



Consent Item 12

TO: East Bay Community Energy Board of Directors
FROM: Taj Ait-Laoussine, VP Technology & Analytics
SUBJECT: Amendment to Subscription Agreement with Myst AI Inc.
DATE: July 21, 2021

Recommendation

Adopt a Resolution authorizing the CEO to negotiate and execute an Amendment to the Subscription Agreement with Myst AI Inc. to extend the term through June 30, 2024, and to increase the compensation by \$474,000, for a total amount not to exceed \$618,000.

Background and Discussion

Accurate load forecasts are essential to the efficient operation of EBCE. Every day, EBCE must submit to the California Independent System Operator (CAISO) a forecast of its expected hourly load for the following day. It is both necessary and prudent for EBCE to submit as accurate a forecast as possible, to both minimize financial exposure to EBCE, and to contribute to the efficient operation of CAISO markets.

In June 2020, EBCE executed a Subscription Agreement with Myst AI, Inc. (Myst) to provide forecasting services to EBCE for a term of one year at a cost not to exceed \$144,000. The services included both **load** and **price** forecasts.

EBCE is pleased with the performance of Myst's load forecasts, which have averaged a mean error of just under 3% over the duration of our engagement. This performance exceeds the performance that EBCE would have otherwise achieved without the services of Myst, and - believe - also exceeds that of other community choice aggregation agencies (CCA). Since EBCE contracted with Myst, other CCAs have followed suit.

The value of our subscription to Myst's load forecast service was especially evident after the rotating outage events of August 2020, when load forecasting inaccuracy

was identified by the CAISO as one of several root causes. EBCE was able to demonstrate to the CAISO that it had invested in advanced forecasting capabilities to minimize its forecasting inaccuracies during those events.

EBCE is also receiving **price** forecasts from Myst as part of its subscription. Price forecasts can enable EBCE to participate in virtual bidding in the CAISO's Convergence Market. EBCE continues to evaluate the performance and accuracy of Myst's price forecasts, and to develop both a framework and processes to implement the use of these forecasts in accordance with EBCE policies.

Fiscal Impact

EBCE seeks to amend its existing Subscription Agreement with Myst, to increase the total compensation by \$474,000 for a 3-year term, for a total amount not to exceed \$618,000. Specifically, the additional costs breakdown is as follows:

- Load Forecasting subscription for 36 months, for a total not to exceed \$324,000 (\$9,000 / month);
- Additional services to refine and adapt price forecasts to EBCE's needs and requirements, for a total not to exceed \$60,000, should EBCE decide to proceed with further evaluation of price forecasting;
- Price Forecasting subscription for 30 months, for a total not to exceed \$90,000 (\$3,000 / month), should EBCE decide to proceed with the price forecasting service.

The pricing reflects a discount from the standard fee schedule in recognition of the collaborative nature of Myst and EBCE's relationship during the first year of service, and for the duration of the proposed agreement.

Attachments

- A. Resolution Authorizing the Chief Executive Officer to Negotiate and Execute an Amendment to the Subscription Agreement with Myst AI Inc.
- B. Original Subscription Agreement between Myst AI Inc. and EBCE

RESOLUTION NO.

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CHIEF
EXECUTIVE OFFICER TO NEGOTIATE AND EXECUTE AN AMENDMENT TO THE
SUBSCRIPTION AGREEMENT WITH MYST AI, INC.**

WHEREAS The East Bay Community Energy Authority (“EBCE”) was formed as a community choice aggregation agency (“CCA”) on December 1, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.*, among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy-related climate change programs in all of the member jurisdictions. The cities of Newark and Pleasanton, located in Alameda County, along with the City of Tracy, located in San Joaquin County, were added as members of EBCE and parties to the JPA in March of 2020.

WHEREAS accurate forecasting of day-ahead load is essential to EBCE’s efficient operation;

WHEREAS EBCE entered into a Subscription Agreement in June 2020 with Myst AI Inc. to provide forecasting services for a one-year term for an amount not to exceed \$144,000;

WHEREAS the existing agreement was awarded as a sole-source contract given the unique nature of the services offered by Myst AI, Inc.

WHEREAS EBCE is pleased with the services it has received from Myst AI Inc. and the accuracy of its day-ahead load forecasts;

WHEREAS the aforementioned Agreement can be extended by mutual agreement of both parties pursuant to section 4.1;

WHEREAS EBCE would like to amend the Subscription Agreement for an additional term of 36 months at a cost of \$474,000 for that term, total compensation not to exceed \$618,000.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The CEO is hereby authorized to negotiate and execute an Amendment to the Subscription Agreement with Myst AI, Inc. which shall be effective through June 30, 2024 and provide a total compensation not exceed \$618,000. The CEO is further authorized to execute any clarifying or clerical changes to the Amendment, which must be approved by General Counsel.

ADOPTED AND APPROVED this 21st day of July, 2021.

Dianne Martinez, Chair

ATTEST:

Adrian Bankhead, Clerk of the Board

SUBSCRIPTION AGREEMENT

THIS SUBSCRIPTION AGREEMENT (this “**Agreement**”) is made and entered into effective as of the 5th day of June, 2020 (the “**Effective Date**”) between Myst AI Inc., a Delaware corporation with offices at 25 Taylor Street, San Francisco, CA 94102, USA (“**Myst AI**”) and East Bay Community Energy Authority, a joint powers authority organized under the laws of California with offices at 1999 Harrison Street, Suite 800, Oakland, CA 94612 (“**Subscriber**”).

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Subscriber and Myst AI (collectively, the “**Parties**” and each, a “**Party**”) hereby agree as follows:

1. Services. Subject to the terms and conditions of this Agreement, Myst AI will provide Subscriber with access to the software-as-a-service offering and related services delivered through <https://www.myst.ai> (the “**Services**”) solely for Subscriber’s internal non-commercial use, as set forth in the Scope of Services, attached hereto and incorporated herein as Exhibit A. Subscriber will be responsible for obtaining internet access and other third Party software and services necessary for it to access the Services. The Services are subject to modification from time to time at Myst AI’s sole discretion, for any purpose deemed appropriate by Myst AI; *provided*, that Myst AI will not materially reduce the aggregate features and functionalities of the Services.

1.1 Availability. Except as otherwise agreed between Myst AI and Subscriber in writing, Myst AI shall make the Services available 99.5% of the time, excluding any time referred to in the next sentence. Notwithstanding the foregoing, Myst AI reserves the right to suspend Subscriber’s access to the Services: (i) for scheduled or emergency maintenance, or (ii) any loss or interruption of Software due to a force majeure event as set forth in [Section 10.4](#) below. Myst AI will give Subscriber a minimum of 48 hours prior written notice of any suspension due to scheduled maintenance.

1.2 Support. Subject to the terms and conditions hereof, Myst AI will provide support to Subscriber for the Services. Subscriber will designate

an employee who will be responsible for all matters relating to this Agreement (“**Primary Contact**”). Subscriber may change the individual designated as Primary Contact at any time by providing written notice to Myst AI. In addition to the Services, Myst AI will provide Subscriber with up to eight (8) hours of consulting services per quarter at no charge.

1.3 Cooperation. Subscriber will reasonably cooperate with Myst AI in connection with the performance of this Agreement by making available such personnel and information as may be reasonably required, and taking such other actions as Myst AI may reasonably request to assist in its provision of the Services. Subscriber will also cooperate with Myst AI in establishing a password or other procedures for verifying that only designated employees of Subscriber have access to any administrative functions of the Services. In the event Subscriber gives Myst AI written notice of a “litigation hold” or a request for records under the California Public Records Act (Gov. Code § 6250 et seq.), then as to all data identified in such notice, Myst AI shall, at reasonable cost to Subscriber, isolate and preserve all such data pending receipt of further direction from Subscriber.

2. Restrictions. Subscriber will not, and will not permit any third Party to: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Services or any related software, documentation or data related to the Services (*provided*, that reverse engineering is prohibited only to the extent such prohibition is not contrary to applicable law); modify, translate, or create derivative works based on the Services or software; except as expressly permitted herein, use the Services or any related software for timesharing or service bureau purposes; use the Services or any related software other than in accordance with this Agreement and in compliance with all applicable laws and regulations (including but not limited to any privacy laws, and laws and regulations concerning intellectual property, consumer and child protection, obscenity or defamation); except as expressly permitted by the functionalities of the Services, run or use any processes that run or are activated while Subscriber is not logged on to the Services or that “crawl,” “scrape,” or “spider” the Services; or use the Services or any

related software in any manner that (1) is harmful, fraudulent, deceptive, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, or otherwise objectionable (including without limitation, accessing any computer, computer system, network, software, or data without authorization, breaching the security of another user or system, and/or attempting to circumvent any user authentication or security process), (2) impersonates any person or entity, including without limitation any employee or representative of Myst AI, or (3) knowingly contains a virus, trojan horse, worm, time bomb, unsolicited bulk, commercial, or “spam” message, malware, or other harmful computer code, file, or program (including without limitation, password guessing programs, decoders, password gatherers, keystroke loggers, cracking tools, packet sniffers, and/or encryption circumvention programs).

3. Fees and Payment Terms.

Subscriber will pay Myst AI subscription fees as stated on Exhibit B attached hereto (the “**Fees**”) in accordance with the payment schedule set forth on Exhibit B. If not otherwise specified, payments will be due within thirty (30) days of Subscriber’s receipt of the invoice. Unless otherwise specified in Schedule A or on an invoice, all amounts stated in this Agreement or on any invoice are in U.S. dollars and all payments will be made in U.S. dollars. Myst AI shall not suspend any part of the Services where: (a) Subscriber is reasonably disputing any amount due to Myst AI; or, (b) any unpaid but undisputed amount due to Myst AI is less than ninety (90) business days in arrears. Myst AI shall maintain accurate records of all fees billable to, and payments made by, Subscriber in a format that will permit audit by Subscriber for a period of no less than three (3) years from when a fee was incurred or a payment was made. The foregoing obligation of Myst AI shall survive the termination of this Agreement.

4. Term and Termination.

4.1 Term.

(a) Initial Term. The initial term of this Agreement begins on the Effective Date and will continue for twelve (12) months (the “**Initial Term**”). Subscriber has the right to terminate the agreement within the first three (3) months after the Effective Date if use of Myst AI’s Services for virtual bidding would not have yielded a net economic impact for Subscriber of at least \$200,000 on an annualized basis, with at least one (1) month prior notice.

(b) Renewal Terms. Following the Initial Term and unless otherwise terminated as

provided for in this Agreement, this Agreement may be renewed for successive one (1) year terms (each, a “Renewal Term” and collectively, the “Term.”) upon mutual written agreement of the Parties.

4.2 Termination. In the event of a material breach of this Agreement by a Party, the other Party may terminate this Agreement by giving thirty (30) days prior, written notice to the breaching Party; *provided, however*, that this Agreement will not terminate if the breaching Party has cured the breach before the expiration of such thirty (30) day period.

4.3 Effect of Termination. In the event of any termination or expiration of this Agreement,

(a) Subscriber will pay Myst AI for all undisputed amounts payable hereunder as of the effective date of termination or expiration;

(b) all rights and licenses granted hereunder to Subscriber (as well as all rights granted to any Affiliates or contractors of Subscriber) will immediately cease, including but not limited to all use of the Services.

(c) Myst AI shall, within ten (10) business days following the termination of this Agreement, provide Subscriber, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Myst AI), with a final extract of the Subscriber Data in the format specified by Subscriber. Further, Myst AI shall certify to Subscriber the destruction of any Subscriber Data within the possession or control of Myst AI, in accordance with Section 12.5, but such destruction shall occur only after the Subscriber Data has been returned to Subscriber. This Section shall survive the termination of this Agreement.

4.4 Survival. The following provisions will survive any termination or expiration of this Agreement: Sections 4.3 and 4.4, 5, 6, 8, 9, and 10.

5. Intellectual Property.

5.1 Title. Except as expressly set forth herein, Myst AI alone (and its licensors, where applicable) will retain all intellectual property rights relating to the Services and related software and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Subscriber or any third Party relating to the Services and/or related software, which are hereby assigned to Myst AI. Subscriber will not copy, distribute, reproduce or use any of the foregoing except as

expressly permitted under this Agreement. Except as expressly set forth herein, this Agreement is not a sale and does not convey to Subscriber any rights of ownership in or related to the Services or related software, any intellectual property rights.

5.2 Data.

(a) In order to provide the Services, Subscriber will deliver certain of its historical data for Myst AI to train forecasting models as well as ongoing data for forecasts (collectively, “**Energy Data**”) to Myst AI upon request by Myst AI during the Term. The historical data may be provided in a static manner (e.g. through a secure file sharing system), while the ongoing data must be provided in a dynamic manner (e.g. through an application programming interface) or as otherwise agreed to by parties.

(b) Except as set forth herein, Subscriber and its licensors shall (and Subscriber hereby represents and warrants that they do) have and retain all right, title and interest (including, without limitation, sole ownership of) of all content and data provided by or on behalf of Subscriber and/or its end-users to Myst AI through or in connection with the Services, including, without limitation, Model Input Data and any information regarding Subscriber products and/or services (collectively, “**Data**”) and all intellectual property rights in and to such Data. Subscriber represents that the Data provided to Myst AI will be accurate, reliable, and appropriate for purposes of delivering and improving the Services. If Myst AI receives any notice or claim that any Data, or activities hereunder with respect to any Data, may infringe or violate rights of a third Party or any applicable law or regulation (a “**Claim**”), Myst AI may (but is not required to) suspend activity hereunder with respect to that Data. Subscriber, on behalf of itself and its suppliers and licensors (as applicable) hereby grants Myst AI a worldwide, non-exclusive license to use, view, copy, reformat, distribute, display and analyze (including sublicensing to third party data processors such as Google Cloud Platform and Google Analytics) the Data solely in connection with Myst AI’s performance of the Services, which includes without limitation training Myst AI’s machine learning models, so long as such third party data processors (listed in Exhibit C) provide for the protection of Subscriber Data according to their terms of service or similar agreement to at least as high a standard as the ones described in this agreement. Subscriber further agrees and represents that it has reviewed and is subject to Myst AI’s Privacy Policy, which is attached hereto and incorporated herein by this reference, as Exhibit D.

5.3 Marketing. Myst AI is permitted to disclose that Subscriber is one of its customers to any third-Party at its sole discretion, and to place Subscriber’s name and logo on its website and marketing materials for this purpose.

6. Confidentiality. In the course of their dealings, the Parties may disclose to one another confidential information relating to their business (“**Confidential Information**”). For the purposes of this Agreement, the term “Confidential Information” shall mean all information and documentation of a Party that: (a) has been marked “confidential” or with words of similar meaning, at the time of disclosure by such Party; (b) if disclosed orally or not marked “confidential” or with words of similar meaning, was subsequently summarized in writing by the disclosing Party and marked “confidential” or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing Party. For purposes of this Agreement, in all cases and for all matters, Subscriber Data shall be deemed to be Confidential Information. Neither Party will disclose Confidential Information to any third party, other than to its employees or contractors, without the express written consent of the other Party, nor will a Party make use of any Confidential Information other than in the performance of rights or obligations under this Agreement. Each Party will use at least the same degree of care to avoid disclosure of Confidential Information as it uses with respect to its own Confidential Information. This Section shall not limit any prior confidentiality agreement between the Parties. Confidential Information does not include information: (a) generally available to or known to the public, (b) previously known to the recipient, (c) independently developed by the recipient outside the scope of this Agreement, (d) lawfully disclosed by a third party, or (e) disclosed during testimony before any judicial or quasi-judicial court or tribunal, except those held in-camera. Each Party shall advise the other Party immediately in the event either Party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and each Party will cooperate with the other Party in seeking injunctive or other equitable relief against any such person. It is understood that Subscriber is subject to the California Public Records Act (Gov. Code § 6250 *et seq.*). If a request under the California Public Records Act is made to view Myst AI’s Confidential Information, Subscriber shall notify Myst AI of the request and the date that such records will be released to the requester unless Myst AI obtains a court order enjoining that disclosure. If Myst AI fails to obtain a court order enjoining that disclosure, Subscriber will

release the requested information on the date specified. Each Party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other Party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a Party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available.

7. Representations and Warranties.

7.1 General. Each Party represents and warrants to the other Party that (a) it has the legal right and power to enter into this Agreement, (b) the performance of its obligations and/or exercise of its rights hereunder (including, without limitation, for Subscriber, its collection, use and/or disclosure to Myst AI of any personally identifiable information via the Services) will not violate or conflict with (1) any agreements, contracts or other arrangements to which it is a Party, or (2) any applicable law and/or regulation, (c) the execution of this Agreement and the performance by it of the transactions contemplated hereby have been duly authorized by all necessary corporate action and any other consents required to be obtained by it have been obtained, (d) it will comply with all applicable laws and regulations, including, without limitation, the US Foreign Corrupt Practices Act, and all other laws and regulations prohibiting corruption and bribery, and (e) it will not, directly or indirectly make or give, offer or promise to make or give, or authorize the making or giving of any payment, gift, or other thing of value or advantage (including, for example, accommodations, airfare, entertainment or meals) to any person or entity for the purpose of wrongfully influencing decisions or for any other purpose that is otherwise unlawful. Further, Myst AI represents and warrants that: (a) it is in the business of providing the Services; (b) the Services are fit for the ordinary purposes for which they will be used; (c) it acknowledges that Subscriber is relying on its representation of its experience and expert knowledge, and that any substantial misrepresentation may result in damage to Subscriber; (d) it knows the particular purpose for which the Services are required by Subscriber; (e) it is the lawful licensee or owner of the Services (excluding any Subscriber Data therein) and has all the necessary rights in the Services to grant the use of the Services to Subscriber; (f) the Services and any other work performed by Myst AI hereunder shall not infringe upon any United States or foreign copyright, patent, trade secret, or other proprietary right, or misappropriate any trade secret, of any third-party, and that it has neither assigned nor otherwise

entered into an agreement by which it purports to assign or transfer any right, title, or interest to any technology or intellectual property right that would conflict with its obligations under this Agreement; (g) it shall disclose any third-party (which shall, for purposes of this Agreement, be deemed a subcontractor) whose intellectual property is incorporated into the Services or who is necessary for the performance of the Services and it shall maintain in-force written agreements with such third-party, if any, for the term of this Agreement, provided, however, that data provided by third-party vendors shall not be required to be disclosed under this section; (h) it has the expertise to perform the Services in a competent, workmanlike, and professional manner and in accordance with the highest professional standards; (i) the Services will conform in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in the Scope of Work; (j) it is a business duly incorporated, validly existing, and in good standing under the laws of its state of incorporation; (k) it has all requisite corporate power, financial capacity, and authority to execute, deliver, and perform its obligations under this Agreement; (l) there is no outstanding litigation, arbitrated matter or other dispute to which it is a party which, if decided unfavorably to it, would reasonably be expected to have a potential or actual material adverse effect on its ability to fulfill its obligations under this Agreement; and (m) it, its officers, employees, associates and subcontractors, presently have no interest, and will not acquire any interest, direct or indirect, financial or otherwise, that would conflict in any way with the performance of this Agreement, and that it, its officers, employees, associates and subcontractors, will not employ any person having such an interest.

7.2 Reserved.

8. Indemnification and Insurance.

8.1 Reserved.

8.2 Myst AI agrees to indemnify, defend, and hold harmless Subscriber and its elected officials, officers, directors, agents, attorneys and employees (each, an "Indemnitee") from and against any and all liabilities, damages, losses, expenses, claims, demands, suits, fines, or judgments (each, a "Claim," and collectively, the "Claims"), including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnitee, by reason of any Claim arising out of or relating to any act, error or omission, negligence, or misconduct of Myst AI, its officers, directors, agents,

employees, and subcontractors, during the performance of this Agreement, including, without limitation, Claims arising out of or relating to: (a) bodily injury (including death) or damage to tangible personal or real property; (b) any payment required to be paid to subcontractors, if any, of Myst AI; (c) any material misrepresentation or breach of warranty of any representation or warranty set forth in this Agreement; (d) any destruction, or unauthorized access, use, or theft of Subscriber Data; or (e) any material breach of any covenant set forth in this Agreement; provided, however, that the foregoing indemnity shall not apply to the extent that the applicable Claim resulted from the sole negligence or willful misconduct of an Indemnitee.

8.3 Myst AI agrees to indemnify, defend, and hold harmless Indemnitees from and against any and all Claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnitee, by reason of any Claim arising out of or relating to the Services allegedly or actually infringing or misappropriating any United States or foreign patent, copyright, trade secret, trademark, or other proprietary right. In the event that Myst AI is enjoined from providing the Services and such injunction is not dissolved within thirty (30) calendar days, or in the event that Subscriber is adjudged, in any final order of a court of competent jurisdiction from which no appeal is taken, to have infringed upon or misappropriated any patent, copyright, trade secret, trademark, or other proprietary right in the access or use of the Services, then Myst AI shall, at its expense: (a) obtain for Subscriber the right to continue using such Services; (b) replace or modify such Services so that they do not infringe upon or misappropriate such proprietary right and is free to be used by Subscriber; or, (c) in the event that Myst AI is unable or determines, in its reasonable judgment, that it is commercially unreasonable to do either of the aforementioned, Myst AI shall reimburse to Subscriber any prepaid fees.

8.4 Unless otherwise approved in writing by Subscriber's risk manager, Myst AI shall, at its own expense, procure and maintain in full force and effect during the term of this Agreement, policies of insurance, of the types and in the minimum amounts as follows, with responsible insurance carriers duly admitted and qualified in California covering the operations of Myst AI, pursuant to this Agreement:

1) Commercial General Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000.00) per occurrence for bodily injury,

personal injury and property damage and a general aggregate limit of Two Million Dollars (\$2,000,000.00) per project or location. If Myst AI is a limited liability company, the commercial general liability coverage must be amended so that Consultant and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage. If Myst AI does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Myst AI must obtain a non-owned auto endorsement to the Commercial General Liability policy required. If Myst AI agrees that they will not drive to carry out the services of this Agreement, this requirement will be waived.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. If Myst AI has no employees while performing Services under this Agreement, workers' compensation policy is not required, but Consultant must execute a declaration that it has no employees.

4) Professional Liability/Errors & Omissions Insurance with minimum limits of Two Million Dollars (\$2,000,000.00) per claim and in aggregate.

5) Cyber Liability with a minimum limit of One Million Dollars (\$1,000,000) per occurrence.

8.5 The Indemnitees shall be named as additional insureds in the commercial general policy. Myst AI shall cause the liability it assumed under this Agreement to be specifically insured under the contractual liability section of the liability insurance policies. The liability policies shall be primary without right of contribution from any Indemnitee, and Myst AI waives all rights of subrogation with respect to said policies. Such policies shall require that Subscriber be given no less than thirty (30) calendar days prior written notice of any cancellation thereof or material change therein. Subscriber shall have the right to request a reasonable adjustment of the limits of liability for commercial general and/or professional liability insurance as Myst AI's exposure to Subscriber increases. Myst AI shall provide Subscriber with certificates of insurance and original endorsements,

evidencing all of the above coverage, including all special requirements specifically noted above, and shall provide Subscriber with certificates of insurance evidencing renewal or substitution of such insurance thirty (30) calendar days prior to the effective date of such renewal or substitution.

9. Limitation of Liability.

9.1 Liability Exclusion. IN NO EVENT WILL EITHER PARTY HERETO OR THEIR LICENSORS BE LIABLE TO EACH OTHER FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE SERVICES, OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT, ANY DELAY OR INABILITY TO USE THE SERVICES OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT OR OTHERWISE ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS OR LOST SALES, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES.

9.2 EXCEPT IN THE CASE OF FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, BREACH OF CONFIDENTIALITY OBLIGATIONS, OR INTELLECTUAL PROPERTY INFRINGEMENT, THE CUMULATIVE LIABILITY OF EITHER PARTY FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT WILL NOT EXCEED THE GREATER OF EITHER (A) THREE TIMES (3X) THE FEES PAID TO MYST BY SUBSCRIBER DURING THE 12-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM OR (B) THE MAXIMUM POLICY LIMITS OF THE INSURANCE COVERAGES PROVIDED IN SECTION 8.4 IF SUCH CLAIM IS COVERED BY SUCH INSURANCE COVERAGE.

10. Miscellaneous Provisions.

10.1 Notices. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or email; and upon receipt, if sent by certified or registered mail (return receipt requested), or postage prepaid, to the respective

addresses of the Parties set forth below or such other addresses as the respective Parties may designate by like notice from time to time.

If to Myst AI:

Myst AI
25 Taylor Street
San Francisco, CA 94102
Attn: Pieter Verhoeven, Titiaan Palazzi
Email: pjverhoeven@myst.ai,
tpalazzi@myst.ai

If to Subscriber:

East Bay Community Energy Authority
1999 Harrison Street, Suite 800
Oakland, CA 94612
Attn: Taj Ait-Laoussine
Email: taitlaoussine@ebce.org

11.

11.1 Relationship Of The Parties. Each Party is an independent contractor of the other Party. Nothing herein will constitute a partnership between or joint venture by the Parties, or constitute either Party the agent of the other.

11.2 Assignment. Neither Party may assign or otherwise transfer any of its rights or obligations under this Agreement without the prior, written consent of the other Party; *provided, however*, that a Party may, upon prior, written notice to the other Party and without the consent of the other Party, assign or otherwise transfer this Agreement to any of its Affiliates or to an entity with or into which it is merged or consolidated or to which it sells its stock or other equity interests or all or substantially all of its assets. Any assignment or other transfer in violation of this Section 10.3 will be null and void. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the Parties hereto and their permitted successors and assigns.

11.3 Force Majeure. Nonperformance of either Party will be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts, orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing Party.

11.4 Choice of Law. This Agreement will be governed by the laws of the State of California,

U.S.A. without regard to its conflict of laws' provisions. The federal and state courts sitting in Alameda County, California, U.S.A. will have proper and exclusive jurisdiction and venue with respect to any disputes arising from or related to the subject matter of this Agreement.

11.5 Modification. No modification or amendment to this Agreement will be effective unless in writing signed by authorized representatives of both Parties.

11.6 No Waiver. The rights and remedies of the Parties to this Agreement are cumulative and not alternative. No waiver of any rights is to be charged against any Party unless such waiver is in writing signed by an authorized representative of the Party so charged. Neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege.

11.7 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect, and, if legally permitted, such offending provision will be replaced with an enforceable provision that as nearly as possible effects the Parties' intent.

11.8 Entire Agreement. This Agreement (including Exhibits hereto) contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements and commitments with respect thereto. There are no other oral or written understandings, terms or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement. Where Subscriber is required to "click through" or otherwise accept or made subject to any online terms and conditions in accessing or using the Services, such terms and conditions are not binding and shall have no force or effect as to the Services or this Agreement.

11.9 Execution In Counterparts; Facsimile/PDF/Electronic Signature. This Agreement may be executed in counterparts (which may be exchanged by facsimile or email), each of which will be deemed an original, but all of which together will constitute the same Agreement. The Parties agree that a facsimile, PDF or electronic signature may substitute

for and have the same legal effect as the original signature.

11.10 Attorneys' Fees and Costs. In any litigation, or other proceeding, informal or formal, by which one Party either seeks to enforce this Agreement or seeks a declaration of any rights or obligations under this Agreement, the non-prevailing Party shall pay the prevailing Party's costs and expenses, including but not limited to, reasonable attorneys' fees.

11.11 Time is of the Essence. Time is of the essence in every provision of this Agreement in which time for performance is a factor.

11.12 Cumulative Remedies. All rights and remedies of Subscriber herein shall be in addition to all other rights and remedies available at law or in equity, including, without limitation, specific performance against Myst AI for the enforcement of this Agreement, and temporary and permanent injunctive relief. All rights and remedies of Myst AI herein shall be in addition to all other rights and remedies available at law or in equity, including, without limitation, specific performance against Subscriber for the enforcement of this Agreement, and temporary and permanent injunctive relief.

11.13 Subscriber is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.), and is a public entity separate from its constituent members. Subscriber shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Myst AI shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Subscriber's constituent members in connection with this Agreement.

11.14 Non-Discrimination. In the performance of this Agreement, Myst AI shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law.

11.15 Subscriber's Rights to Employ Other Consultants. Subscriber reserves the right to employ other consultants in connection with the subject matter of the Services.

11.16 Inserted Provisions. Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein, and the Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Agreement shall be amended to make such insertion on application by either Party.

11.17 Captions and Terms. The captions in this Agreement are for convenience only, are not a part

of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

11.18 Third-Party Beneficiaries. Nothing, express or implied, in this Agreement is intended to benefit, or to create or be construed to create any rights of enforcement in any persons or entities who are neither signatories to this Agreement nor Indemnitees.

[Signature Pages Follow.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

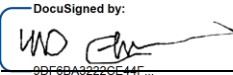
COMPANY:

MYST AI INC.

By: 
 Name: Titiaan Palazzi
 Title: Co-founder, COO
 Address:
25 Taylor Street
San Francisco, CA 94102
 Email: tpalazzi@myst.ai

SUBSCRIBER:

EAST BAY COMMUNITY ENERGY AUTHORITY

By: 
 Name: Nick Chaset
 Title: CEO
 Address:
1999 Harrison Street, Ste 800
oakland, CA 94610
 Email: nchaset@ebce.org
6/5/2020

APPROVED AS TO FORM:


 Inder Khalsa
 General Counsel EBCEA

EXHIBIT A**SCOPE OF SERVICES**

Myst AI is to provide Subscriber with access to forecasts for Subscriber's total wholesale load ("**Load Forecasts**") as well as day-ahead and real-time price forecasts, including P5, P25, P50, P75, and P95 confidence intervals¹ ("**Price Forecasts**"). These forecasts can be accessed through Myst AI's Web App and Application Programming Interface (API). Subscriber is to receive secure access to both interfaces upon execution of this Agreement. Load Forecasts will be generated each hour for the next seven (7) days. Price Forecasts will be generated once daily for the next calendar day.

¹ For the purpose of this agreement, the real-time price will refer to the hourly-averaged Fifteen Minute Market price at DLAP_PGAE.

EXHIBIT B

FEE SCHEDULE

1. Fees. The total Fees for the Initial Term are \$18,500 per month. Myst AI will notify Subscriber of any changes to the Fees for a Renewal Term at least thirty (30) days prior to the start of the Renewal Term.
2. Discount. Fees for the Initial Term will be discounted by 35% to \$12,000 per month, in recognition of EBCE's past efforts to collaborate with Myst in exploring and configuring the service offering for Community Choice Aggregators ("CCAs"), and in discussing this collaboration with other CCAs.
3. Payment Schedule. Fees will be invoiced on a quarterly basis on the first day of quarterly usage, to be paid by Subscriber according to the payment terms.

EXHIBIT C**THIRD PARTY DATA PROCESSORS**

Third Party	Purpose
Google Cloud Platform (GCP)	Storage of data, training of models, creation of forecasts, evaluation of forecast performance

EXHIBIT D

PRIVACY POLICY

Your privacy is important to us. This Privacy Policy (“**Policy**”) applies to our website and any services (“**Services**”) operated by us and explains what information we collect from you, including information that may be used to personally identify you (“**Personal Information**”) and how we use it. We encourage you to read the details below. This Policy applies to any user or visitor of our Services. Myst AI Inc. (“**Company**”, “**we**”, or “**us**”) will be the controller of your personal data provided to, or collected by or for, or processed in connection with our Services.

We will notify you of any changes to this Policy by sending notice to the primary email address specified in your account or by a prominent notice on the Services. Significant changes will go into effect thirty (30) days following such notification. Non-material changes or clarifications will take effect immediately. You should periodically check the Services and this privacy page for updates. You acknowledge that your continued use of our Services after we publish or send a notice about our changes to this Policy means that the collection, use and sharing of your personal data is subject to the updated Policy.

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- Contact Us

What Information Do We Collect?

We collect information, including Personal Information, to operate effectively and provide you the best experiences with the Services. You provide some of this information directly, such as when you create an account or contact us for support. We get some of it by recording how you interact with the Services and receiving error reports or usage data from software running on your device. We will only collect and process Personal Information about you where we have lawful bases. Lawful bases include consent (where you have given consent), contract (where processing is necessary for the performance of a contract with you (e.g. to deliver the Services you have requested)) and “legitimate interests”.

We collect, store, and use the following information, which includes Personal Information:

Information you give us:

- Your name, email address, postal address, zip code, country, other location data, telephone number, organization you represent, and any other information you share with us, including any inquiries and information submitted when you access our Services.
- Your responses to surveys that we may ask you to complete for research purposes or to help direct Company activities.

- Other Personal Information you voluntarily submit, which may include historical data, such as energy production or consumption data, that you provide to us.
- Any information you share when you contact us.

Information we get from your use of the Services:

- Details of how you use the Services.
- Your internet protocol address (i.e., IP address) and, if you access the Services from a mobile application, your unique mobile device ID number and non-email authentication.
- Browser and device information and information collected through cookies, pixel tags, and other technologies.

How Do We Use The Information We Collect?

We use the information we collect to improve the Services, optimize our technology, or refine the experience of our customers.

Namely, we use the information we collect to:

- To administer the Services, enable you to use features, and improve your overall user experience.
- To send information including confirmations, invoices, technical notices, updates, security alerts, and support and administrative messages.
- To respond to comments and questions and provide customer service.
- To analyze how our users use the Services using tools like Google Analytics and other tools to help us understand traffic patterns and know if there are problems with the Services.
- To protect, investigate, and deter against fraudulent, unauthorized, or illegal activity.
- To link or combine user information with other Personal Information.
- To compare information for accuracy, update our records, and verify it with third parties.

Do We Share Your Personal Information?

We do not rent, sell, or share your Personal Information with other people or non-affiliated third parties except with your consent or as necessary to complete any transaction or provide any service you have requested or authorized. We do not share personal data with third parties for their direct marketing purposes without your consent.

To help us do our work, we may provide limited access to some of your Personal Information to the following third parties:

- **Affiliated Third Parties:** We may share information with our affiliates and/or subsidiaries.
- **Service Providers:** We may work with third party providers, notably our database administrators, cloud computing services, data analysts, application service providers, bulk SMS services, and other non-governmental organizations. We do not authorize them to use or disclose your Personal Information except in connection with providing their services.

We may also transfer your Personal Information to a third party as a result of a merger, acquisition, reorganization or similar transaction; when required by law or to respond to legal process; to protect our customers; to protect lives; to maintain the security of the Services; and to protect the rights or property of Company. In such event, and to the extent legally permitted, we will notify you and, if there are material changes in relation to the processing of your Personal Information, give you an opportunity to consent to such changes.

Protection of Company and Others

We will also share Personal Information with companies, organizations or individuals outside of Company if we have a good-faith belief that access, use, preservation, or disclosure of your Personal Information is reasonably necessary to (1) detect or protect against fraud or security issues, to enforce terms, (2) meet any enforceable government request, (3) defend against legal claims, or protect against harm our legal rights or safety, or that of our staff and/or users.

How Do We Secure Your Personal Information?

We take reasonable steps to protect your Personal Information against unauthorized access, alteration, disclosure, misuse, or destruction. Unfortunately, no data transmission or storage system can be guaranteed to be 100% secure. The safety and security of your Personal Information also depends on you. If you are a Member, you are responsible for keeping your membership details confidential. Your account is protected by your account password and we urge you to take steps to keep your Personal Information safe by not disclosing your password and by logging out of your account after each use. We further protect your Personal Information from potential security breaches by implementing certain technological security measures including encryption, firewalls and secure socket layer technology. However, these measures do not guarantee that your Personal Information will not be accessed, disclosed, altered or destroyed by breach of such firewalls and secure server software. By using the Services, you acknowledge that you understand and agree to assume these risks.

We retain your personal data while your account is in existence or as needed to provide you Services. This includes data you or others provided to us and data generated or inferred from your use of our Services.

Your Choices Regarding Information

You have several choices regarding the use of Personal Information on our Services:

Changing or Deleting Your Personal Data. All users may review, update, correct or delete the Personal Information furnished by a user by contacting us at support@myst.ai. If you completely delete all of your Personal Information, then your user account may become deactivated. We will use commercially reasonable efforts to honor your request. We may retain an archived copy of your records as required by law or for legitimate business purposes.

Delete or Correct Your Content. You may access, correct, amend, or delete your content by contacting us at support@myst.ai . You control all of the user content you upload. Content that you delete (including content containing Personal Information) may be retained in archived or backup copies in order to enable you to use certain features like revision history and base snapshots. For instructions on how to permanently delete content from your account, please contact us at support@myst.ai. Please note that permanent deletion of your content through this process will impair or disable those features with respect to that Content.

Delete or Correct Personal Information. You may access, correct, amend, or delete Personal Information we have about you by emailing us at support@myst.ai. For your protection, we may only share and update the Personal Information associated with the specific email address that you use to send us your request, and we may need to verify your identity before doing so. We will try to comply with such requests in a reasonably timely manner. If you wish to cancel your account, you may do so by emailing us at support@myst.ai. If you do, personally identifiable information associated with your account will be deleted as soon as is reasonably practical or as required by applicable law. Please note that we may retain information that is otherwise deleted in anonymized and aggregated form, in archived or backup copies as required pursuant to records retention obligations, or otherwise as required by law.

Download or Access Personal Information. You can ask us for a copy of your Personal Information and can ask for a copy of Personal Information you provided in machine readable form by emailing us at support@myst.ai.

Links to Third Party Websites

We may provide links to other websites. We have no control over these websites and they are subject to their own terms of use and privacy policies. As such, we do not endorse and are not responsible for the availability of, or for any content, advertising, products, or other materials on or available from, these third party websites.

By using the Services, you agree that we will not be liable for any damage or loss caused by your use of or reliance on any content, advertising, products, or other materials on or available from these third party websites.

How We Respond to Do Not Track Signals

Your browser settings may allow you to automatically transmit a Do Not Track signal to websites and other online services you visit. We do not alter our practices when we receive a Do Not Track signal from a visitor's browser because we do not track our visitors to provide targeted advertising. To find out more about Do Not Track, please visit <http://www.allaboutdnt.com>.

Children Under 16

The Services are not directed to individuals who are under the age of sixteen (16) and we do not solicit nor knowingly collect Personal Information from children under the age of sixteen (16). If you believe that we have unknowingly collected any Personal Information from someone under the age of sixteen (16), please contact us immediately at support@myst.ai and the information will be deleted.

A Note to Users Outside the United States

Our Company is based in the United States. The Services are controlled and operated by us from the United States and are not intended to subject us to the laws or jurisdiction of any state, country or territory other than that of the United States. Your Personal Information may be stored and processed in any country where we have facilities or in which we engage service providers, and by using the Services you consent to the transfer of information to countries outside of your country of residence, including the United States, which may have data protection rules that are different from those of your country. In certain circumstances, courts, law enforcement agencies, regulatory agencies or security authorities in those other countries may be entitled to access your Personal Information.

Contact Us

If you have any questions about this Policy, your Personal Information, or the Services, you can contact support@myst.ai.