, relating to Independent Market Monitor.

Except as specifically stated in the immediately preceding paragraph, Contractor must indemnify, defend and hold harmless the PUCT, the State of Texas, ERCOT and their officers, agents, employees, representatives, contractors, assignees, and designees from any and all liabilities, claims, suits, assessments, penalties, losses, damages, demands or causes of action, and all related costs, attorney fees and expenses of whatever kind or nature asserted by a third party and occurring in any way incident to, arising out of, or in connection with acts or omissions of Contractor, its agents, employees and subcontractors, committed in the conduct of this contract. Contractor will have the obligation to undertake the defense of any such claim, process, or legal proceeding at Contractor's expense; provided, however, that either the PUCT, ERCOT, or both, may participate in the defense with counsel of their own choosing. Any defense must be coordinated by Contractor with the Office of the Attorney General when Texas State Agencies are named defendants in any lawsuit. Contractor may not agree to any settlement without first obtaining concurrence from the Office of the Attorney General when Texas State Agencies are named defendants in any lawsuit. Contractor, the PUCT, and ERCOT agree to furnish timely written notice to each other of any claim.

If all or any part of the deliverables of this contract is the subject of any claim, suit, or proceeding for infringement or misappropriation of any intellectual property right, Contractor may, and in the event of any adjudication that the deliverables or any part thereof infringes or misappropriates any patent, trademark, copyright, or trade secret, or if the licensing or use of any of the deliverables or any part thereof is enjoined, Contractor must, at its expense do one of the following things: (i) procure for ERCOT and the PUCT the right under such patent, trademark, copyright or trade secret to fully use the deliverables or the affected part thereof; or (ii) replace the deliverable or affected part thereof with another non-infringing deliverable; or (iii) suitably modify the deliverable or affected part thereof to make it non-infringing.

Contractor will not indemnify ERCOT or PUCT, however, to the extent the claim of infringement is based on: (a) ERCOT's modification of the software or deliverable or use of the deliverable other than as contemplated by this Contract and the applicable Statement of Work; (b) ERCOT's failure to use corrections or enhancements provided to it by Contractor where infringement could have been avoided by use of such corrections or enhancements; (c) ERCOT's use of the software or deliverable in combination with any product or information not owned or developed or authorized by Contractor; or (d) Contractor's compliance with information, direction, specification, or materials provided by ERCOT or the PUCT or its agents where such compliance gave rise to the infringement claim. Additionally, Contractor will not indemnify ERCOT or PUCT for its liabilities, claims, suits, assessments, penalties, losses, damages, demands, or causes of action arising out of or alleging negligence or misconduct by employees, agents or subcontractors of the PUCT or ERCOT.

Contractor's obligations under this Article 12 are conditioned upon the indemnified Party promptly notifying Contractor of any claim in writing and reasonably cooperating with the Contractor's defense of the claim.

ERCOT must indemnify, defend, and hold harmless Contractor, their officers, agents, employees, representatives, contractors, assignees, and designees from any and all liabilities, claims, suits, assessments, penalties, losses, damages, demands or causes of action, and all related costs, attorney fees and expenses of whatever kind or nature asserted by a third party and arising out of the acts or omissions of ERCOT, its agents, employees and subcontractors, that constitute gross negligence or intentional misconduct.

Article 13. INSURANCE

13.1 Contractor Responsibility. Contractor agrees to comply with all state and federal laws applicable to the liability and payment of Contractor and Contractor's employees, including laws regarding wages, taxes, insurances, and workers' compensation. Neither the PUCT nor the State of Texas nor ERCOT will be liable to the Contractor, its employees, agents, or others for the provision of unemployment insurance or workers' compensation or any benefit available to a state employee.

13.2 Minimum Insurance. Contractor must, at its sole cost and expense, secure and maintain as a minimum, from the effective date of this contract and thereafter during the term of this contract and any renewals or extensions thereof, for its own protection and the protection of the PUCT, the State of Texas, and ERCOT:

- a) commercial liability insurance, covering, at a minimum, the following categories of liability within the following limits: (i) bodily injury and property damage - \$1,000,000 limit per occurrence, \$2,000,000 aggregate, (ii) medical expense - \$5,000 limit per person, (iii) personal injury and advertising liability - \$1,000,000 limit, (iv) products or completed operations - \$2,000,000 aggregate, (v) damage to premises rented - \$50,000 limit;
- b) automobile liability coverage for vehicles driven by Contractor's employees (\$500,000 per occurrence);
- c) workers' compensation insurance in accordance with the statutory limits, as follows: (i) employer's liability - \$1,000,000 each incident, (ii) disease - \$1,000,000 each employee and \$1,000,000 policy limit;
- d) cyber incident coverage to include: privacy breach related legal expenses to review and determine responsibilities under privacy breach laws; expenses related to compliance with privacy law notification requirements; credit and identification monitoring for up to 12 months after a cyber incident; expenses related to forensic investigations to investigate a system intrusion into the Contractor's computer system; and expenses to hire a public relations firm for public communications response; and
- e) a fidelity bond or crime policy in the amount of \$1,000,000 with third party coverage for ERCOT and the PUCT for Contractor's employees working on ERCOT premises or

working with ERCOT intellectual property, proprietary information, or Confidential Information.

The PUCT, the State of Texas, and ERCOT must be named an additional insured on the commercial liability and automobile policies.

Insurance coverage must be from companies licensed by the State of Texas to provide insurance with an "A" rating from A.M. Best and authorized to provide the corresponding coverage.

13.3 Certificates of Insurance. Contractor must furnish to the PUCT and ERCOT certificates of insurance and any applicable endorsements, signed by authorized representatives of the surety or insurers, of all such bonds and insurance and confirming the amounts of such coverage within ten (10) days of the effective date of this contract, and upon request thereafter. Contractor must provide the PUCT contract administrator and ERCOT contract administrator with timely renewal certificates as the coverage renews. Failure to maintain such insurance coverage specified herein, or to provide such certificates or endorsements promptly, will constitute a material breach of this Contract. Contractor must provide thirty (30) days written notice of any notice for renewal or cancellation of insurance.

Article 14. DISPUTE RESOLUTION

The Parties agree to resolve disputes arising under this contract through the dispute resolution process provided for in Chapter 2260 of the Texas Government Code and Subchapter C of the PUCT Rules for Administrative Services.

Article 15. SOVEREIGN IMMUNITY

The State of Texas and the PUCT do not waive sovereign immunity by entering into this contract and specifically retain immunity and all defenses available to them under the Constitution, the laws of the State of Texas, or the common law.

Article 16. GOVERNING LAW

Notwithstanding anything to the contrary in this contract, this contract will be deemed entered into in the State of Texas and will be governed by, construed and interpreted in accordance with the laws of the State of Texas that apply to contracts executed in and performed entirely within the State of Texas, without reference to any rules of conflict of laws. The Parties consent to the exclusive jurisdiction of the State of Texas. The Parties hereby submit to the jurisdiction of the courts located in, and venue is hereby stipulated to, the state courts located in Travis County, Texas. Each Party stipulates that it is subject to the jurisdiction of the courts located in Travis County, Texas, for any cause of action arising from any act or omission in the performance of this contract. Further, each Party hereby waives any right to assert any defense to jurisdiction being held by the courts located in Travis County, Texas, for any cause of action arising from any act or omission in the performance of this contract.

Article 17. COMPLIANCE WITH LAW

17.1 General. Contractor must comply with all federal, state, and local laws, executive orders, regulations, and rules applicable at the time of performance. Contractor warrants that all Services sold hereunder will have been produced, sold, delivered, and furnished in strict compliance with

all applicable laws and regulations to which they are subject, including, but not limited to, Equal Employment Opportunity laws. All laws and regulations required in agreements of this character are hereby incorporated by this reference.

17.2 Taxes. Contractor agrees to comply with any and all applicable state tax laws that may require any filing with or payment to the State of Texas as a result of any action taken as a result of this contract.

17.3 Workers' Compensation. Contractor agrees that it will be in compliance with applicable state workers' compensation laws throughout the term of this contract and any renewals or extensions thereof.

17.4 Conflicts. Contractor agrees to abide by the requirements of and policy directions provided by the Texas statutes, the rules and regulations of the PUCT, and ERCOT rules and procedures. Contractor agrees to inform and consult with the PUCT and ERCOT when further interpretations or directions are needed in order to fully implement the rules and regulations of the PUCT or ERCOT rules and procedures. In the event that Contractor becomes aware of inconsistencies between this Contract and a Texas statute or PUCT rule, Contractor will so advise the PUCT immediately and will cooperate fully to revise applicable provisions of this contract as necessary. In the event that Contractor becomes aware of inconsistencies between this Contract and an ERCOT rule or procedure, Contractor will so advise ERCOT and PUCT immediately and will cooperate fully to revise applicable provisions of this Contract as necessary.

17.5 Compliance with Deceptive Trade Practices Act. Contractor must comply with Texas Business and Commerce Code Chapter 17.

17.6 Compliance with Americans with Disabilities Act. Contractor must comply with the Americans with Disabilities Act, 42 U.S.C. Chapter 126.

17.7 Prohibited Use of Appropriated or Other Funds. Contractor must comply with Texas Government Code Sections 556.005 and 556.0055 related to prohibited uses of appropriated and other funds.

17.8 Certificate of Interested Parties Form. At the time Contractor submits a signed contract to the PUCT, Contractor must submit a "Certificate of Interested Parties" form to the PUCT and file the form with the Texas Ethics Commission. The form and instructions for filing the form can be found at: <https://www.ethics.state.tx.us/tec/1295-Info.htm>. Contractor must not perform any work under the contract, nor receive any compensation prior to filing the form with the Texas Ethics Commission.

Article 18. CONTRACTOR'S CERTIFICATION

By accepting the terms of this Contract, Contractor certifies that, to the extent applicable, it is in compliance with the following requirements and prohibitions. Contractor understands and agrees that a false certification may lead to termination of this contract for cause.

18.1 Prohibitions on Gifts. Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this contract.

18.2 Delinquent Obligations. Contractor is not currently delinquent in the payment of any franchise or sales tax owed to the State of Texas, and is not delinquent in the payment of any child support obligations under applicable state law.

18.3 Terrorist Financing. The PUCT is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it, via cross referencing proposers or vendors with the Federal General Services Administration's System for Award Management (SAM), <https://www.sam.gov/>, which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

<http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>

Contractor certifies that the Contractor and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at: <https://www.sam.gov/>

Contractor further certifies that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization as prohibited by Section 2252.152 of the Texas Government Code.

18.4 Antitrust. Neither Contractor nor anyone acting for Contractor has violated the antitrust laws of this state, codified in Section 15.01, et seq. of the Texas Business and Commerce Code or the Federal Antitrust Laws, nor has communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage.

18.5 Family Code. Contractor has no principal who is ineligible to receive funds under Texas Family Code Section 231.006 and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

18.6 Prohibited Compensation. Contractor has not received compensation from the PUCT, or any agent, employee, or person acting on the PUCT's behalf for participation in the preparation of this contract.

18.7 Government Code. Under Texas Government Code Section 2155.004, Contractor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated or payment may be withheld if this certification is inaccurate.

18.8 Outstanding Obligations. Payments due under the contract will be applied towards any debt that is owed to the State of Texas, including but not limited to delinquent taxes and child support.

18.9 Contracting with Executive Head of State Agency. Contractor certifies this contract is in compliance with Texas Government Code Section 669.003 relating to contracting with the

executive head of a State agency. If Texas Government Code Section 669.003 applies, bidder will provide the following information in order for the bid to be evaluated: Name of Former Executive; Name of State Agency; Date of Separation from State Agency; Position with Bidder; and Date of Employment with Bidder.

18.10 Buy Texas. Contractor will comply with Texas Government Code Section 2155.4441, pertaining to service contracts regarding the use of products produced in the state of Texas.

18.11 Hurricane Recovery. Under Texas Government Code Section 2155.006, Contractor certifies that the individual or business entity named in this proposal is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

18.12 E-Verify. Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

1. All persons hired to perform duties within Texas, during the term of the contract; and
2. All persons (including subcontractors) hired by the proposer to perform work pursuant to the contract, within the United States of America.

The Contractor must provide, upon request of PUCT, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed.

If this certification is falsely made, the contract may be immediately terminated, at the discretion of the state and at no fault to the state, with no prior notification. The Contractor will also be responsible for the costs of any re-solicitation that the state must undertake to replace the terminated contract.

This term should not be construed to require Contractor to utilize E-Verify to determine the eligibility of existing employees, or otherwise use E-Verify in violation of the law.

18.13 Debarred Vendors List. Contractor certifies that it is not on the Debarred Vendors List located at http://www.window.state.tx.us/procurement/prog/vendor_performance/debarred/.

18.14 Does Not Boycott Israel. If Contractor is required to make a certification pursuant to Texas Government Code Section 2270.002. Contractor certifies that Contractor does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. If Contractor does not make that certification, Contractor certifies that it provided a statement to the PUCT, prior to signing this contract, stating why the certification is not required.

Article 19. GENERAL PROVISIONS

19.1 Relationship of Parties. Contractor is and will remain at all times an independent contractor, and nothing in this contract will be deemed to create a joint venture, partnership, employment, franchise, or master-servant relationship between the Parties. Notwithstanding

anything to the contrary, the Parties will have principal-agent relationships as described in the Statement of Work. Except as expressly provided to the contrary elsewhere in this contract, no Party has any right or authority to act on behalf of another Party, nor to assume or create any obligation, liability or responsibility on behalf of another Party. Under no circumstances will the relationship of employer and employee be deemed to arise between the PUCT or ERCOT and Contractor's personnel. Contractor will be solely responsible for achieving the results contemplated by this contract, whether performed by Contractor, its agents, employees or subcontractors.

19.2 Non-Exclusivity. Nothing in this contract is intended nor will be construed as creating any exclusive arrangement between Contractor and PUCT or Contractor and ERCOT. This contract will not restrict PUCT or ERCOT from acquiring any similar, equal, or like goods or services from other entities or sources.

19.3 Taxes and Statutory Withholdings. Contractor acknowledges that it is not a PUCT or ERCOT employee, but is an independent contractor. Accordingly, it is Contractor's sole obligation to report as income all compensation received by Contractor under the terms of this contract. Contractor is solely responsible for all taxes (federal, state, or local), withholdings, social security, unemployment, Medicare, Workers' Compensation insurance, and other similar statutory obligations (of any governmental entity of any country) arising from, relating to, or in connection with any payment made to Contractor under this contract. Contractor must defend, indemnify and hold the PUCT and ERCOT harmless to the extent of any obligation imposed by law on the PUCT or ERCOT to pay any tax (federal, state, or local), withholding, social security, unemployment, Medicare, Workers' Compensation insurance, or other similar statutory obligation (of any governmental entity of any country) arising from, relating to, or in connection with any payment made to Contractor under this contract. Further, Contractor understands that neither it nor any of its individual employees is eligible for any PUCT or ERCOT employee benefit, including but not limited to holiday, vacation, sick pay, withholding taxes (federal, state, local), social security, Medicare, unemployment or disability insurance, Workers' Compensation, health and welfare benefits, profit sharing, 401(k) or any employee stock option or stock purchase plans. Contractor hereby waives any and all rights to any such PUCT or ERCOT employment benefit.

19.4 Notice. Except as otherwise stated in this contract, all notices provided for in this contract must be (a) in writing, (b) addressed to a Party at the address set forth below (or as expressly designated by such Party in a subsequent effective written notice referring specifically to this contract), (c) sent by a national carrier with tracking capability (e.g. FedEx or Certified U.S. Mail), with proper postage affixed and (d) deemed effective upon the third business day after deposit of the notice with the carrier.

IF TO THE PUCT:

ATTENTION: Executive Director
1701 N. Congress Ave., 7th Floor
Austin, TX 78701

With copies to the PUCT contract administrator, and Jay Stone, CTPM, CTCD, at the same address.

IF TO ERCOT:

ATTENTION: General Counsel
7620 Metro Center Drive
Austin, TX 78744

IF TO CONTRACTOR:

ATTENTION: David Patton, Ph.D.
9990 Fairfax Boulevard, Ste. 560
Fairfax, Virginia 22030

19.5 Headings. Titles and headings of articles and sections within this contract are provided merely for convenience and must not be used or relied upon in construing this contract or the Parties' intentions with respect thereto.

19.6 Export Laws. Contractor represents, warrants, agrees and certifies that it (a) will comply with the United States Foreign Corrupt Practices Act (regarding, among other things, payments to government officials) and all export laws and rules and regulations of the United States Department of Commerce or other United States or foreign agency or authority and (b) will not knowingly permit any non-Party to directly or indirectly, import, export, re-export, or transship any intellectual property or any third Party materials accessed by Contractor during the course of this contract in violation of any such laws, rules or regulations.

19.7 Preprinted Forms. The use of preprinted forms, such as purchase orders or acknowledgments, in connection with this contract is for convenience only and all preprinted terms and conditions stated thereon are void and of no effect. The terms of this contract cannot be amended, modified, or altered by any conflicting terms, provisions, or conditions contained in a proposal or a preprinted form, such as purchase orders or acknowledgements. If any conflict exists between this Contract and any terms and conditions on a proposal, purchase order, acknowledgment, or other preprinted form, the terms and conditions of this Contract will govern.

19.8 Specific Personnel. Contractor has identified the personnel for this assignment ("Team"), in its proposal.

Contractor warrants that it will use its best efforts to avoid any changes to the Team during the course of this Contract. Should personnel changes occur during the term of this Contract or any extensions or renewals thereof, Contractor will recommend to the PUCT personnel with comparable experience and required qualifications and training. The PUCT must approve any change in personnel on this project in writing. Contractor must provide individuals qualified to perform the tasks assigned to such individual. At the PUCT's request, Contractor must remove from the project any individual whom the PUCT finds unacceptable for any reason in the PUCT's sole discretion. Contractor must replace such individual with another individual satisfactory to the PUCT as soon as practicable.

19.9 No Felony Criminal Convictions. Contractor represents and warrants that neither Contractor, nor any of its employees, agents, or representatives, including any subcontractors and

employees, agents or representatives of such subcontractors, has been convicted of a felony criminal offense or that if such a conviction has occurred Contractor has fully advised PUCT and ERCOT of the facts and circumstances surrounding the conviction.

19.10 Publicity. Contractor understands and agrees that the PUCT and ERCOT do not endorse any vendor, commodity, or service. Contractor understands and agrees that Contractor, its employees, representatives, other agents, or subcontractors may not issue any public disclosure, media release, advertisement, or publication without prior written approval of the PUCT and ERCOT: which pertains to this contract or any services or project to which this contract relates; or which pertains to any results or findings based on information provided, created, or obtained to fulfill the requirements of this contract; or which mentions the PUCT or ERCOT.

19.11 No Third Party Beneficiaries. Nothing contained in the contract, either express or implied, is intended to confer on any person other than the Parties, or their respective permitted successors, assigns, or transferees any interests, rights, remedies, obligations or liabilities.

19.12 Prompt Payment. All payments to Contractor by ERCOT, any payments by Contractor to any subcontractor, and any payments by a subcontractor to any other person or entity that provides goods or services under this contract must be made in compliance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act

Article 20. NO IMPLIED WAIVER

The failure of any party, at any time, to enforce a provision of this contract will not constitute a waiver of that provision; will not affect the validity of this contract or any part of it; and will not affect the right of any party to enforce each and every provision.

Article 21. ORDER OF PRECEDENCE

In the event of conflicts or inconsistencies between the provisions of this contract and any attachments or exhibits, the following are given preference in the order listed below:

- 1) The General Terms and Conditions of this contract;
- 2) The Statement of Work, including any exhibits;
- 3) The Supplemental Terms and Conditions of this contract;
- 4) The Request for Proposals;
- 5) The Contractor's proposal.

Article 22. FORCE MAJEURE

Neither the PUCT nor Contractor nor ERCOT will be considered in default in the performance of its obligations under this contract to the extent that the performance of such obligations is prevented or delayed by any cause beyond the reasonable control of the affected party, which such party could not, by due diligence have avoided, including but not limited to acts of God, severe weather, explosions, riots, acts of war, or orders of legal authority. Such causes will not relieve either party of liability in the event of its failure to use due diligence to remedy the situation and remove the cause in an adequate manner, with all reasonable dispatch, and to give notice and full particulars of the same in writing to the other party as soon as possible after the

occurrence of the cause that prevented or delayed performance of the obligations. If the event of Force Majeure continues for a period of more than one hundred and eighty (180) days, either party thereafter may terminate this contract upon giving at least ten (10) days prior written notice to the other party.

Article 23. SEVERABILITY

If any provision of this contract is held unlawful or otherwise unenforceable, that provision will be severed and deemed deleted and the remainder of this contract will continue in full force and effect, as if the provision had never existed.

Article 24. FUNDING OUT CLAUSE

This contract is contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations, legislative or executive budget cuts, amendment of the Appropriations Act, state agency consolidations, or any other disruptions of current appropriations, provisions of Section 6.3 of this contract will apply. Any contract resulting from this solicitation is contingent upon the continued availability of lawful appropriations by the Texas Legislature. See Texas Constitution, Article III Section 49, State Debts; and Texas General Appropriations Act for the 2020-2021 Biennium, Article IX, Section 6.03, Excess Obligations Prohibited.

Article 25. DRUG FREE WORKPLACE POLICY

Contractor must comply with the applicable provisions of the Drug-Free Work Place Act of 1988, 41 U.S.C. § 8102, et seq., and 48 CFR § 52.223-6 Drug-Free Workplace) and maintain a drug-free work environment. The requirements of the Drug Free Workplace Act and the rules interpreting it are incorporated by reference and Contractor must comply with the relevant provisions thereof, including any amendments that may hereafter be issued.

Article 26. SUBSTITUTIONS

Substitutions are not permitted without written approval of the PUCT and ERCOT.

Article 27. RIGHT TO AUDIT

Pursuant to Section 2262.154 of the Texas Government Code, the State Auditor may conduct an audit or investigation of Contractor or any other entity or person receiving funds from the state directly under this Contract or indirectly through a subcontract under this contract. The acceptance of funds by Contractor or any other entity or person directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, Contractor or any other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the vendor and the requirement to cooperate is included in any subcontract awards.

Article 28. SIGNATORIES

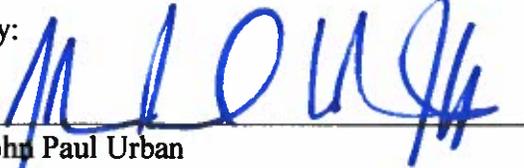
The undersigned signatories represent and warrant that they have full authority to enter into this contract on behalf of the respective parties.

Article 29. ENTIRE AGREEMENT

This contract, including the Statement of Work, constitutes the entire agreement and understanding between the parties with regard to its subject matter and supersedes and merges all prior discussions, writings, negotiations, understandings, and agreements concerning the provision of these Services. Any terms and conditions attached to a solicitation will not be considered unless incorporated into this contract by specific reference.

In WITNESS WHEREOF both parties by their duly authorized representatives have executed this contract effective as of January 1, 2020.

The Public Utility Commission of Texas

By: 

John Paul Urban
Executive Director

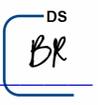
Date Signed: 12/30/19

Electric Reliability Council of Texas, Inc.

By: 

Name Bill Magness
Title President & CEO

Date Signed: December 30, 2019 | 1:51 PM PST

Approved as to form (ERCOT Legal): 

Potomac Economics, Ltd.

By: _____
David B. Patton, Ph.D.
President

Date Signed: 12/31/19

ATTACHMENT A –Statement of Work

I. Overview

A. **Introduction.** Subject to the PUCT’s supervision and oversight, the Contractor will act as the Independent Market Monitor (IMM) for the Electric Reliability Council of Texas (ERCOT) Region. Contractor will be responsible for monitoring the wholesale electricity market in the ERCOT power region, including all markets for energy, ancillary capacity services, and congestion revenue rights, and monitoring all aspects of ERCOT’s operations that affect supply, demand, and the efficient functioning of the competitive wholesale electricity market. The amount of work required fluctuates and Contractor will be required to complete many tasks on an as-needed basis, as described in more detail in this Statement of Work. The tasks, duties, and responsibilities of the Contractor will include the following:

B. Market Knowledge.

1. Contractor must hire an IMM Director and staff to carry out the day-to-day monitoring functions specified in this Contract.
2. The IMM Director must be knowledgeable and keep that knowledge current regarding market monitoring in an electricity market.
3. The Contractor, IMM Director, and staff must promptly become familiar with the ERCOT Protocols (“Protocols”) and all PUCT Rules and Texas statutes relating to the wholesale electricity market, including, but not limited to, wholesale market design and operations, restrictions on the existence and abuse of market power, and market monitoring. The Contractor must also be familiar with the enforcement authority, policies, and procedures of the PUCT.

C. **Detection and Prevention of Manipulation and Assessment of Market Power in ERCOT Wholesale Markets.** The Contractor must develop and refine tools to gather and analyze information and data as needed for its market monitoring activities and actively monitor the wholesale electricity market in the ERCOT power region, under the direction of the PUCT, including the following:

1. Continuously monitor the wholesale power market through the use of market screens and indices to identify any abnormal wholesale market events and potentially anticompetitive behavior;
2. Conduct market power tests, monitor structural indicators of market power, and conduct other analyses related to market power determination;
3. Analyze events that fail the screens and indices, potentially anti-competitive behavior, and other abnormal activities and market events through the use of computer simulation and advanced quantitative tools as necessary, and initiate informal discussion of events with ERCOT and

PUCT staff and market participants, if appropriate;

4. Conduct investigations of specific market events when anomalies are discovered and prepare reports to PUCT regarding same; and
5. Coordinate with the PUCT and ERCOT to develop procedures for the coordination of investigative activities among the Contractor, ERCOT, and PUCT, and for PUCT approval of investigations that require significant resources.

D. Evaluation of Wholesale Market Operations, Current Protocols and Proposed Changes to the Protocols. The Contractor must continuously evaluate the operation of the wholesale electricity market and will assist PUCT and ERCOT by developing recommendations for enhancing the competitiveness and efficiency of ERCOT administered markets. The Contractor will:

1. Develop, refine, and regularly monitor market performance measures to evaluate market participants' compliance with ERCOT Protocols;
2. Evaluate whether ERCOT manages the markets it administers in accordance with the Protocols;
3. Assess the effectiveness of ERCOT's management of the energy, ancillary capacity services, and congestion rights markets, and evaluate the effectiveness of congestion management and system operations by ERCOT;
4. Analyze the Protocols and proposed changes to the Protocols to identify potential reliability impacts, opportunities for strategic manipulation, and other economic inefficiencies;
5. Attend ERCOT stakeholder meetings relating to current market issues and changes in market design;
6. Interact with market participants to better understand their operations and market behavior; and
7. Recommend measures to enhance market efficiency and improve market design.

E. Reporting Obligations and Enforcement Support. The PUCT is responsible for enforcement activities and prosecutions, as discussed in further detail below under the headings "PUCT Enforcement Support" and "PUCT Supervision." Contractor must assist and support the PUCT in its enforcement and prosecution obligations by promptly developing informative reports and supporting PUCT enforcement activities. As part of this assistance, the Contractor must:

1. Timely and directly report to PUCT Commissioners and the PUCT contract administrator any irregular or potentially anti-competitive behavior,

including any potential market manipulations, market power abuse, or market power strategies, and any discovered or potential violations of PUCT Rules or ERCOT Protocols or operating guides;

2. Submit to the PUCT daily, monthly, and quarterly reports on prices and congestion, abnormal bids and offers, and unusual market or operational behavior. Daily reports are due at the end of the following business day, monthly reports are due on the last business day of the following month, and quarterly reports are due on the last business day of the following quarter.
3. Submit to the PUCT annual reports that meet the following requirements:
 - i. Assess the competitiveness of the market;
 - ii. Identify market design flaws;
 - iii. Assess the efficiency of ERCOT's management of the energy, ancillary capacity services, and congestion rights markets;
 - iv. Evaluate the effectiveness of congestion management by ERCOT;
 - v. Evaluate whether there are inefficiencies, inappropriate incentives, flaws, or opportunities for manipulation in the market design; and
 - vi. Recommend methods to correct any flaws and enhance the efficiency of the wholesale market.
 - vii. The final draft of this report must be submitted to the PUCT for review no later than May 1 each year, and contractor must publish the final draft by May 30;
 - a. If Contractor fails to submit the final draft of the annual report to the PUCT for review by May 1, the monthly invoice for services provided in May must be reduced by \$5,000 per day for each day past the deadline until the final draft is submitted.
 - b. If Contractor fails to publish the report with changes required by the PUCT by May 30, the monthly invoice for services provided in May must be reduced by \$5,000 per day for each day past the deadline until the report is published unless the PUCT Contract Administrator gives Contractor prior written approval to delay publication, in which case, Contractor must meet the approved deadline for publication or the monthly invoice for the month in which publication is due must be reduced by \$5,000 per day for each day past the revised deadline until the report is published.
 - c. Parties acknowledge and agree that if the report is delayed, the PUCT will suffer damages that are not easily calculated ahead of time and the \$5,000 per day fee reduction serves as liquidated damages.
4. Submit other reports as set forth in PUCT Rules or as otherwise requested

by the PUCT and communicate regularly with PUCT staff;

- i. Contractor must take PUCT staff's input on the format and content. Contractor must provide PUCT staff the opportunity to request updates at least once a year.
 5. Provide expert advice, analysis, reports, and testimony services relating to the IMM's independent analysis, findings, and expertise as a part of the PUCT staff's case in enforcement proceedings initiated by the PUCT executive director;
 6. Coordinate enforcement activities between the Contractor and the PUCT, including identification of priorities, allocation of resources for investigations, and obtaining advanced approval of investigations that require significant resources in excess of the work covered by the fixed fees under this contract;
 7. Obtain legal support to inform the IMM's services to the PUCT for enforcement actions in select matters, as directed in writing by the PUCT. This will require, at a minimum, hiring a full-time employee licensed to practice law in the State of Texas;
 8. Inform the PUCT Oversight & Enforcement Director of any third-party inquiries concerning enforcement matters; and
 9. Contractor will be PUCT's agent and representative in the matters contemplated under this contract. Therefore, communications between the Contractor, PUCT Staff, ERCOT (where appropriate), and other client representatives of PUCT Staff made in anticipation of litigation or in furtherance of PUCT Staff's enforcement matters are privileged under the Texas Rules of Civil Procedure and the Texas Rules of Evidence. Contractor must maintain confidentiality of all privileged communications.
 10. Contractor must comply with the Texas Open Meetings Act and legal restrictions on ex parte communications in all communications with PUCT Commissioners or their advisors.
- F. At the end of this contract period, if the contractor will no longer be performing the IMM services under this contract, the contractor will be required to assist in a smooth transition to the next IMM.

II. Performance Benchmarks.

- A. Documentation of IMM Activities. The IMM must assign internal identification numbers to all investigations, enforcement activities, and other projects and matters conducted by the IMM. The IMM must maintain a database of these activities and matters and must provide access to such database to designated PUCT Staff.
- B. Reporting. The IMM must provide a quarterly report to the PUCT contract

administrator that addresses investigation and enforcement activities, as well as other projects conducted by the IMM. All services under the contract must be accounted for under this report. The report must be provided in a timely fashion, but in no event later than the end of the quarter following the quarter covered in the report. The report should be separated into two parts—one for investigation and enforcement activities and one for other IMM projects.

1. **Investigation and Enforcement Matters Report.** Every investigation or enforcement matter involving the IMM must be listed in this portion of the quarterly report. The report should include, at a minimum, the following information for each investigation or enforcement matter:
 - i. Internal identification number;
 - ii. Name of each investigation or enforcement activity;
 - iii. PUCT Docket number, if applicable;
 - iv. Description of the investigation or enforcement activity;
 - v. Dates that an investigation is opened and closed;
 - vi. Key dates in the investigation or enforcement activity;
 - vii. Description of major activities performed in the investigation or enforcement action;
 - viii. A point of contact for each investigation and the members of the IMM team assigned to each activity.
 - ix. List of investigations that have been referred to the Commission during the period covered by that report; and
 - x. Cumulative hours spent on all investigation and enforcement activities per quarter.

2. **Other Projects Report.** All non-investigation related activities or projects must also be detailed in the quarterly report. The report should include, at a minimum, the following information for each non-investigation related activity or project:
 - xi. Internal identification number;
 - xii. Name of project;
 - xiii. PUCT Docket number, if applicable;
 - xiv. Description of the project;
 - xv. Dates that the project began and ended;
 - xvi. Key dates in the project;
 - xvii. Description of major activities performed in the project;
 - xviii. A point of contact for each project and the members of the IMM team assigned to each project;
 - xix. Indicate whether the project is recurring or not; if non-recurring, provide the date by which such project must be accomplished; and
 - xx. Cumulative hours spent on each other project per quarter.

C. **Monthly Meeting.** IMM staff must meet on a monthly basis with PUCT staff designated by the PUCT contract administrator to review pending matters and issues relating to the IMM's duties under this contract.

D. Required Duties and Minimum Staffing Level. The IMM must perform all of the duties specified in this Contract. The IMM must establish an office in space provided by ERCOT in its facility in Austin, Texas, with a staff that is sufficient to carry out the day-to-day market monitoring functions and consult with PUCT staff on a regular basis. The Austin staff must consist of at least eight persons who have technical and economic proficiency in the areas of electric generation and transmission, economics, information technology, law, and the analysis of complex transactions, including the interaction between the energy and financial markets. Staffing for legal support must include a full-time employee licensed to practice law in the State of Texas. The selection of the IMM Director and the mix of technical expertise prescribed for staffing IMM operations are subject to PUCT approval.

The IMM Director, Deputy Director, or designated liaison of the IMM must spend at least eight hours a week at the offices of the PUCT. The PUCT will provide appropriate office space, high-speed internet access, and a parking permit.

III. Responsibilities of ERCOT and PUCT

A. ERCOT Support.

1. ERCOT will provide the Contractor with full access to ERCOT's operations centers and ERCOT's records, data, and other information concerning operations, settlement, and reliability. ERCOT is authorized to provide any such information (including without limitation Protected Information or ERCOT Critical Energy Infrastructure Information (ECEII) as defined under ERCOT Protocols) to Contractor as PUCT's agent and designee in matters relating to the subject matter of this contract.
2. ERCOT will provide office and conference space at its Austin, Texas facility equipped with standard office furniture and equipment (fax, printer, and copier) and telephones (land lines), and high-speed internet access. Computers for use by the Contractor's staff located in the ERCOT facility will be provided by ERCOT; computers for use by staff working in other locations must be provided by the Contractor. In addition, the Contractor will have occasional access to other ERCOT conference rooms and copiers, as needed.
3. ERCOT will provide other support and cooperation necessary for the Contractor to perform its functions, including all support and cooperation which is determined appropriate by the PUCT.
4. ERCOT will be PUCT's agent and representative in the matters contemplated under this contract, except with regard to the IMM's duties monitoring ERCOT's performance. Therefore, communications between the Contractor, PUCT Staff, ERCOT, and other client representatives of PUCT Staff made in anticipation of litigation or in furtherance of PUCT Staff's enforcement matters are privileged under the Texas Rules of Civil Procedure and the Texas Rules of Evidence. ERCOT must maintain confidentiality of all privileged communications.

B. PUCT Enforcement Support. The PUCT is responsible for enforcement activities and has a legal staff that will prosecute enforcement proceedings. The PUCT will also provide a contract administrator to the Contractor to coordinate on investigation and enforcement activities and evaluate whether enforcement is appropriate, based on reports provided by the Contractor. The PUCT will also provide staff to evaluate the penalties that are appropriate for violations of PUCT or market rules and testify on this matter.

C. PUCT Supervision.

1. The Contractor's activities will be subject to the supervision and oversight of the PUCT.
2. The PUCT may periodically review the performance of the Contractor under the Contract to assess whether the Contractor is meeting the requirements of the Contract and providing diligent and professional services under the Contract. The PUCT must provide the Contractor a written report of the conclusions it reaches in any such review. If, in the PUCT's sole judgment, the Contractor's performance has not been adequate, it may direct the Contractor to replace the IMM Director.

IV. Cost of Services

A. Fixed Fee. Contractor will perform the services described in this Contract for an annual Fixed Fee, paid in arrears, in monthly installments, according to the fixed fee schedule below.

Contract Year	Dates	Total Annual Fixed Fee	Monthly Payment
Year 1	January 1, 2020 – December 31, 2020	\$3,950,000	\$329,167
Year 2	January 1, 2021 – December 31, 2021	\$4,070,000	\$339,167
Year 3	January 1, 2022 – December 31, 2022	\$4,195,000	\$349,583
Year 4	January 1, 2023 – December 31, 2023	\$4,320,000	\$360,000

B. No Expenses Reimbursed.

The fixed fee payments described above are Contractor's only compensation. No expenses will be charged to or reimbursed by ERCOT or PUCT.

ATTACHMENT B –Supplemental Terms and Conditions

1. BACKGROUND INVESTIGATION AND CONDUCT

1.1 Background Investigation

- A. Contractor will ensure that all individuals performing Services on behalf of Contractor under this Agreement (“Individuals” or, singularly, an “Individual”) are legally authorized to perform the Services in the United States and Texas, and that the education and background on resumes submitted to ERCOT for Individuals are accurate.**
- B. Prior to any Individual having unescorted access to ERCOT's facilities, or access to ERCOT computers or information systems (“Access Privileges”), such Individual must successfully pass a background investigation, including:**
 - 1. a criminal background check for the previous seven (7) years in each county, state, and country in which the Individual has worked, lived, or attended school showing no felonies and no misdemeanors except those misdemeanors that ERCOT accepts in writing, using a reputable vendor of consumer report services;**
 - 2. verification of the Individual's identity and confirming each Individual's social security number by (a) a reputable vendor of consumer report services, (b) receipt of a properly-completed Form I-9, or (c) other reliable process acceptable to ERCOT; and**
 - 3. a clean, supervised drug screen to detect cocaine, amphetamines, opiates, phencyclidine, and marijuana, administered by a reputable medical office or drug testing service.**
- C. For each Individual for whom Contractor requests Access Privileges, Contractor must:**
 - 1. arrange and pay for the above background investigation; and**
 - 2. provide written confirmation to ERCOT that the Individual has successfully passed the requisite background investigation. Contractor will maintain and allow ERCOT or its authorized representative access to audit Contractor's records relating to the background investigation of any Individual for a period of three (3) years after the End Date of the applicable SOW.**

- D. All information regarding an Individual obtained during the background check and drug screen will be kept confidential by ERCOT to the extent allowed by law.

1.2 Conduct

- A. Contractor agrees that it and all Individuals will abide by ERCOT's Code of Conduct and Ethics Corporate Standard ("Code of Conduct") and all other policies and procedures applicable to ERCOT independent contractors while performing Services for ERCOT, on ERCOT premises, or using ERCOT equipment or networks.
- B. Further, all Individuals must execute the then-current Consultant Ethics Agreement (the "Ethics Agreement") acknowledging and agreeing to be bound by ERCOT's Antitrust Compliance, Driving on Company Business, Confidentiality, Fraud Prevention and Whistleblower, and Acceptable Use Corporate Standards prior to being granted access privileges or beginning services for ERCOT. All Individuals will execute such updated agreements as are reasonably requested by ERCOT.
- C. The form of the current required Ethics Agreement and Code of Conduct may be found at www.ercot.com.
- D. Contractor agrees that it will abide by ERCOT's Information Protection Corporate Standard.
- E. Contractor acknowledges that the following items are subject to inspection by ERCOT personnel at any time with or without notice:
 - 1. any e-mail, voicemail, or computer usage by any Individual using ERCOT computer, network, or electronic equipment; and
 - 2. any tangible item situated on ERCOT's premises (including filing cabinets, desks, or other work areas).
- F. On-site Safety
 - 1. Contractor is responsible for complying with all ERCOT safety precautions and programs in connection with the Services provided.
 - 2. Contractor will take all necessary precautions and provide all necessary protection from damage, injury, or loss to persons or property in providing the Services.
 - 3. Contractor is liable for all damage or loss to any person or property to the extent caused by Contractor or an Individual.

2. CONFIDENTIALITY

2.1 Exchange of Confidential Information

For the purposes of this Agreement, the Parties will be exchanging certain Confidential Information, as defined in Section 2.2.A below (i.e., the "Disclosing Party" provides Confidential Information to the "Receiving Party"). Notwithstanding anything herein to the contrary, this confidentiality provision remains subject to the terms of Article 10

(Public Information), of Contract No. 473-19-00007 among Contractor, the PUCT, and ERCOT.

2.2 Confidential Information

- A. "Confidential Information" is information that by its nature or purpose would reasonably be considered by a person to be confidential, proprietary, or trade secret information and specifically includes, but is not limited to, anything designated as Protected Information under the ERCOT Protocols. Confidential Information also includes all information, technical data, and know-how that relates to the business, services, or products of Disclosing Party, or Disclosing Party's Market Participants (as defined below), customers, or other vendors, including without limitation, any research, products, services, developments, inventions, processes, techniques, designs, and scientific, technical, engineering, distribution, marketing, financial, merchandising, pricing, and sales information that is disclosed to Receiving Party directly or indirectly in writing, electronically, orally, by drawings, or through inspection. A "Market Participant" is an entity other than ERCOT that engages in any activity that is in whole or in part the subject of the ERCOT Nodal Protocols, regardless of whether it has signed an agreement with ERCOT, as further described in the ERCOT Nodal Protocols, which may be found on ERCOT's website at www.ercot.com.
- B. The Parties agree that all materials and information exchanged in connection with the performance of Services under this Agreement are considered Confidential Information.
- C. Confidential Information does not include information, technical data, or know-how that:
 - 1. is already published or available to the public, or subsequently becomes available, other than by a breach of this Agreement;
 - 2. is received from a third party without Receiving Party's knowledge of any obligation of confidentiality;
 - 3. is independently developed by personnel or agents of Receiving Party without reliance on the Confidential Information;
 - 4. is proven by written evidence to be known to Receiving Party at the time of disclosure; or
 - 5. is produced by Receiving Party in compliance with an order, rule, or law of any federal, state, local, or municipal body having jurisdiction over a party, provided that Receiving Party gives Disclosing Party notice, to the extent reasonably possible, of such order, rule, or law and gives Disclosing Party an opportunity to defend and/or attempt to limit such production.

2.3 Precautions Taken to Protect Confidential Information

- A. Receiving Party agrees not to disclose or use the Confidential Information for any purposes other than those under this Agreement.**
- B. Receiving Party will take reasonable actions and precautions to prevent unauthorized disclosure and use of Confidential Information, including maintaining possession and control at all times.**
- C. Confidential Information and all copies are and will remain the property of Disclosing Party.**
- D. Except as to Confidential Information that also makes up a part of prior works or Confidential Information that constitutes a "state record," as defined by Texas Government Code § 441.180(11) and must be retained by the PUCT in accordance with a records management program established under Texas Government Code § 441.183, upon request of Disclosing Party or immediately upon termination of this Agreement, Receiving Party will promptly return to Disclosing Party all Confidential Information via bonded courier or some other similarly secure means agreed upon in advance, or destroy all Confidential Information using a destruction method that ensures such data is unrecoverable and providing documentation to Disclosing Party detailing the destruction method and process used, provided that each Party may keep a copy of this Agreement.**
- E. Receiving Party agrees to immediately notify Disclosing Party upon discovery of any unauthorized use or disclosure of Confidential Information, and to cooperate in any reasonable way to help Disclosing Party regain possession of the Confidential Information and prevent further unauthorized use or disclosure.**

2.4 Loopholes

- A. Contractor recognizes that by performing Services under this Agreement, Contractor may become aware of methods by which Market Participants could manipulate or "game" the ERCOT system ("Loopholes") and thereby take unethical advantage of the ERCOT system.**
- B. Contractor agrees that to the extent Contractor becomes aware of such information, it will promptly notify a member of ERCOT management of the existence of such Loopholes and that it will treat such information as Confidential Information.**

2.5 Notwithstanding anything to the contrary in this Agreement, no Individual or Party will be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made (A) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (B) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. An Individual who files a lawsuit for retaliation by a Party for reporting a suspected violation of law may disclose the trade secret to his or her attorney and use the trade secret information in the court proceeding, if the Individual (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

3. CYBER SECURITY

3.1 Prior to performing Services, Contractor will provide summary documentation of its secure product development life cycle, including the standards, practices, training programs, and development environment used to create or modify any deliverables. If applicable, Contractor will document how it addresses and prevents introduction of malicious code during development and delivery of software included with deliverables.

If applicable, the Contractor will document how the most critical application security weaknesses are being addressed.

- 3.2 During or after performance of services or transfer of any deliverables, and upon Contractor identifying any known vulnerabilities or breaches of system security, Contractor will notify ERCOT (1) within 24 hours of such breaches involving services, deliverables, and/or software provided to ERCOT or (2) within three (3) calendar days of any other breaches of Contractor's system security. Within seven (7) calendar days of any such breach, Contractor will provide follow-up documentation to ERCOT that will include a description of the breach, potential security impact, root cause, and recommended corrective actions to be taken by ERCOT and Contractor. Contractor will continue to report to ERCOT on a schedule approved by ERCOT until a root cause analysis and forensic investigation to determine the full impact have been completed or exhausted.
- 3.3 Contractor will notify ERCOT immediately upon resignation, termination, or reassignment of any Individuals requiring Access Privileges.
- 3.4 Contractor will transfer any deliverables only through secure channels approved in advance by ERCOT and the PUCT. ERCOT may require Contractor to specify how digital delivery will be validated and monitored to ensure integrity and authenticity of software and patches, and to apply encryption throughout the delivery process.
- 3.5 All Contractor access, including Contractor-initiated remote access and automated system-to-system access, will occur only through ERCOT's security gateways and firewalls, and will adhere to ERCOT security procedures.