

1. Authorize OED to sign Automated Metering Infrastructure (AMI) contract with Landis & Gyr. (Rob Neely)

OED would like permission to enter into a contract with Landis & Gyr to provide Automated Metering Services. The board approved the selection of Landis & Gyr on September 2, 2014, after an extensive review of AMI proposals by OED staff and engineering consultants. OED has provided the City Attorney with the contracts for review and comment. Due to the length of the contract, a digital version is available for your review on the City FTP site.

The contract will only be signed after review and approval of the City Attorney. Funds were set aside in the FY2013, FY2014 and FY2015 OED budget for this AMI purchase, and the costs are within the budgeted amount.

MASTER PURCHASE AND SERVICES AGREEMENT

THIS MASTER PURCHASE AND SERVICES AGREEMENT is effective as of the last signature date below (“Effective Date”) and is between the City of Oxford ~~Electric Department~~, a Mississippi municipal corporation ~~_____~~ (“Customer”) with principal offices located at City of Oxford, 107 Courthouse Square, Oxford, MS 38655, and Landis+Gyr Technology, Inc., a Delaware corporation (“Landis+Gyr”) with principal place of business at 30000 Mill Creek Avenue, Suite 100, Alpharetta, GA 30022.

WHEREAS, Customer desires to engage Landis+Gyr to perform Services and to provide Products to Customer for the provision of a Gridstream RF solution as referenced in this Agreement for Customer’s deployment and implementation of the Gridstream RF Advanced Metering Infrastructure system (“RF”).

Comment [EA1]: ? the is the “RF” referenced?

WHEREAS, Landis+Gyr will supply to Customer the Products and perform the Services as set forth herein and as described in the attached Exhibit(s) to this Agreement.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties agree as follows:

1.0 Definitions

The terms listed below are defined as follows:

- 1.1 “Agreement” means this Master Purchase and Services Agreement, including all exhibits and Statements of Work, which is by and between Customer and Landis+Gyr. ~~In the event there are any conflicting provisions or requirements among the Agreement documents, the provision and requirements of the Agreement document shall be enforced in the following order of descending priority: (i) the body of this Agreement; (ii) any amendment to this Agreement; and (iii) any other document included as an Agreement document.~~
- 1.2 “Collector” means the Landis+Gyr two-way radio base station that transmits data between the Automated Meters, Routers and the data center.
- 1.3 “Confidential Information” means any information, technical data, or know-how considered proprietary or confidential by the disclosing party or any of its affiliates including, but not limited to, the disclosing party or any of its affiliate’s trade secrets, commercially sensitive or proprietary information, research, development, inventions, processes, methods, specifications, protocols, designs, drawings, diagrams, know-how, engineering, marketing data, techniques, documentation, customer information, pricing information, procedures, data concepts, business and marketing plans or strategies, financial information, business opportunities, requests for proposals or information, software and related documentation, hardware information, services and products (both existing and planned), and product roadmaps disclosed by either party, any of its affiliates, either directly or indirectly in any form whatsoever, including in writing, orally, machine readable form or through access to party’s premises.
- 1.4 “Customer Data” means (i) any and all end users of Customer’s information relating to electricity, natural gas and/or water consumption, load profile, billing history, or credit history that is or has been obtained or compiled by Customer in connection with supplying electric services, gas services and/or water services to that customer or group of customers (“Personal Information”) (regardless of the media in which it is contained) that may be disclosed at any time to Landis+Gyr or to the Field Tools by Customer or its employees, agents, consultants, contractors, suppliers or customers in anticipation of, in connection with, or incidental to Landis+Gyr’s performance of the Services for or on behalf of Customer; (ii) any and all Personal Information created, obtained, used or accessed by Landis+Gyr (or the Field Tools) in its performance of the Services, or derived from such information or materials; and (iii) all data and information of Customer, its employees or customers

- 1.5 “**Endpoint**” means a sensory-type device, e.g., electric meter, water meter, gas meter, DA device, load control switch, etc., that is equipped with an AMI module.
- 1.6 “**Equipment**” means Network Devices, Endpoints and/or hardware that Customer purchases from Landis+Gyr.
- 1.7 “**Event of Bankruptcy**” means any of the following events or circumstances with respect to a party:
- a) That party makes a general assignment for the benefit of creditors;
 - b) That party institutes proceedings to be adjudicated a voluntary bankrupt, or consent to the filing of a petition of bankruptcy against it;
 - c) That party is adjudicated by a court of competent jurisdiction as being bankrupt or insolvent;
 - d) That party seeks reorganization under any bankruptcy act, or consent to the filing of a petition seeking such reorganization; or
 - e) That party has a decree entered against it by a court of competent jurisdiction appointing a receiver, liquidator, trustee, or assignee in bankruptcy or in insolvency covering all or substantially all of such party’s property or providing for the liquidation of such party’s property or business affairs.
- 1.8 “**Field Tools**” means the Landis+Gyr proprietary field tools named RadioShop and Endpoint Test Manager.
- 1.9 “**Firmware**” means software embedded in and provided with the Equipment.
- 1.10 “**Network Devices**” means the Collectors, Routers, and radios that are in these devices for RF that are or will be under this ~~Master~~ Agreement physically deployed in the Customer service territory. The term does not include the system backhaul, the network operations center, any system equipment that is not located in the Customer service territory, Meters, or any aspect or component of the system components that is not used by Customer.
- 1.11 “**Meter**” means a device that measures the supply of electricity, gas, or water provided by Customer to Customer’s consumer.
- 1.12 “**Products**” means Equipment, Firmware, Software, and/or any other items purchased or licensed from Landis+Gyr as described on Exhibit A attached hereto, if any, or that Customer purchases or licenses from Landis+Gyr and is not described on Exhibit A.
- 1.13 “**Purchase Order**” means a Customer order, including, without limitation, a purchase order offered by Customer, to purchase Products from Landis+Gyr that Landis+Gyr accepts. Each Purchase Order will be deemed to include the terms and conditions of this Agreement even if not referenced in a Purchase Order.
- 1.14 “**Router**” means Landis+Gyr-furnished Network Devices that provides intermediate communication and data processing between Endpoints and Collectors. Routers may also communicate with other Routers.
- 1.15 “**Services**” means project management services, training, project delivery services, hosting and/or other services described in Exhibit A.
- 1.16 “**Software**” means computer application and programs in any form that Customer licenses from Landis+Gyr, including, RadioShop, Endpoint Test Manager (ETM) and any other software referenced in Exhibit A.
- 1.17 “**System**” means Landis+Gyr’s Equipment, Firmware, Field Tools and Software used by the Customer to monitor and manage its consumer’s usage of Customer offerings.

Comment [EA2]: Gridstream RF Advanced Metering Infrastructure system?

1.18 “**Third Party Products**” means, if any, goods and software that Customer purchases or sub-licenses from Landis+Gyr that are not manufactured or provided by Landis+Gyr that display the logo or copyright of another manufacturer, or that are not proprietary to Landis+Gyr.

2.0 Orders; Cancellations and Modifications

2.1 Equipment Forecasts. Within thirty (30) days after the Effective Date of this Agreement, Customer shall supply to Landis+Gyr a written forecast of total anticipated Landis+Gyr Equipment needs by month. Any changes to the Equipment forecast should also be furnished to Landis+Gyr. Failure to provide an accurate forecast, within reason, may negate the stated Landis+Gyr equipment lead times and may adversely impact delivery of product to Customer.

Comment [EA3]: Can OED do this? Issue?

2.2 Written Orders. Customer may issue Purchase Orders to Landis+Gyr by mail, facsimile communication or electronic mail. Landis+Gyr may accept Customer’s Purchase Order by signing it, acknowledging it using facsimile or electronic mail, or by delivering the Products which Customer ordered. Customer’s Purchase Order will be accepted solely for purposes of establishing the items and quantities ordered and the desired shipment dates and shipment method. Customer’s desired shipment dates shall take into account Landis+Gyr’s current lead times at the time of the Purchase Order. Lead times will be provided to Customer by a Landis+Gyr representative and are defined as the cycle time from acknowledgement of Order to fulfillment of Order, assuming the Equipment was initially forecasted in accordance with Section 2.1. It is acknowledged by the parties that all instrument and documents issue or delivered pursuant to this Agreement, including all Purchase Orders, order acceptance, order acknowledgements, invoices and other instruments (“**Order Documents**”) shall incorporate the terms and conditions of this Agreement, irrespective of whether any such Order Document expressly references this Agreement, and shall be subject to the terms and conditions contained in this Agreement. The parties acknowledge that this provision shall be construed as objection to any standard or pre-printed terms and conditions contained in an Order Document now or hereafter delivered by a party pursuant to this Agreement for purposes of Section 2-207 of the Uniform Commercial Code. Notwithstanding the foregoing, in the event of any conflict between this Agreement and any Order Document (other than the standard or pre-printed terms and conditions contained therein, which shall have no force and effect), such conflict shall be resolved in accordance with the following order of precedence: (i) the Order Document (other than the standard or pre-printed terms and conditions contained therein, which shall have no force and effect) and (ii) this Agreement. The parties acknowledge and agree that this provision is conspicuous.

Comment [EA4]: NOTE: Order and Delivery terms may be governed by and not the MS UCC.

Comment [EA5]: Not sure this makes sense, but OK

2.3 Cancellation and Modifications. Customer may cancel or reduce an Equipment Order on written notice to Landis+Gyr no later than sixteen (16) weeks prior to scheduled delivery of the Equipment Order, and, if so, Customer is not responsible for payment of a cancellation or modification charge. Customer may not cancel or modify an Equipment Order within sixteen (16) weeks prior to delivery. Notwithstanding the foregoing, cancellation charges do not apply to Software or Services Orders.

Comment [EA6]: Timeframes?

2.4 Equipment Intellectual Property. Landis+Gyr retains ownership of all intellectual property rights in the Equipment. Customer agrees that Customer shall not, and that Customer shall not allow any third party, to attempt to reverse engineer, de-compile, or disassemble the Equipment or the Firmware or otherwise discover the trade secrets in the Firmware for any reason. Notwithstanding the following, Customer in no way indemnifies Landis+Gyr against any act, including but not limited to third party act. Landis+Gyr understands and accepts that Customer is subject to freedom of information and open records acts and to open meetings acts and other applicable laws.

Comment [EA7]: City cannot indemnify in any way. Subject to open meetings and open records laws. Open records laws contain provisions and processes which allow the potential for companies to protect information

3.0 Shipment

- 3.1 Shipments. Landis+Gyr will ship or deliver Equipment to Customer's warehouse or other designated location. All Equipment will be shipped to Customer FOB destination. Customer agrees to inspect Equipment within one (1) week upon receipt and to promptly notify Landis+Gyr of any defects. Customer will be deemed to have accepted the Equipment unless Customer notifies Landis+Gyr within one week after receipt of the Equipment that the equipment is rejected. The acceptance of any Equipment by Customer shall not preclude the subsequent removal thereof if such Equipment shall be found to be defective after installation; in such event, the Agreement's warranty terms shall apply.

Comment [EA8]: Timing?

4.0 Prices and Taxes

- 4.1 Prices. Customer's Purchase Order will state Product prices and, if the ordered Product is a Product described on Exhibit A hereto, if any, the Purchase Order will state the applicable price set forth thereon. If the Purchase Order does not state a Product price or is for a Product not set forth on Exhibit A, the price will be Landis+Gyr's then-current price. Landis+Gyr may increase Customer's price for items ordered by Customer but not included in Exhibit A if it increases its price after it accepts the Purchase Order, and the Purchase Order specifies delivery more than one hundred twenty (120) days after the price increase becomes effective. Landis+Gyr shall notify Customer of the price increase, and Customer shall have the option of cancelling or otherwise modifying its order, without penalty. Also, price increases for Services or Software licensed for a periodic fee will apply to subsequent billing periods. The above notwithstanding, set forth in Exhibit A are unit prices for Products contemplated in the event Customer expands its system.
- 4.2 Price Adjustment for Pricing in Exhibit A. Pricing by Landis+Gyr set forth in Exhibit A will remain firm for two (2) years from the Effective Date. Following year two (2), pricing set forth in the pricing table in Exhibit A shall be subject to an annual increase equal to the percentage annual adjustment in the CPI. The CPI will be obtained from U.S. Bureau of Labor Statistics (www.bls.gov/cpi) and is designated as of the June-to-June twelve-month percentage change to the Consumer Price Index – Urban Wage Earners and Clerical Workers, Not seasonally adjusted
- 4.3 Taxes and Other Charges. Unless otherwise stated, Product and Services prices do not include shipment and installation charges, charges associated with preparing the Customer site; and all taxes that relate to Customer's acquisition or use of Products and Services, including sales, use, VAT and property (ad valorem) taxes, other governmental charges and taxes, and assessments after audit. Customer agrees to pay those charges and taxes, except for taxes based on Landis+Gyr's net income. If Customer qualifies for tax exemptions, Customer must provide Landis+Gyr with appropriate exemption documentation.

Comment [EA9]: Provide documentation

5.0 Invoice and Payment

- 5.1 Invoice and Payment. Landis+Gyr will issue invoices to Customer for all amounts owed to Landis+Gyr hereunder. Invoices (i) for Equipment will be issued upon shipment of the Equipment, (ii) for Services shall be issued upon performance of the Services; and (ii) for Software license and maintenance fees in advance of delivery. Payment is due within sixty (60) days from the date of the invoice or ~~thirty (30) days of the invoice date~~ within ten (10) days after final adoption and approval from appropriate governing authority, if additional authorization is required. Late payments will be subject to interest from the due date at the lesser of one percent (1%) per month or the maximum rate allowed by law.

6.0 Software

- 6.1 Firmware License. The Firmware is licensed to Customer, not sold. Customer is granted a non-transferable, non-exclusive license to use the firmware solely in connection with Customer's use

of the Equipment during the term of this Agreement and for use solely with Gridstream communication network. Customer understands and agrees that it is not permitted to distribute the firmware to a third party in any form, or to use the firmware except as it is embedded in the Equipment.

Comment [EA10]: Not sure what this means.

6.2 License to Field Tool Software and Software. Landis+Gyr hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable limited license to use the Field Tool Software and Software (collectively, the “**Software**”) in object code form only in the Customer service territory on the terms of this license. Landis+Gyr licenses use of Software solely for use in conjunction with Landis+Gyr Systems. Customer agrees that Customer shall not and that Customer shall not allow any third party (i) to attempt to reverse engineer, de-compile, or disassemble the Software or otherwise discover the trade secrets in the Software for any reason, (ii) to make alterations to, or modifications of, the whole or any part of the Software nor permit the Software or any part of it to be combined with, or become incorporated in, any other programs without express permission from Landis+Gyr. Software is also subject to the license terms included in schedules or agreements executed for specific Software if any. Customer agrees not to copy Software without express written authorization from Landis+Gyr, except that Customer may copy Software as a part of file backups or archivals. Customer must reproduce and include the copyright notices on any such copies. Landis+Gyr (and/or its third party licensors) retains title to the original Software provided to Customer and any copies made from it. Customer’s employees, consultant and contractors (if any) shall be deemed authorized users of the Software provided that each such employee, consultant and/or contractor has agreed to comply with the terms hereof, and further provided that Customer remains liable for any breach of the terms of the license by such employee(s), consultant(s) or contractor(s).

6.3 Intellectual Property Rights. All proprietary and intellectual property rights in and to the Firmware and Software provided hereunder are owned by Landis+Gyr (or its third party licensors) and Landis+Gyr (and/or its third party licensors) retains title to the original Firmware and Software provided to Customer and any copies made from it.

6.4 Notwithstanding the provisions of this section, Customer in no way indemnifies Landis+Gyr against any act, including but not limited to third party act. Landis+Gyr understands and accepts that Customer is subject to freedom of information and open records acts and open meetings acts and other applicable laws.

7.0 Services

7.1 Services. Landis+Gyr will provide the Services as set forth in Exhibit A or in a separate Statement of Work and may include hosting services if the parties enter into a separate Software as a Service Agreement. Exhibit A sets forth the description of the Services, pricing, duration and any other terms specific to the Services described therein.

8.0 Limited Warranties

8.1 Equipment Limited Warranty. Landis+Gyr will repair or replace (at Landis+Gyr’s option) any Defective Equipment at no charge to Customer if such units fail to perform according to Landis+Gyr’s specifications due to a Defect within eighteen (18) months of the shipment date (the “**Warranty Period**”), provided that such units are returned based on the following conditions: (i) Customer requests a return materials authorization form (“**RMA**”) within sixty (60) days of identification of an issue and ships the Equipment within seven (7) days of an RMA from Landis+Gyr, (ii) returned freight prepaid to Landis+Gyr, (iii) only after a written RMA is provided by Landis+Gyr. Customer will remove and ship to Landis+Gyr at Customer’s expense any such nonconforming Equipment and will reinstall the repaired or replaced Equipment at Customer’s expense. Landis+Gyr will ship Equipment repaired or replaced under this warranty back to Customer at Landis+Gyr’s expense. For Equipment returns where Landis+Gyr determines that there is no Defect found, the Customer may be charged a fee to fully cover

Comment [EA11]: Timings, potential costs for testing

reasonable Landis+Gyr expenses for the handling, processing and testing of such devices. “Defect” and “Defective” means a material failure of the Equipment to comply with the Equipment specifications during the Warranty Period. For Equipment that is found to be not under warranty, Landis+Gyr can attempt repairs based on current prevailing rates or ship the equipment back to the Customer. In the event units are repaired or replaced being determined under warranty, the repaired or replaced units shall be warranted for the longer of the remainder of the warranty period for the original equipment or six (6) months from shipment of the repaired or replacement equipment. Equipment maintenance fees shall not commence until after the applicable warranty period for each item of Equipment expires. Repaired or replacement units will be returned to Customer with freight prepaid by Landis+Gyr if the items are under warranty; if not, Customer is responsible for payment of freight and the applicable Equipment fee.

8.2 Software Warranty. To the extent applicable, Landis+Gyr warrants that all Landis+Gyr Software will materially comply with the software documentation provided for a period of ninety (90) days from the date of delivery. As sole and exclusive remedy for nonconforming software, Landis+Gyr will use commercially reasonable efforts to remedy the performance issue associated with the Software. If Landis+Gyr is unable to remedy the performance issue for ninety (90) days unless otherwise mutually extended, then Landis+Gyr’s sole obligation is to refund the license fee that Customer paid for the nonconforming software. Landis+Gyr does not warrant that Software will operate uninterrupted, or error free, or that all deficiencies, errors, defects, or nonconformities will be corrected, however warrants that it will work in good faith with Customer, without costs to Customer, to remedy any said interruption or defects, if the same can be remedied.—The warranties provided by Landis+Gyr do not extend to third party software that is identified as being sublicensed to Customer by Landis+Gyr hereunder. To the extent as permitted, Landis+Gyr will “pass through” or assign to Customer the warranties provided by such third party. Landis+Gyr will provide those warranties in writing at the time of delivery. Landis+Gyr agrees to identify third party software to be provided.—

8.3 Services Warranty. Landis+Gyr warrants that it will provide Services in a professional workmanlike manner, and the Services warranty period shall be ninety (90) days after performing a Service. Customer’s sole remedy for breach of this warranty is to have Landis+Gyr reperform the Services or to receive a refund of any fees paid in the event that reperforming the Services is not possible.

8.4 Warranty Limitations and Exclusions. Landis+Gyr’s Products warranty obligations do not apply to the extent caused by: Customer’s or a third party’s infrastructure or data; Customer’s or a third party’s misuse of Products; installation by Customer or a third party not in compliance with training or manuals provided by Landis+Gyr; operation or use by Customer or third parties not in compliance with applicable training, manuals or specifications provided by Landis+Gyr; Customer’s or a third party’s neglect, modification, accident, vandalism or other intentional damage; exposure to adverse conditions exceeding performance levels required by applicable specifications; or any other limitation or exclusion described herein.

8.5 **DISCLAIMER. OTHER THAN THE EXPRESS WARRANTIES SET FORTH HEREIN, LANDIS+GYR MAKES NO REPRESENTATIONS OR IMPLIED WARRANTIES TO CUSTOMER WITH RESPECT TO ANY EQUIPMENT, NETWORK DEVICES, FIELD TOOLS, SOFTWARE, FIRMWARE AND/OR SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INFRINGEMENT OR WARRANTIES THAT MAY BE IMPLIED BY TRADE USAGE OR CUSTOM.**

8.6 Third Party Products. The warranties provided by Landis+Gyr do not extend to third party products that are manufactured by a third party. For avoidance of doubt, Landis+Gyr makes no representations or warranties with respect to any third party product. Landis+Gyr will use

Comment [EA12]: Could not this apply to literally every software issue?

commercially reasonable efforts to assign to Customer the warranties provided by such third party. Landis+Gyr agrees to identify third party products to be provided.

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8.7 Exclusive Remedies. Each party's rights and remedies set forth in this Section are exclusive and in lieu of all other rights and remedies, and the Customer waives on right or remedy allowed by law.

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9.0 General Indemnity; Infringement Indemnity

Comment [EA13]: City cannot waive any right or remedy

9.1 General Indemnity. ~~Each party (the "Indemnifying Party")~~ The extent allowed by law, Landis+Gyr will indemnify, hold harmless and defend the ~~Customer other party~~ and its officers, directors, ~~shareholders,~~ agents, employees, and representatives ~~(collectively, the "Indemnified Party")~~ from all third party claims, and related liabilities, fines, interest, costs, expenses and damages (including reasonable attorneys' fees) incurred by the ~~Customer Indemnified Party~~ (collectively, the "**Indemnified Losses**"), for any property damage, injury, death, loss or destruction of any kind to persons or property, to the extent the damage, injury, death, loss or destruction arises out of or is related to the conduct, negligence, willful misconduct or misrepresentation on the part of the Indemnifying Party or any of its servants, representatives, agents, employees or contractors.

Comment [EA14]: City cannot indemnify company see attached opinion

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Comment [EA15]: Mississippi tort claims act

9.2 Infringement Indemnity by Landis+Gyr. Landis+Gyr agrees, to the extent allowed by law, to indemnify, hold harmless and defend Customer and its officers, directors, ~~shareholders,~~ agents, employees, and representatives from and against any third party claim alleging that any Products or any resulting use of the Products constitutes an infringement of any patent or copyright or misappropriation of any trademark or trade secret, or constitutes a breach of any intellectual property right of any third party.

9.3 If the sale or use of any of the Products is enjoined in connection with any such claim, Landis+Gyr agrees to, at its option, without cost or expense to Customer:

- (a) procure for Customer and its customers the right to use such Products;
- (b) replace such Products with equivalent non-infringing products; or
- (c) modify such Products so they become non-infringing.

Notwithstanding the foregoing, Landis+Gyr will have no liability pursuant to this Section or otherwise for any claim of infringement to the extent such a claim is caused by (i) the misuse or unapproved modification of the Products by or at the direction of Customer (ii) the failure of Customer to use corrections or enhancements made available to Customer at no cost to Customer or (iii) use of the Products in combination with other equipment or software not provided by Landis+Gyr but only to the extent such claim is attributable to the combination or other equipment or software and if such claim would have been avoided but for such combined use. Customer will consult with Landis+Gyr, as the subject matter expert in this space, before making any unilateral change(s) to the operating environment. If Landis+Gyr advises Customer that making the proposed change(s) would likely lead to an infringement claim and Customer moves forward with those changes despite Landis+Gyr's warning, then Landis+Gyr will have no liability pursuant to this Section or otherwise for any resulting claim of infringement. This Section 9.3 sets forth the entire liability of Landis+Gyr with respect to patent infringement.

9.4 Indemnification Procedures. In the event any third party asserts any claim with respect to any matter as to which the indemnities in this Agreement may relate, to the extent allowed by law ~~Customer the Indemnified Party~~ shall give commercially reasonable written notice ~~to the Indemnifying Party,~~ and ~~the Indemnified Party~~ shall have the right at its election to participate in the defense or settlement of the third party claim at its own expense by giving prompt written notice, ~~to the Indemnified Party.~~ ~~If the Indemnifying Part~~ Landis+Gyr ~~y~~ does not give such notice

and does not proceed diligently so to defend the third party claim promptly after receipt of the notice of the third party claim, ~~Landis+Gyr the Indemnifying Party~~ shall be bound by any defense or settlement that the ~~CustomerIndemnified Party~~ may make as to those claims and shall reimburse the ~~CustomerIndemnified Party~~ for its losses and expenses related to the defense or settlement of the third party claims but only if it is determined that ~~the Indemnifying Party~~Landis+Gyr's indemnity and defense obligations under this Agreement covers such third party claim. The parties shall cooperate in defending against any asserted third party claims. In ~~the Indemnifying Party's~~ To the extent allowed by law, Landis+Gyr's defense of the third party claim, the following provisions shall apply:

- (a) the ~~CustomerIndemnified Party~~ shall be entitled to participate in (but not control) the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim;
- (b) the ~~CustomerIndemnifying Party~~ shall obtain the prior written approval of ~~Landis+Gyrthe Indemnified Party~~ before entering into any settlement of such claim or ceasing to defend against such claim, if pursuant to or as a result of such settlement or cessation, injunctive or other equitable relief would be imposed against ~~the Indemnified Party~~Landis+Gyr; and
- (c) ~~Landis+Gyrthe Indemnifying Party~~ shall not permit any lien, encumbrance or other adverse charge to exist upon any asset of the ~~CustomerIndemnified Party~~ or its affiliates.

9.5 Exceptions and Limitations on Indemnification. Notwithstanding anything to the contrary in this Agreement, ~~Landis+GyrIndemnifying Party~~ is not obligated to indemnify, hold harmless or defend ~~CustomerIndemnified Party~~ against any claim (whether direct or indirect) if such claim or corresponding Losses arise out of or result from, in whole or in part, ~~Indemnified Party's~~Customers:

- (a) gross negligence or more culpable act or omission (including recklessness or willful misconduct); or
- (b) use of the Products in any manner that does not materially conform with the usage guidelines or specifications provided by Landis+Gyr.

10.0 Term; Termination

10.1 Term. This Agreement shall become effective on the Effective Date and continue in full force and effect for five (5) years unless sooner terminated in accordance with the provisions hereof. Thereafter, the term shall renew on a year to year basis unless either party receives written notice from the other of the other party's intent to terminate the Agreement upon the expiration of the then current one (1) year term. Such notice shall be delivered no later than sixty (60) days prior to the expiration of the then current one (1) year term; if the non-terminating party receives the notice thereafter, the term shall renew for an additional one (1) year. Upon the termination or expiration of the Agreement, any existing Support and Maintenance Agreement between the parties shall be deemed terminated. Notwithstanding, this Agreement shall in no way bind its boards and subsequent governing authorities where prohibited by law.

10.2 Right to Terminate. Either party may terminate this Agreement upon sixty (60) days prior written notice to the other party for failure of such party to fulfill any of its material obligations hereunder. In the event that the breaching party corrects the breach within the sixty (60) day period, this Agreement shall continue in full force and effect as it would have had such breach not occurred. Failure to perform due to a force majeure shall not be considered a substantial or material default under this Agreement. A party hereto may, at its option, terminate this Agreement upon an Event of Bankruptcy of the other party.

10.3 Effect of Termination. The expiration or termination of this Agreement, for any reason, shall not release either party from any liability to the other party, including any payment obligation, that has already accrued hereunder. If Customer shall terminate this Agreement other than for reasons of a default by Landis+Gyr, Customer shall:

- (a) immediately discontinue use of the Software;
- (b) within ten (10) days at Landis+Gyr's option and at Customer's expense, return to Landis+Gyr or destroy all copies of the Software, Documentation and all materials containing Landis+Gyr's Confidential Information, subject to applicable law.
- (c) Within thirty (30) days certify in writing to Landis+Gyr that all such copies and materials have been returned or destroyed, and that Customer's use of the Software has been discontinued, subject to applicable law.

Comment [EA16]: Freedom of information, open records

10.4 Survival. Subject to applicable law. The provisions of Section 1, 6 through 10, and 12 through Section 15 shall survive the expiration or earlier termination of this Agreement for any reason, provided that with respect to Section 12, each party's obligations under this Section 10.4, shall survive the expiration or earlier termination of this Agreement for a period of two (2) years from the date of such expiration or termination, except for Confidential Information that constitutes a trade secret under any applicable law, in which case, such obligations shall survive for as long as such Confidential Information remains a trade secret under such law. Landis+Gyr understands and accepts that Customer cannot bind its subsequent boards and it is subject to freedom of information and open records acts and open meetings acts and other applicable laws.

Comment [EA17]: Cannot bind subsequent boards and open meeting, open records

11.0 Change Management Process

11.1 Change Management. If changes are requested by either party following the Effective Date, the requesting party shall provide a request to the other party's Project Manager or other designated staff in writing. The other party will analyze the impact and inform the other party's Project Manager of any impacts to cost, schedule, and other implications to perform the change. If both parties approve of the written change, accepted Change Requests will be deemed amendments to this Agreement and are incorporated into this Agreement by reference. Execution of the requested work cannot begin until both parties have accepted the change order in writing.

12.0 Governing Law; Dispute Resolution

12.1 Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State of Mississippi and shall for all purposes be construed and enforced in accordance with Mississippi law.

12.2 Disputes. Any dispute shall first be submitted to a non-binding arbitration. ~~If said non-binding arbitration mediation process involving senior executives from both parties. In the event that mediation is unable to satisfactorily resolve any dispute then the parties may proceed to remedies available to them under the Agreement and applicable law. matter shall be resolved by arbitration using a single arbitrator selected by the American Arbitration Association ("AAA") in Atlanta, Georgia. The arbitrator's decision and award shall be final and binding and may be entered in any court having jurisdiction. The arbitrator shall not have the power to award punitive, special or incidental damages. Issues of arbitrability shall be determined in accordance with federal laws relating to arbitration and all other aspects shall be interpreted in accordance with the laws of the State of Mississippi. Each party shall pay its own attorney's fees associated with the arbitration and other costs and expenses of the arbitration shall be paid as provided by the rules of the AAA; provided, however, the prevailing party in the arbitration shall be entitled to recover its attorney fees, costs, and expenses from the non-prevailing party if the arbitrator determines there is good reason to do so. If court proceedings to stay litigation or compel arbitration are necessary, the party who unsuccessfully opposes such proceedings shall pay all~~

Comment [EA18]: See attached opinion

~~associated costs, expenses and attorney's fees which are reasonably incurred by the other party. If any portion of this provision is held to be unenforceable, it shall be severed and shall not affect the duty to arbitrate.~~

~~12.3 Court Actions. Except as permitted in this section, neither party may bring a case in court. If Landis+Gyr or Customer disregards this restriction, files a court case and fails to dismiss it promptly upon being notified of this provision, that party will pay the other party's costs and expenses, including attorney's fees, incurred after the notice in defending the court case. Landis+Gyr retains the right to obtain an injunction in court to prevent Customer's misuse of its intellectual properties.~~

13.0 Confidentiality

13.1 Landis+Gyr, its affiliates, and Customer may exchange Confidential Information with each other, and each party shall take all reasonable precautions to prevent such Confidential Information from being disclosed to third parties, including officers and employees not having a legitimate need for the information, ~~and shall not disclose any Confidential Information to third parties unless the discloser of such Confidential Information has consented to disclosure in writing. These non-disclosure obligations shall survive the termination of this Agreement and shall continue for a period of five (5) years thereafter. Information need not be marked "Confidential" to be considered Confidential Information.~~ "Confidential Information" includes any Confidential Information disclosed prior to the effective date of this Agreement. Customer Confidential Information shall also be deemed to include Customer Data and shall not be subject to the exceptions referenced below in Section 13.4.

Comment [EA19]: Subject to open meetings and open records, etc. Laws provide processes and procedures for company to protect information that it believes is proprietary

13.2 ~~No Rights in Confidential Information.~~ Customer and Landis+Gyr hereby ~~acknowledge and agree that all Confidential Information of the other party shall remain the sole and exclusive property of such other party and that the receiving party shall have no proprietary rights, title or interests therein except as otherwise provided in this Agreement.~~ agree to work in good faith and under applicable law to ensure that Confidential Information remains the exclusive property of such other party.

~~13.3 Termination. Upon termination for any reason, or at any other time that Customer or Landis+Gyr demands, the other party shall promptly deliver and/or certify destruction of Confidential Information, as appropriate, to the requesting party all Confidential Information (copies and originals) of the requesting party as may be in the other party's possession or under its control.~~

~~13.4~~13.3 Non-Confidential Information. Notwithstanding the definition of Confidential Information, the following information shall not be considered Confidential Information:

- a. Information which is already generally available to the public;
- b. Information which hereafter becomes generally available to the public, except as a result of the direct or indirect action of the receiving party in breach of this Agreement;
- c. Information known to the receiving party on a non-confidential basis prior to receipt by the disclosing party;
- d. Information that is independently developed without access to the disclosing party's Confidential Information; and
- e. Information disclosed under legal compulsion; provided, however, that prior to a disclosure pursuant to an order or applicable law, the receiving party, to the extent permitted by law, promptly provides the other party written notice of such proposed disclosure and reasonably cooperates with the other party in its attempts to limit or prevent such disclosure.

14.0 — Limitation of Liability

~~14.1 — No Consequential or Indirect Damages. EXCEPT AS OTHERWISE PROVIDED IN SECTION 14.3, IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS REPRESENTATIVES BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES (EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), INCLUDING WITHOUT LIMITATION, LOSS OF BUSINESS, REVENUE OR PROFIT, ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION UPON WHICH A CLAIM FOR DAMAGES MAY BE BASED, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY. THESE LIMITATIONS WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS IN ITS ESSENTIAL PURPOSE.~~

Comment [EA20]: See attached opinion and tort claim act

~~14.2 — Maximum Liability. EXCEPT AS OTHERWISE PROVIDED IN SECTION 14.3, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO LANDIS+GYR PURSUANT TO THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE NON-BREACHING PARTY'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.~~

~~14.3 — Exceptions. THE LIMITATIONS AND EXCLUSIONS SET FORTH IN THIS SECTION 14 SHALL NOT APPLY TO DAMAGES OR LIABILITIES ARISING FROM: (A) PERSONAL INJURY OR DEATH OR DAMAGE TO ANY REAL OR TANGIBLE PERSONAL PROPERTY CAUSED EITHER PARTY'S NEGLIGENT ACTS OR OMISSIONS, OR WILLFUL MISCONDUCT OR (B) BREACHES UNDER SECTION 9.2 (INFRINGEMENT INDEMNIFICATION) OR SECTION 14 (CONFIDENTIALITY).~~

15.014.0 — General

~~15.014.0 — Complete Agreement, Modification and Assignment.~~ The parties agree that this Agreement and any ancillary agreements, exhibits or schedules constitutes the complete and exclusive agreement between them with respect to its subject matter -and supersedes all previous understandings, negotiations, proposals, acknowledgements, and representations, whether oral or written with respect thereto. No modification of this Agreement will be effective unless it is in writing and signed by authorized representatives of Customer, after proper authorization by its governing authority, -and Landis+Gyr. Customer may not assign this Agreement, a Purchase Order, or its rights or obligations under them without the express written consent of Landis+Gyr which shall not be unreasonably withheld. Any exhibit attached hereto is incorporated herein by this reference.

~~15.114.1 — Notices.~~ Notices, other than routine communications having no legal effect, shall be in writing and shall be sent by certified United States mail (return receipt requested), by guaranteed overnight delivery, by courier, or by confirmed facsimile addressed to the addresses set forth below:

For Customer: City of Oxford
107 Courthouse Square
Oxford, MS 38655
Attn: Mayor of the City of Oxford
Facsimile No: 662-

For Landis+Gyr: Landis+Gyr Technology, Inc.
30000 Mill Creek Avenue, Suite 100
Alpharetta, GA 30022
Attn: Legal Department
Facsimile No: 678.258.1686

~~15.2~~14.2 Force Majeure. Except for payment obligations, neither party is liable for failing to fulfill its obligations due to acts of God, civil or military authority, war, riots, strikes, fire, or other causes beyond its reasonable control. To the extent a party is substantially delayed by force majeure from performing its obligations hereunder, such party shall give notice and details of the force majeure to the other party as soon as practicable, then the parties may extend the time for performance by written agreement. In the event it shall become impossible for Landis+Gyr or Customer to perform its respective obligations because of force majeure, then in such event the party so unable to perform may terminate this Agreement upon written notice to the other. In no event shall an event of force majeure excuse or delay the payment of any amount owed by one party to the other party under this Agreement. Landis+Gyr understands and agrees that this provision in no way limits rights and remedies available the Customer by law.

~~15.3~~14.3 No Third Party Beneficiaries. There are no third-party beneficiaries to this Agreement, and no party other than Landis+Gyr and Customer shall have any legally enforceable rights under this Agreement.

~~15.4~~14.4 Headings. All headings used in this Agreement are for reference purposes only and are not part of this Agreement.

~~15.5~~14.5 Waiver; Severability. No delay or omission by Customer or Landis+Gyr in enforcing its rights or remedies under this Agreement shall impair such right or remedy or be deemed to be a waiver thereof. Any waiver, in whole or in part of any provision of this Agreement will not affect be considered to be a waiver of any other provision. No waiver of this Agreement shall be valid unless in writing and signed by the parties thereto. If any term of this Agreement is found to be unenforceable or invalid for any reason, such term shall not affect the other provisions, but such unenforceable term shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permitted the intent of Customer and Landis+Gyr set forth in this Agreement, and all other terms will remain in full force and effect.

~~15.6~~14.6 Independent Contractor. Nothing in this Agreement shall be read as appointing either party as the agent or legal representative of the other party for any purpose whatsoever, nor shall either party hold itself out as such. This Agreement does not create or is intended to create any express or implied relationship of joint ventures, partners, employer and employee, associates, or principal and agent between the parties, and both parties are acting as independent contractors and principals for their own accounts. Neither party is granted any right or responsibility for or on behalf of the other or otherwise to bind the other. In providing the Services and Products and, Landis+Gyr shall have sole responsibility for all persons employed by it in connection with the performance of such Services; and, except as provided in this Agreement, Landis+Gyr shall solely determine the methods, details, and means of performing the Services.

~~15.7~~14.7 EEOC and Affirmative Action.

- a. **Landis+Gyr is in compliance with all of the laws and Executive Orders prohibiting discrimination, including but not limited to Title VII of the Civil Rights Act of 1964 as amended, the Civil Rights Act of 1991, 42 USC 2000(e), et seq., and all applicable state and local laws against discrimination.**
- b. **Landis+Gyr and subcontractor, if any, shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with**

disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

15.814.8 Performance Bond. **[City of Oxford to confirm whether a performance bond is required.]**

15.914.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the Effective Date at such time as all the signatories hereto have signed a counterpart of this Agreement, after having been properly authorized to do so.

Acknowledged and agreed by the authorized representatives of the parties.

Customer

Landis+Gyr

Authorized Signature

Authorized Signature

Printed Name

Printed Name

Title

Title

Date

Date

**EXHIBIT A TO MASTER AGREEMENT
PRODUCTS PRICING SCHEDULE AND DESCRIPTION OF SERVICES**

A. Project Delivery Services Overview

The parties will perform in accordance with the following summary (see Table 1) in connection with the deployment and implementation of the Gridstream RF AMI System:

Table 1 – Summary of Roles

Services	Landis+Gyr	Customer
Project Management Support	√	
System Design	√	
Training	√	
Software as a Service	√	
Installation (network)		√
Installation (endpoint)		√
Field Engineering (on-site field installation support)		√
Integration Services		To be determined if required
System Administration/Daily Operations/Database Administration		√
WAN Backhaul Communications		√

This Agreement includes Level 3 Services provided by Landis+Gyr. Other Services are provided for reference only. Detailed description of these services is provided in Table 2. Customer may elect to upgrade to a higher level of service and support by paying the applicable upcharge with a signed amendment to the Agreement. A la carte services and pricing for services and support beyond this agreement are provided in Table 3.

Table 2 – Detailed Description of Landis+Gyr Project Delivery Services

Service	Level 1 Starter	Level 2 Extended	RECOMMENDED Level 3 Preferred	Level 4 Comprehensive
Project Management <i>Highly credentialed and driven by industry standards and Landis+Gyr's robust 17 step process</i>	Remote project management by a Landis+Gyr Project Coordinator, including remote project kickoff session, coordination and scheduling of Landis+Gyr resources and activities, and bi-weekly status meetings	Project management services, led by a Landis+Gyr PMP®-certified Project Manager or qualified Landis+Gyr distributor, including on-site project kickoff session, logistics support, risk/issue management, scope management, contract management, resource management, and biweekly status	Project management services, led by a Landis+Gyr PMP®-certified Project Manager or qualified Landis+Gyr distributor, including on-site project kickoff session, logistics support, risk/issue management, scope management, contract management, resource management, and weekly status	Project management services, led by a Landis+Gyr PMP®-certified Project Manager or qualified Landis+Gyr distributor, including on-site project kickoff session, logistics support, risk/issue management, scope management, contract management, resource management, and weekly status meetings

		meetings	meetings	
Configuration Support <i>In-depth support for this key activity</i>	Endpoint configuration workshop and remote support for first-article testing	Endpoint configuration workshop and remote support for first-article testing	Endpoint configuration workshop and remote support for first-article testing	Endpoint configuration workshop and remote support for first-article testing
Network Design and Site Surveys <i>Using repeatable ISO-certified processes</i>	Basic network design services including initial network design and review of initial design with customer	Initial network design, up to 40 hours of on-site survey work, and final network design	Includes initial and final network design, up to 40 hours of on-site surveys and 40 hours of network optimization services, as well as validation of connectivity	Comprehensive network design services which include Level 3 services plus packet testing and network validation
Technical Implementation Support <i>Executing system success with dedicated engineers</i>	Unlimited remote technical support from a dedicated Landis+Gyr technical expert	Unlimited remote technical support from a dedicated Landis+Gyr technical expert	Unlimited remote technical support from a dedicated Landis+Gyr technical expert	Unlimited remote technical support plus on-site support as required for critical issues from a dedicated Landis+Gyr project technical expert
Integration Support <i>Expert whole-solution guidance and support</i>	Available as an à la carte service	Up to 20 hours of remote integration support to facilitate customer's integration with billing system (Landis+Gyr will lead detailed requirements and design workshops, provide standard APIs and API specifications, provide best practices, and support customer integration activities)	Up to 40 hours of remote integration support to facilitate customer's integration with billing system (Landis+Gyr will lead detailed requirements and design workshops, provide standard APIs and API specifications, provide best practices, and support customer integration activities)	Up to 40 hours of remote integration support to facilitate customer's integration with billing system and/or MDM (Landis+Gyr will lead detailed requirements and design workshops, provide standard APIs and API specifications, provide best practices, and support customer integration activities)
On-Site Commissioning <i>In-depth support for this key activity</i>	Remote support for commissioning of initial network device	Up to 40 hours of on-site commissioning of initial network device (Landis+Gyr will inspect installation, commission equipment and ensure network preparation for endpoint deployment)	Up to 40 hours of on-site commissioning of initial network device (Landis+Gyr will inspect installation, commission equipment and ensure network preparation for endpoint deployment)	Up to 40 hours of on-site commissioning of initial network device (Landis+Gyr will inspect installation, commission equipment and ensure network preparation for endpoint deployment)

Network Monitoring <i>Reinforcements to further optimize your system</i>	Available as an à la carte service	Available as an à la carte service	Available as an à la carte service	Advanced network performance graphical reports furnished on a daily basis via our proprietary “Analytics Center”
Software License and Upgrades, Hosting, Monitoring <i>Dedicated and secure software cloud services by ITIL-certified experts in a SSAE-16 certified data center¹²</i>	Command Center installation and hosting in our secure Network Operations Center which includes monitoring, backups, software upgrades, and DBA and system administration. Includes license for Command Center. Requires a signed SaaS Agreement and a 1 year commitment.	Command Center installation and hosting in our secure Network Operations Center which includes monitoring, backups, software upgrades, and DBA and system administration. Includes license for Command Center. Requires a signed SaaS Agreement and a 1 year commitment.	Command Center installation and hosting in our secure Network Operations Center which includes monitoring, backups, software upgrades, and DBA and system administration. Includes license for Command Center. Requires a signed SaaS Agreement and a 1 year commitment.	Command Center installation and hosting in our secure Network Operations Center which includes monitoring, backups, software upgrades, and DBA and system administration. Includes license for Command Center. Requires a signed SaaS Agreement and a 1 year commitment.
Training <i>Flexible and customizable options</i>	(a) WebEx training for site surveys, (b) WebEx Command Center training, (c) WebEx Network Deployment training, (d) 6 WebEx training courses for continuing education	(a) WebEx training for site surveys, (b) 3-day Command Center training in our training facilities for 3 people, (c) 3-day Network Deployment course in our facilities for 3 people, (d) 6 WebEx continuing education training courses	a) On-site training for site surveys, (b) 3-day Command Center training in Landis+Gyr’s training facilities for 3 people, (c) 3-day Network Deployment course in our facilities for 3 people, (d) 8 WebEx continuing education training courses	(a) On-site training for site surveys, (b) 3-day Command Center training at Landis+Gyr or customer facilities for 12 people, (c) 3-day Network Deployment course at Landis+Gyr or customer facilities for 12 people, (d) 3-day field tool training at customer facilities for 12 people, (e) 8 WebEx continuing education training courses
24x7 Post-Implementation Technical Support <i>Safeguarding your long-term success</i>	Landis+Gyr will provide ongoing 24x7 phone technical support ³	Landis+Gyr will provide ongoing 24x7 phone technical support ⁶	Landis+Gyr will provide ongoing 24x7 phone technical support ⁶	Landis+Gyr will provide ongoing 24x7 phone technical support ⁶
System Audit Service <i>Detailed inspection to ensure high-performance and reliability</i>	Available as an à la carte service	Available as an à la carte service	Available as an à la carte service	A skilled IT resource will perform ⁴ an exhaustive series of inspections to assure reliability, high-performance, and continued customer confidence in our solution. The detailed

¹ Our data center is SSAE-16 certified and our data center and support professionals are ITIL-trained and certified

² Full failover/disaster recovery priced separately

³ With the execution of the Landis+Gyr Software as a Service Agreement and payment of the monthly SaaS service fee

⁴ Within 6 months of project completion

				analysis includes a review of meter programs, enterprise architecture, database maintenance and retention practices, system configuration settings, system/server performance, third-party integration, and security.
Delivery Services Price⁵	Fixed Price, invoiced upon contract execution	Fixed Price, 50% invoiced upon contract execution, 50% invoiced upon conclusion of project delivery services	Fixed Price, 50% invoiced upon contract execution, 50% invoiced upon conclusion of project delivery services	Fixed Price, 50% invoiced upon contract execution, 50% invoiced upon conclusion of project delivery services
Software License and Upgrades, Hosting, Monitoring Price	Monthly fee commences once Command Center is installed	Monthly fee commences once Command Center is installed	Monthly fee commences once Command Center is installed	Monthly fee commences once Command Center is installed

Table 3 – A La Carte Services and Pricing

Service Description	Price ⁶
Project Management	\$200/Hour
Technical Implementation Support(Including Network Monitoring, Network Performance Validation Support)	\$200/Hour
Software Installation	\$200/Hour
Integration Support	\$200/Hour
Network Monitoring and Troubleshooting	\$150/Hour
Security Consulting	\$200/Hour
RF Field Technician (Including Site Surveys, Device Commissioning, Field Troubleshooting)	\$150/Hour
Network Design (Including Design Modifications, Backhaul Designs, DA Designs)	\$150/Hour
Turn-key Installation of Network/Endpoints	To be Quoted, if Required
Training Courses – On-site at Customer Facilities within Continental US	\$7000/Class (includes travel expenses)
Training Courses - At Landis+Gyr Facilities	2-Day Class: \$800/Person/Class 3-Day Class: \$1200/Person/Class
Training Courses - Public WebEx	\$50/Hour/WebEx Login
Professional Services (Including System Audit Services)	\$225/Hour

⁵ Additional services available as an à la carte service or via an upgrade to a higher level of service

⁶ Pricing shown is per person, travel expenses excluded and would be billed at cost;

B. Gridstream RF Solution Pricing

The following table represents quantities and pricing for the AMI solution.

Network Devices	Quantity	Price/Unit	Price Total
C6000 Series Collector	2	\$6,500.00	\$13,000.00
C6000 Series Collector Mounting Kit	2	\$850.00	\$1,700.00
Routers	9	\$1,790.00	\$16,110.00
Total Network Devices			\$30,810.00

Software as a Service - Annual Service Fees (Hosting) *	Months	Price/Unit	Price Total
Command Center	12	\$1,000.00	\$12,000.00
Gridstream MDMS and SmartData for Outage Management (for months 1-6)	6	\$1,414.00	\$8,484.00
Gridstream MDMS and SmartData for Outage Management (for month 7-12)	6	\$1,914.00	\$11,484.00
SmartData Connect (Consumer Portal)	12	\$1,250.00	\$15,000.00
Bill Pay and Presentment	12	\$416.67	\$5,000.04
SmartData Prepay (Pay As You Go) for up to 200 Users	12	\$1,758.33	\$21,099.96
SmartData Connect Customization (Estimated) **	N/A	\$15,000.00	\$15,000.00
MDMS Integration Services (Estimated) **	N/A	\$60,000.00	\$60,000.00
Total SaaS Service Fees			\$148,068.00

Project Services and Tools	Quantity	Price/Unit	Price Total
Tiered Project Delivery Services - Level 3, Preferred	1	\$65,000.00	\$65,000.00
RF Field Tools and Radio Kit	1	\$4,900.00	\$4,900.00
Total Project Services and Tools			\$69,900.00

Bond	Quantity	Price/Unit	Price Total
Payment and Performance Bond (Estimated, MDMS scope was not included in performance bond)	1	\$2,820.00	\$2,820.00
Total Bond			\$2,820.00

Total			\$251,598.00
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**Please see Software as a Service Schedule B for pricing and clarifications*

***This is an estimated price for customization and integration services. Please reference the relevant statements of work under the SaaS Agreement.*

C. Clarifications

Gridstream RF Clarifications

1. The following are outside the scope of this Agreement: (i) Endpoints and (ii) installation of Network Devices and Endpoints.
2. The Network Device quantities are approximations of required quantities and have been developed from data provided by the Customer. Actual Network Devices quantities necessary for the AMI System to function properly may vary based on verification of final meter quantities, system analysis and requirements, locations, deployment approach, and system optimization needs.
3. Landis+Gyr's Network Device quantities have been based on the meter location data provided by the Customer and may need to be refined based on final quantities included in this project.
4. Endpoint deployment will be deployed in a manner in which the electric endpoints are contiguous and are located within range of an appropriate network device to enable adequate meshing.
5. Customer will provide WAN backhaul access to each C6000 Series Collector.

6. Customer will provide new or existing poles, of an appropriate height, with 120/240V power source for installation of Network Devices.
7. Network Devices are currently available with an initial 20-week manufacturing lead time after receipt of order.
8. WAN backhaul will be provided by Customer.
9. RF Tools and Radio Kit pricing includes one license each for RadioShop and Endpoint Test Manager, as well as the cost of a radio; it does not include the cost of the PC required to run the software.
10. Tiered Project Delivery Services - Level 3, Preferred pricing is based on Landis+Gyr's Tiered Delivery Services Model. Pricing is based on project management services being provided by Landis+Gyr for a period of six (6) months, as well as required Gridstream RF training, invoiced 50% upon contract execution, with the remaining 50% invoiced upon conclusion of project delivery services.

D. Description of Roles and Responsibilities/Deployment of Gridstream RF AMI System.

1. PROJECT SCOPE

PROJECT SCOPE

1.1 System Generally

Landis+Gyr will assist Customer's planning of deployment of the System prior to Customer's deployment of the System and perform design and project coordination Services. This approach will certify Customer to run and maintain the System through a transitional plan starting at the beginning of the System implementation.

During the start-up time period, defined as the planning and readiness phase of the project, Landis+Gyr will coordinate all activities related to the planning of the initial deployment covering Landis+Gyr meters, network, installation, operation and maintenance training and related activities.

2. PROJECT RESPONSIBILITIES

This Section provides a summary of the responsibilities to be undertaken by Landis+Gyr and Customer in order to fulfill the requirements of the project.

2.1 Landis+Gyr Responsibilities

2.1.1 General Project Coordination Services

2.1.1.1 Project Coordination

Landis+Gyr will provide the services of a Project Manager experienced in the implementation of the Gridstream RF system of comparable complexity and who will be responsible for coordination of the equipment delivery, planning deployment, and training Customer to commission the Network Devices.

2.1.1.2 System Technical Support / Call Center

Landis+Gyr will support Customer's system administrator in connection with the operation of Command Center, which operates all main facets of the System.

2.1.1.3 WAN Communications Support

Landis+Gyr will provide a specialist available to support Customer for the necessary communication strategy and equipment needed to make the System work. This specialist will assist and facilitate, when required, the configuration of the WAN communications to accommodate Customer's chosen communication mode. These Services are provided through the initial planning and readiness phase prior to installation of the System. Customer is responsible for acquiring all WAN communications equipment.

2.1.1.4 System Design Services

Landis+Gyr will deliver the collectors and routers needed for the successful implementation of the System. Landis+Gyr's System Engineering staff will help develop the preliminary System design. Landis+Gyr's System Engineers are skilled in AMI engineering requirements involving various system designs including IT plan, network infrastructure design, radio frequency propagation and design, drawing package, and more. Customer will be involved throughout the design phase.

2.1.2. Network Infrastructure Products

2.1.2.1 Collector/Router Design, Procurement, and Deployment.

2.1.2.1.1 Landis+Gyr will create designs as per Customer's requirements and in conjunction with Landis+Gyr's design standards.

2.1.2.1.2 All collectors and routers will be configured by Landis+Gyr prior to shipment.

2.1 Customer Responsibilities

2.2.1 General Services and Facilities

2.2.1.1 Project Lead. Customer will provide an experienced project lead ("**Customer's Project Manager**") who will serve as the primary contact between Customer and Landis+Gyr's Project Manager. Customer's Project Manager will be responsible for all Customer deliverables and coordinate Customer's internal resources in areas such as IT, Customer Service, Metering Services, Training and System Administration.

2.2.2 Collector/Routers

2.2.2.1 Design and Procure

2.2.2.1.1 Customer will provide reasonable consultation and assistance to Landis+Gyr's designers as required.

2.2.2.1.2 Customer will approve Landis+Gyr's designs prior to Customer's installation. Review and approval schedules will be identified in the Project Schedule.

- 2.2.2.1.3 Landis+Gyr in conjunction with Customer will perform construction planning.
- 2.2.2.1.4 Customer will supply an experienced design specialist who will, on an installation-by-installation basis:
 - (a) Assist Landis+Gyr with design by participating in pre-design site meetings and providing advice;
 - (b) Issue switch numbers to be included on design drawings and documents;
 - (c) Review Landis+Gyr's designs and provide comments prior to installation;
 - (d) Arrange any survey and staking required for pole placement; and
 - (e) Obtain all necessary permits and approvals prior to installation.
 - (f) Customer will supply and keep current material item catalogue showing approved manufacturer and part numbers for third party-equipment.

2.2.2.2 Installation

- 2.2.2.2.1 Landis+Gyr will supply onsite commissioning, optimization, orientation (includes training for Customer to maintain and troubleshoot RF equipment) and configuration of the collector equipment as further described in and subject to this Exhibit A.
- 2.2.2.2.2 Customer will provide necessary resources to energize and commission the routers and collectors for placement into permanent service.
- 2.2.2.2.3 Customer will provide installation-ready poles or towers for mounting of RF collectors including power, grounding and WAN communication. Customer agrees to install facilities at its cost for the purposes of router and collector attachment to enable the routers and collectors to perform optimally and in accordance with the design.
- 2.2.2.2.4 Customer will arrange for underground facilities locating, in advance of construction, if ground disturbance is required.
- 2.2.2.2.5 Customer will arrange for power interruptions if required for construction and/or installation.
- 2.2.2.2.6 Customer will install all collectors and routers and if applicable, third party-ancillary equipment as per the design.
- 2.2.2.2.7 Customer will connect to applicable communication equipment to accommodate available utility fiber or communication network.
- 2.2.2.2.8 Customer is responsible for meter installation.

Software as a Service Agreement

This Software as a Service (SaaS) Agreement (this “**Agreement**”), dated as of _____, 2014 (the “**Effective Date**”), is by and between City of Oxford ~~Electric Department (“Customer”)~~, a Mississippi ~~[TYPE OF LEGAL ENTITY]~~ **municipal corporation (“Customer”)**, with offices located at City of Oxford, 107 Courthouse Square, Oxford, MS 38655, and **LANDIS+GYR TECHNOLOGY, INC.** a Delaware corporation with offices located at 30000 Mill Creek Avenue, Suite 100, Alpharetta, GA 30022 (“**Service Provider**”).

WHEREAS, Customer requires third-party hosted “software as a service” (the “**SaaS Services**,” as further described herein) with respect to certain of its information technology needs and related smart grid program;

WHEREAS, Service Provider has agreed to provide the SaaS Services to Customer, all on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and representations set forth in this Agreement, the parties hereby agree as follows:

1. Definitions.

“**Access Credentials**” means any user name, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify an individual’s identity and authorization to access and use the SaaS Services.

“**Affiliate**” means any entity (including without limitation, any individual, corporation, company, partnership, limited liability company or group) that directly through one or more intermediaries, controls, is controlled by or is under common control with Service Provider or Customer for so long as such control exists. For purposes of this definition, “control” means having more than 50% of the shares or other equity interest with voting rights in the legal entity or organization at issue.

“**Agreement**” has the meaning set forth in the preamble.

“**Authorized Users**” means any Customer employee, contractor or agent, or any other individual or entity authorized by Customer to access and use the SaaS Services through Customer’s account under this Agreement.

“**Business Day**” means a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by Law to be closed for business.

“**Change Order**” has the meaning set forth in **Section 2.3**.

“**Confidential Information**” has the meaning set forth in **Section 8.1**.

“**Customer**” has the meaning set forth in the preamble.

“**Customer Data**” means any and all information, data, materials, works, or other content, relating to Customer’s end customers’ information relating to electricity, water or natural gas consumption, load profile, billing history, or credit history that is or has been obtained or compiled by Customer in connection with supplying electric services, water services or gas services to that customer or group of customers (regardless of the media in which it is contained) that may be disclosed at any time to Service Provider by Customer or its employees, agents, consultants, contractors, or suppliers in anticipation of, in connection with, or incidental to Service Provider’s performance of the SaaS Services for or on behalf of Customer .

“**Customer Failure**” has the meaning set forth in **Section 3.2**.

“**Customer Modification**” has the meaning set forth in **Section 9.2**.

“**Customer Systems**” means the Customer's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services.

“**Deliverable**” has the meaning set forth in **Section 2.4(b)**.

“**Documentation**” means any manuals, instructions or other documents or materials that Service Provider provides or makes available to Customer in any form or medium and which describe the functionality, components, features or requirements of the SaaS Services or Provider Materials, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof.

“**Disabling Code**” means any software, virus, Trojan horse, time bomb or other code that is harmful, disabling or which enables unauthorized access to the Service Provider Systems or Customer Systems, or theft or damage to Customer Data, or otherwise impairs the operation of the Service Provider Systems, any Customer Systems, or any Third Party system utilized by Service Provider in the Service Provider Systems.

“**Effective Date**” has the meaning set forth in the preamble.

“**Endpoints**” means each of the following types of physical devices installed for use in the delivery of any commodity:

- i. a meter measuring the quantity of a commodity delivered, at a utility customer premise or at any other point within the distribution system, with respect to which the Software stores, processes, or makes accessible data specifically identified to that premise or distribution point for use in one or more of the utility operations the Software performs or supports; and
- ii. an unmetered supply point with respect to which the Software performs calculations of quantities of a commodity delivered in lieu of metering.

For avoidance of doubt, Endpoints do not include: aggregations of data from multiple Endpoints; interfaces between the Software and other systems or applications; sub-meters or devices installed at

a utility customer premises beyond the meter; or devices only used to read, retrieve, or transmit data from Endpoints.

“**Fees**” has the meaning set forth in in **Section 6.1**

“**Force Majeure Event**” has the meaning set forth in **Section 13.1**

“**Indemnified Party**” has the meaning set forth in **Section 9.4**.

“**Indemnifying Party**” has the meaning set forth in **Section 9.4**.

“**Infringement Claim**” has the meaning set forth in **Section 9.1(a)**.

“**Initial Term**” has the meaning set forth in **Section 5.1**.

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

“**Interfaces**” means the Service Provider’s file transfer communications interfaces and data feeds between the Service Provider’s Systems and the Customer’s Systems which are developed, operated, owned and maintained by Service Provider pursuant to this Agreement including, as applicable, any configuration and customization required to meet the requirements of this Agreement.

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

“**Losses**” has the meaning set forth in **Section 9.1**.

“**Permitted Uses**” means any use of the SaaS Services by Customer or any Authorized User for the benefit of Customer in or for Customer's internal business operations.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity.

“**Process**” means to perform any operation or set of operations on any data, information, material, work, expression or other content, including to (a) collect, receive, input, upload, download, record, reproduce, store, organize, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other improvements or derivative works, (b) process, retrieve, output, consult, use, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or (c) block, erase or destroy. “**Processing**” and “**Processed**” have correlative meanings.

“**Professional Services**” has the meaning set forth in **Section 2.4**.

“**Renewal Term**” has the meaning set forth in **Section 5.4**.

“**SaaS Services**” has the meaning set forth in **Section 2.1**.

“**Service Provider**” has the meaning set forth in the preamble.

“**Service Provider Materials**” means all devices, documents, data, know-how, methods, processes, software and other inventions, works, technologies and materials, including any and all Service Software, Documentation, computer hardware, programs, reports and specifications, client software and deliverables provided or used by Service Provider in connection with performing the SaaS Services, in each case developed or acquired by the Service Provider independently of this Agreement.

“**Service Provider Personnel**” means all employees and agents of Service Provider, all subcontractors and all employees and agents of any subcontractor, involved in the performance of Services.

“**Service Provider Systems**” has the meaning set forth in **Section 8.4(c)**.

“**SOW**” has the meaning set forth in **Section 2.4**.

“**Supported Release**” means versions of Service Software currently supported by Service Provider. Service Provider will support at a minimum the current generally available release in addition to the previous release of Service Software.

“**Reimbursable Expenses**” has the meaning set forth in **Section 6.3**

“**Representatives**” means a party's employees, officers, directors, consultants, legal advisors and, with respect to Service Provider, Service Provider's subcontractors, and, with respect to Customer, solely those of its independent contractors or service providers that are Authorized Users.

“**Service Order**” has the meaning set forth in **Section 2.1(a)**

“**Service Period**” has the meaning set forth in **Section 5.1** of Schedule A.

“**Service Software**” means the Service Provider software application or applications and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that Service Provider provides remote access to and use of as part of the SaaS Services.

“**Subcontractor**” has the meaning set forth in **Section 2.6**.

“**Term**” has the meaning set forth in **Section 5.3**.

“**Termination for Cause**” has the meaning set forth in **Section 5.1**.

“**Territory**” means the Customer's service territory.

“**Third Party Materials**” means materials and information, in any form or medium, including any software, documents, data, content, specifications, products, equipment or components of or relating to the Services that are not proprietary to Service Provider.

“**Upgrade**” means updating the Service Software to the most current generally available version.

2. Services.

2.1. Services. Subject to and conditioned on Customer’s and its Authorized Users’ compliance with the terms and conditions of this Agreement, during the Term, Service Provider agrees to provide to Customer and its Authorized Users access to certain of its or its licensors hosted software and hardware products and provide the following services: infrastructure, monitoring, technical support, backup and recovery, initial training, change management, and technology upgrades for Customer’s productive use of such services. Throughout the Term and at all times in connection with its actual or required performance under this Agreement, Service Provider will, in accordance with all terms and conditions set forth in this Agreement and each applicable Service Order, provide to Customer and its Authorized Users the following services (“**Services**”):

- (a) the hosting, management and operation of the Service Software and other services for remote electronic access and use by the Customer and its Authorized Users (“**SaaS Services**”) as described in one or more written, sequentially numbered service orders specifically referencing this Agreement, which, upon their execution will be attached as part of Schedule B and by this reference are incorporated in and made a part of this Agreement (each, a “**Service Order**”);
- (b) service maintenance and the Support Services as set forth in the applicable Service Order and the Service Level Agreement described in Schedule A; and
- (c) such other services as may be specified in the applicable Service Order.

Except for Scheduled Downtime in accordance with the Service Level Agreement in Schedule A; service downtime or degradation due to a Force Majeure Event or any other circumstances beyond Service Provider’s reasonable control, including Customer’s or any Authorized User’s use of Third Party Materials, misuse of the SaaS Services, or use of the Services other than in compliance with the express terms of this Agreement and the Documentation.

2.2. Documentation. The Documentation for the Service Software will accurately and completely describe the functions and features of the Service Software, including all subsequent revisions thereto. The Documentation will be understandable by a typical end user and will provide Authorized Users with sufficient instruction such that an Authorized User can become self-reliant with respect to access and use of the SaaS Services. Company will have the right to make any number of additional copies of the Documentation for internal business purposes at no additional charge.

2.3. Service Orders. Service Orders will be effective only when signed by Customer and Service Provider. Any modifications or changes to the SaaS Services under any executed Service Order

will be effective only if and when memorialized in a mutually agreed written change order (“**Change Order**”) signed by both Parties. Where a Change Order may result in an adjustment to fees, Service Provider will provide a written estimate of such adjustment to Customer within ten (10) calendar days of Service Provider’s receipt of a Change Order. Upon approval of the written estimate to complete the Change Order, the parties will each ratify the Change Order indicating any adjustments to the fees, or delivery schedule.

2.4. Professional Services. During the term of this Agreement, Service Provider may also perform certain implementation, consulting, training and/or support services (“**Professional Services**”) as specified in mutually agreed upon written Statement of Work (“**SOW**”). Each SOW will contain a reference identifying it as a SOW under this Agreement and will contain the following information, as applicable:

- (a) a description of scope of the Professional Services;
- (b) any other items to be delivered (“**Deliverable**”);
- (c) the fees;
- (d) an estimated schedule; and
- (e) assumptions on which the performance of the Professional Services or delivery of the Deliverables is conditioned.

Any provision of a SOW that deems any Deliverable developed by Service Provider to be a “work for hire” or the property of Customer will be contingent upon payment to Service Provider of all amounts properly invoiced to Customer.

2.5. No Software Delivery Obligation. Service Provider has no software delivery obligation and will not ship copies of any of the Service Software used to provide the SaaS Services to Customer as a part of the SaaS Services. Upon the end of the Service Order, Customer’s right to access or use the Service Software specified in the Service Order and the SaaS Services will terminate.

Comment [EA1]: Fully contained in separate agreement?

2.6. Use of Subcontractors. Service Provider may from time to time in its discretion engage third parties to perform Services (each, a “**Subcontractor**”).

2.7. Designation of Responsible Contacts. Customer will provide Service Provider with current appropriate contact information such that Service Provider may communicate maintenance notifications, outages, support items and other communications under this Agreement to Customer on an ongoing basis.

3. Customer Obligations

3.1. Customer Systems and Cooperation. Customer shall at all times during the Term: (a) set up, maintain and operate in good repair and in accordance with the Documentation all Customer Systems on or through which the Services are accessed or used; (b) provide Service Provider with such access to Customer Systems as is necessary for Service Provider to perform the Services in

accordance with the Availability Requirement; and (c) provide all cooperation and assistance as Service Provider may reasonably request to enable Service Provider to exercise its rights and perform its obligations under and in connection with this Agreement.

3.2. Effect of Customer Failure or Delay. Service Provider is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement (each, a “**Customer Failure**”).

3.3. Corrective Action and Notice. If Customer becomes aware of any actual or threatened activity prohibited by Section ~~5.2~~, Customer ~~shall, and~~ shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and Service Provider Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Service Provider of any such actual or threatened activity. Notwithstanding, Customer in no way indemnifies Service Provider against any act, including but not limited to third party act.

Comment [EA2]: ?

3.4. Suspension or Termination of Services. Service Provider may, directly or indirectly, suspend, terminate or otherwise deny Customer's, any Authorized User's or any other third party's access to or use of all or any part of the Services or Service Provider Materials, ~~without incurring any resulting obligation or liability~~, if: (a) Service Provider receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires Service Provider to do so; or (b) Service Provider believes, in its good faith and reasonable discretion, that: (i) Customer or any Authorized User has failed to comply with, any term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any instruction or requirement of the Documentation; (ii) Customer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities relating to or in connection with any of the Services; or (iii) this Agreement expires or is terminated. This **Section 3.4** does not limit any of Provider's other rights or remedies, whether at law, in equity or under this Agreement.

Comment [EA3]: Cannot waive rights

4. Authorization and Restrictions.

4.1. Authorization. Subject to and conditioned on Customer's payment of the Fees and compliance and performance in accordance with all other terms and conditions of this Agreement, Service Provider hereby authorizes Customer, to access and use, solely in the Territory during the Term, the Services and such Service Provider Materials as Service Provider may supply or make available to Customer for the Permitted Uses by and through Authorized Users in accordance with the Documentation and the conditions and limitation set forth in this Agreement or any Service Order. In addition, Customer is authorized to:

- (a) generate, print, copy, upload, download, store and otherwise Process all GUI, audio, visual, digital and other output, displays and other content as may result from any access to or use of the SaaS Services;
- (b) prepare, reproduce, print, download and a reasonable number of copies of Documentation as may be necessary or useful for any Permitted Uses of the SaaS Services under this Agreement;
- (c) access and use the SaaS Services for production uses and applications as may be necessary or useful for the effective use of the SaaS Services for the Permitted Uses hereunder; and
- (d) perform, display, execute, and reproduce and distribute and otherwise make available to Authorized Users, any Service Provider Materials solely to the extent necessary to access or use the SaaS Services in accordance with the terms and conditions of this Agreement.

4.2. Authorization Limitations and Restrictions. Customer will not and will not permit any other Person to access or use the Services or Service Provider Materials beyond the scope of the authorization granted in Section 4.1 as expressly permitted by this Agreement and, in the case of Third-Party Materials, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement expressly permits:

- (a) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make the Services or Service Provider Materials available to any third party, except as expressly permitted by this Agreement or in any Service Order;
- (b) copy, modify or create derivative works or improvements of the Services or Service Provider Materials;
- (c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services or Service Provider Materials, in whole or in part;
- (d) bypass or breach any security device or protection used by the Services or Provider Materials or access or use the Services or Provider Materials other than by an Authorized User through the use of his or her own then valid Access Credentials;
- (e) use or authorize the use of the SaaS Services or Documentation in any manner or for any purpose that is unlawful under applicable Law.
- (f) remove, delete, alter or obscure any trademarks, Documentation, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Services or Service Provider Materials, including any copy thereof;

- (g) access or use the Services or Service Provider Materials in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party, or that violates any applicable Law;
- (h) access or use the Services or Service Provider Materials for purposes of competitive analysis of the Services or Service Provider Materials, the development, provision or use of a competing software service or product or any other purpose that is to the Service Provider's detriment or commercial disadvantage; or
- (i) otherwise access or use the Services or Service Provider Materials beyond the scope of the authorization granted under Section 4.5.1.

4.3. Excess Use. If Customer's use of the SaaS Services exceeds the volume of use authorized in the applicable Service Order (including as to the number of Endpoints), Customer will pay Service Provider the Fees attributable to the excess use in accordance with the applicable Service Order.

4.4. Non-Interference with Service Provider's Customers. Customer agrees that, as far as is practical, its use of the SaaS Services shall not restrict, inhibit, interfere with, or degrade other Service Provider customer's use of the SaaS Services (such as running custom queries against the database). If Customer's use of the SaaS Services violates such restrictions as determined by Service Provider, Service Provider shall provide written notice to Customer of its determination, and if Customer has not remedied or cured the violation within twenty (20) days, Service Provider may at that time suspend or limit the SaaS Services of Customer that is causing the degradation of the services ~~without penalty, until the violation is rectified~~. In addition, Service Provider shall have the right to implement controls necessary to stop or limit future occurrences of a similar nature.

Comment [EA4]: Can we say this?

4.5.

4.4.4.6. Notwithstanding the foregoing, Customer in no way indemnifies Service Provider against any act, including but not limited to third party act. Service Provider understands and accepts that Customer is subject to freedom of information and open records acts and to open meetings acts and other applicable laws.

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5. Term and Termination

5.1. Term. This Agreement will begin on the Effective Date and will remain in full force and effect until three (3) years thereafter ("**Initial Term**") unless terminated by either party for cause, as described in Section 5.4, "**Termination for Cause**," in which case this Agreement and all Service Orders/SOWs will also be terminated. Except in the case of termination for breach by Service Provider, within thirty (30) days' of the date of termination, Customer must pay all amounts remaining unpaid for SaaS Services, plus related taxes and expenses.

5.2. Term of Service Orders/SOWs. Each Service Order/SOW will remain in effect until the earlier to occur of: a) termination of such Service Order/SOW by either party for cause as described in Section 5.4 below; b) termination of such Service Order/SOW upon mutual written consent of the Parties; or c) completion of all Services and the delivery of all Deliverables required under the Service Order/SOW.

5.3. Renewal. Upon expiration of the Initial Term, this Agreement shall automatically renew for successive one (1) year periods (each a “**Renewal Term**” and together with the Initial Term, the “**Term**”), unless a party provides the other party with written notice of its intent not to renew this Agreement at least ninety (90) days prior to the expiration of the then current term.

5.4. Termination for Cause. A party may terminate a Service Order/SOW and this Agreement if:

- (a) the other party is in default of a material obligation under the applicable Service Order/SOW or this Agreement, and such default has not been cured within thirty (30) calendar days after receipt of written notice (specifying the default) from the non-defaulting party. If the default specified in such notice is cured within the thirty (30) day period, the Service Order/SOW and Agreement will remain in effect; or
- (b) the non-terminating party enters into liquidation (apart from a solvent liquidation for the purposes of amalgamation or reconstruction) or is dissolved or declared bankrupt or has a receiver, administrator or administrative receiver appointed over all or part of its assets or enters into an arrangement with its creditors or takes or suffers any similar action.

~~5.5. Notwithstanding any of the provisions of this section, this Agreement shall in no way bind its boards and subsequent governing authorities where prohibited by law.~~

~~5.5. Survival. The terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the performance thereof by either party hereunder will so survive the completion of the performance, cancellation or termination of this Agreement, including without limitation, Confidentiality, Infringement and Limited Warranties.~~

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6. Fees and Expenses.

6.1. Fees. Customer agrees to pay for all services ordered as set forth in the applicable Service Order or SOW (the “**Fees**”). All Fees are due ~~sixty (60) days from the date of the invoice or within ten (10) days after final adoption and approval from appropriate governing authority, if additional authorization is required~~ thirty (30) days from the date of invoice (the “**Due Date**”). Any Fees not paid ~~by the Due Date within thirty (30) days after the date on which Customer receive an invoice (the “**Due Date**”)~~ will accrue interest on the overdue balance from the Due Date at the rate of one and one-half percent (1.5%) per month, or the maximum lawful rate allowable under applicable law, whichever is lower.

6.2. Fees During Renewal Terms. Service Provider's Fees are fixed during the Initial Term. Service Provider fees for Renewal Terms shall escalate annually as of each anniversary of the Effective Date of the Service Order by the amount of the increase in the Consumer Price Index – All Urban Consumers of the Bureau of Labor Statistics of the U.S. Department of Labor for U.S. for All Items with Base Years 1982-1984=100. Those increases will be measured applying the twelve (12) month period ending in the month for which the most recent index results are available as of that anniversary of the Effective Date.

6.3. Reimbursable Expenses. If a Service Order and/or SOW permits reimbursement of expenses by Customer (“**Reimbursable Expenses**”), Service Provider will be reimbursed for those reasonable expenses, at cost.

6.4. Taxes. Customer is exclusively responsible for the payment of all sales and use, value added, duties, tariffs or other similar charges or taxes on the SaaS Services, other than taxes based upon Service Provider’s income, if applicable. All amounts set forth in an applicable Service Order/SOW are exclusive of taxes and taxes are not included in the Fees. Applicable taxes payable by Customer will be separately itemized of invoices sent to Customer.

6.5. Invoices. Service Provider will invoice Customer for all Service Orders at the start of Initial Term and at least thirty (30) days prior to the start of any Renewal Term. Fees for time and materials SOW’s and Reimbursable Expenses shall be issued monthly in arrears based on expenses incurred in the previous month. Fees for fixed bid SOW’s shall be invoiced upon completion of the milestone as set forth in the applicable SOW. All Invoices shall be issued in electronic format, via such delivery means and to such address as are specified by Customer in writing from time to time. If more than one Service Order and/or SOW is in effect, Service Provider may provide an aggregate invoice for all amounts invoiced, together with separate invoices for each Service Order or SOW. Each separate invoice will: (a) clearly identify the Service Order or SOW to which it relates; (b) list each Fee item and Reimbursable Expense separately; (c) include sufficient detail for each line item to enable Customer to verify the calculation thereof; (d) for Fees determined on a time and materials basis, report details of time taken to perform Services on a per-individual basis; (e) be accompanied by all supporting documentation required hereunder for Reimbursable Expenses; and (f) include such other information as may be required by Customer as set forth in the applicable Service Order or SOW. If Customer validly disputes any invoiced amount it shall pay the undisputed amounts and provide written notice of the basis of that dispute to Service Provider within thirty (30) days following delivery of that invoice. The parties will work diligently, promptly and in good faith to resolve any such disputes.

7. Ownership and Restrictions.

7.1. Ownership of Customer Data. As between Customer and Service Provider, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject only to the limited license granted in Section 7.2.

7.2. Limited License to Use Customer Data. Subject to the terms and conditions of this Agreement, Customer hereby grants Service Provider a limited, royalty-free, fully-paid up, non-exclusive, non-transferable and non-sublicensable license, revocable at the will of the Customer, to Process the Customer Data in the United States as instructed by Customer or an Authorized User and solely as necessary to provide the SaaS Services for Customer’s benefit as provided in this Agreement for so long as Customer or any Authorized User uploads or stores such Customer Data for Processing by or on behalf of the Service Provider on the Service Provider Systems.

7.3. Reservation of Rights. Nothing in this Agreement grants any right, title or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Services, Service Provider Materials or Third Party Materials, whether expressly, by implication, estoppel or otherwise. All right, title and interest in and to the Services, the Service Provider Materials and the Third Party Materials are and will remain with Service Provider and the respective rights holders in the Third Party Materials.

8. Confidentiality.

8.1. Obligation of Confidentiality. In the course of performing under this Agreement, each party may disclose to the other material, non-public information, including but not limited to, algorithms, codes, formulas, methodology, design, process, structure, format, documents, documentation, manuals, technical information, specifications, source code, costs and pricing (“**Confidential Information**”). Each party agrees to hold the Confidential Information of the other party in strict confidence, to use reasonable measures which will be no less restrictive than the measures used by the receiving party to protect its own confidential and proprietary information, and not to disclose or use such Confidential Information except as contemplated by this Agreement. Notwithstanding anything to the contrary in the foregoing, each party may disclose Confidential Information to an Affiliate of the receiving party provided that such Affiliate has agreed in writing to protect the confidentiality of such Confidential Information in a manner substantially equivalent to that required of such party under this Agreement. Each party will require its personnel to agree to do likewise. Confidential Information disclosed whether orally or in a tangible form will be marked or indicated as “**Confidential**” or “**Proprietary**” at the time of disclosure. These restrictions will not be construed to apply to (a) information generally available to the public; (b) information released by a party generally without restriction; (c) information independently developed or acquired by a party or its personnel without reliance in any way on other protected information of the disclosing party; or (d) information approved for use and disclosure without restriction. Notwithstanding the foregoing restrictions, a party and its personnel may use and disclose any information (e) to the extent required by an order of any court or other governmental authority; or (f) as necessary for it or them to protect their interest in this Agreement, but in each case only after the disclosing party has been so notified and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.

8.2. Term of Confidentiality. The obligation of confidentiality will continue for a period of five (5) years from the date of disclosure of the information, provided, however, that for any trade secret the obligation of confidentiality will continue and survive until such information is no longer a trade secret under applicable law.

8.3. Customer Data Exception. Notwithstanding the provisions of **Section 8.1** or any other provisions of this Agreement, none of the exclusions set forth in **Section 8.1** apply to any Customer Data.

8.4. Data Privacy and Security

Comment [EA5]: Why is this?

Comment [EA6]: L&G states they take action to limit unauthorized access to Customer Data. While it might be denied, will L&G grant OED indemnification for liability related to Customer Data being stolen?

- (a) Undertaking by Service Provider. Without limiting Service Provider’s obligation of confidentiality as further described herein, Service Provider will use commercially reasonable efforts to establish and maintain a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the Customer Data; (b) protect against any anticipated threats or hazards to the security or integrity of the Customer Data; (c) protect against unauthorized disclosure, access to, or use of the Customer Data; (d) ensure the proper disposal of Customer Data; and, (e) ensure that all employees, agents, and subcontractors of Service Provider, if any, comply with all of the foregoing. In no case will the safeguards of Service Provider’s data privacy and information security program be less stringent than the safeguards used by Customer.
- (b) Unauthorized Access. Service Provider will use commercially reasonable efforts to prohibit access to Customer Systems, in whole or in part, whether through Service Provider's Systems or otherwise, without Customer's express prior written authorization.
- (c) Service Provider Systems. Service Provider will be responsible for the management and maintenance of information technology infrastructure, including all computers, software, databases, electronic systems (including database management systems) and networks used by or for Service Provider to access the Customer Systems or otherwise in connection with the SaaS Services (“**Service Provider Systems**”).
- (e) 8.5 Notwithstanding the provisions of this section, Customer in no way indemnifies Service Provider against any act, including but not limited to third party act. Service Provider understands and accepts that Customer is subject to freedom of information and open records acts and open meetings acts and other applicable laws.

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9. Indemnification.

9.1. Service Provider’s Indemnification Obligations. Service Provider will indemnify, defend and hold harmless Customer and its Affiliates and their respective officers, directors, employees, shareholders and members from and against any losses, claims, penalties, fines, judgments, damages, liabilities or expenses, including reasonable attorneys’ fee (“**Losses**”), or threatened Losses arising out of third party claims relating to, incurred in connection with, or based upon:

- (a) any claim, threatened claim, suit, action or proceeding (“**Claim**”) made against Customer that the SaaS Services infringe any Intellectual Property Rights of a third party enforceable in the U.S. (“**Infringement Claim**”); or
- (b) any claim for bodily injury or death of any individual, or the loss, damage or destruction of any real or personal property, resulting from the willful, negligent, reckless, fraudulent or intentional acts of omissions of Service Provider.

9.2. Indemnification Limitations. If Service Providers advises Customer that making the proposed alteration or modification would likely lead to an infringement claim and Customer moves

forward with those changes despite Service Provider warning. Service Provider will have no liability or obligation for any Losses to the extent that such Loss arises out of or results from any:

- (a) alteration or modification of the SaaS Services by or on behalf of Customer or any Authorized User without Service Provider's authorization (each, a “**Customer Modification**”), provided that no infringement, misappropriation or other violation of third party rights would have occurred without such Customer Modification and provided further that any alteration or modification made by or for Service Provider at Customer's request will not be excluded from Service Provider's indemnification obligations hereunder unless (i) such alteration or modification has been made pursuant to Customer's written specifications and (ii) the SaaS Services, as altered or modified in accordance with the Customer's specifications, would not have violated such third party rights but for the manner in which the alteration or modification was implemented by or for Service Provider;
- (b) access to or use of the SaaS Services that is expressly prohibited by this Agreement or otherwise outside the scope of access or manner or purpose of use described or contemplated anywhere in this Agreement, the Documentation or the applicable Service Order; or
- (c) breach of this Agreement by Customer or noncompliance herewith by any Authorized User; or
- (d) Claims concerning
 - i. Pre-pay or Bill Pay services, or
 - ii. Online Portal services (Smart Data Connect) offered to consumers for viewing billing or energy usage.

~~9.3-Smart Data Connect services offered to consumer for viewing billing or energy usage. Customer's Indemnification Obligations. Customer will indemnify, defend and hold harmless Service Provider, its Subcontractors, Affiliates and their respective officers, directors, employees, shareholder and members from and against all Losses arising out of third party claims relating to, incurred with, or based upon:~~

- ~~(a) Customer's use of the SaaS Services that is not authorized under this Agreement or otherwise not recommended by Service Provider in writing to Customer; or~~
- ~~(b) any Infringement Claim asserted by any third party relating to any Customer materials provided to Service Provider; or~~
- ~~(c) any claim for bodily injury or death of any individual, or the loss, damage or destruction of any real or personal property, resulting from the willful, negligent, reckless, fraudulent or intentional acts of omissions of Customer.~~

Comment [EA7]: ? clarify
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~~9.4.9.3.~~ Procedure. Upon receiving notice of any third party Claim covered by the indemnity obligations set forth in this Section, the party entitled to indemnification (the “**Indemnified Party**”) will promptly notify the other party (the “**Indemnifying Party**”). The Indemnifying Party, at its sole expense, will assume control of the defense of any such Claim; the Indemnified Party may, at its sole cost and expense, participate in the defense. The Indemnifying Party will not settle any Claim without the Indemnified Party’s prior written consent, which will not be unreasonably withheld or delayed.

~~9.5.9.4.~~ Option. In addition to the foregoing indemnification obligations, if all or any part of the a SaaS Services is subject to an Infringement Claim, Service Provider may, at its discretion and expense, take the following actions:

- (a) Procure for Customer the right to continue using the Hosted Service; or
- (b) Modify or replace the allegedly infringing aspect of the SaaS Services to make it non-infringing, provided, however, that such modification or replacement will not degrade the operation or performance of the SaaS Services.
- (c) If neither of the remedies set forth in this **Section 9.45** is reasonably available with respect to the Infringement Claim features then Service Provider may direct Customer to cease any use of any materials that have been enjoined or finally adjudicated as infringing, provided that Service Provider will refund to Customer any prepaid Fees for SaaS Services that have not been provided.

~~(d) The remedies set forth in this Section 9.5 are Customer’s exclusive remedies with respect to any Infringement Claim.~~

Comment [EA8]: Cannot waive any right

~~9.6.9.5.~~ Indemnification Procedure. The party seeking indemnification will promptly notify the Indemnifying Party in writing of any Claims for which it seeks indemnification pursuant to this **Section 9** and cooperate with the Indemnifying Party at the Indemnifying Party’s sole cost and expense. The Indemnifying Party will immediately take control of the defense and investigation of such Claim and will employ counsel reasonably acceptable to the other party to handle and defend the same, at the Indemnifying Party’s sole cost and expense. The Indemnifying Party will not settle any Claim on any terms or in any manner that adversely affects the rights of the other party or any Indemnatee without the other party’s prior written consent, which will not be unreasonably withheld or delayed. The other party and any Indemnatee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. A party’s failure to perform any obligations under this **Section 9.56** will not relieve the Indemnifying Party of its obligations herein except to the extent that the Indemnifying Party can demonstrate that it has been prejudiced as a result of such failure.

~~10. Limitations of Liability.~~

~~10.1. EXCLUSION OF INDIRECT DAMAGES. TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR THE FOLLOWING TYPES OF LOSS: LOSS OF PROFITS OR REVENUE; LOSS OF BUSINESS OR GOODWILL, OR~~

Comment [EA9]: Cannot do this. And tort claims act

~~BUSINESS INTERRUPTION, OR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT, A SERVICE ORDER/SOW OR THE PERFORMANCE OR BREACH THEREOF, WHETHER BASED IN CONTRACT, TORT OR ANY OTHER THEORY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITIES OF SUCH CLAIM.~~

~~10.2. CAP ON DIRECT DAMAGES. EXCEPT FOR DAMAGES ARISING OUT OF RELATING TO A PARTY'S INDEMNIFICATION OBLIGATIONS, BREACH OF CONFIDENTIALITY OBLIGATIONS, OR UNDER OR ANY OTHER LIABILITY WHICH MAY NOT BE EXCLUDED BY LAW, EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY ARISING UNDER OR IN RELATION TO THIS AGREEMENT, A SERVICE ORDER/SOW (OTHER THAN CUSTOMER'S OBLIGATION TO PAY FEES) WILL BE LIMITED TO THE LESSER OF ACTUAL DIRECT DAMAGES OR THE ACTUAL FEES PAID BY CUSTOMER TO SERVICE PROVIDER UNDER THE AFFECTED SERVICE ORDER/SOW DURING THE TWELVE (12) MONTH PERIOD PRIOR TO ANY INCIDENT UNDER WHICH OR IN RELATION TO WHICH THE LIABILITY ARISES. THE EXCLUSIONS AND LIMITATIONS WILL NOT APPLY TO LOSSES ARISING OUT OF OR RELATING TO A PARTY'S GROSS NEGLIGENCE OR MORE CULPABLE CONDUCT, INCLUDING ANY WILLFUL MISCONDUCT OR INTENTIONAL WRONGFUL ACTS.~~

~~11.10. Representations and Limited Warranties.~~

~~11.1.10.1. Mutual Representations and Warranties.~~ Each party represents and warrants to the other party that:

- (a) it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization or chartering;
- (b) it has, and throughout the Term and any additional periods during which it does or is required to perform the SaaS Services will retain, the full right, power and authority to enter into this Agreement and perform its obligations hereunder;
- (c) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate/ action of the party; and
- (d) when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy and similar Laws affecting creditors' rights generally and by general equitable principles, subject to applicable law related to the binding nature of actions of Mississippi governing authorities.

~~11.2.10.2. Additional Service Provider Warranties.~~ Service Provider represents, warrants and covenants to Customer that:

- (a) it is in the business of providing the SaaS Services;
- (b) it is the lawful licensee or owner of the SaaS Services (excluding any Customer Data therein) and has all the necessary rights in the SaaS Services to grant the use of the SaaS Services to Customer;
- (c) the Service Software and Services will in all material respects conform to and perform in accordance with the Documentation and all requirements of this Agreement ;
- (d) it will use its best efforts to ensure that no Disabling Code is introduced into Customer’s computing and network environment by the SaaS Services; and
- (e) it will perform all Services in a timely, professional and workmanlike manner with a level of care, skill, practice and judgment consistent with generally recognized industry standards and practices for similar services, using personnel with the requisite skill, experience and qualifications, and will devote adequate resources to meet Service Provider’s obligations under this Agreement.

11.3.10.3. Additional Customer Warranty. Customer represents, warrants and covenants to Service Provider that:

- (a) Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data so that, as received by Service Provider and Processed in accordance with this Agreement, they do not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable Law.
- (b) prior to Customer’s delivery to Service Provider of any Customer Data that is outside of the Service Providers Systems, Customer shall use current industry state-of-the-art anti-virus measures to detect, prevent and remove Disabling Code, and to prevent the spread of Disabling Code between the Parties when accessing and/or exchanging data or software through the Interfaces or any other network connectivity.

Comment [EA10]: OED do this? Can we represent?

11.4.10.4. DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 11.1, SECTION 11.2 AND SECTION 11.3, ALL SERVICES AND SERVICE PROVIDER MATERIALS ARE PROVIDED “AS IS” AND SERVICE PROVIDER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR SERVICE PROVIDER MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER’S OR ANY OTHER PERSON’S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK

Comment [EA11]: Note: As Is disclaimer on the services provided

WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES EXCEPT IF AND TO THE EXTENT EXPRESSLY SET FORTH IN THE DOCUMENTATION OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED “AS IS” AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

~~12.~~11. Insurance.

~~12.1.~~11.1. Service Provider will, 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 qualified in those states (locations) where the SaaS Services are to be performed, covering the operations of Service Provider, pursuant to this Agreement: commercial general liability (\$1,000,000 per occurrence, \$2,000,000 aggregate); excess liability (\$2,000,000 per occurrence, \$2,000,000 aggregate); workers’ compensation (statutory limits) and employers’ liability (\$500,000 per accident); and, professional liability (\$1,000,000 per occurrence, \$1,000,000 aggregate). At Customer’s request, Customer will be named as an additional insured in such policies which will contain standard cross liability clauses. Service Provider will cause the liability it assumed under this Agreement to be specifically insured under the contractual liability section of the liability insurance policies. At Customer’s Request, Service Provider will provide Customer with certificates of insurance evidencing all of the above coverage and will provide Customer 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.

~~13.~~12. Force Majeure.

~~13.1.~~12.1. Force Majeure Events. Neither party will be liable in damages or have the right to terminate this Agreement for any delay or default in performing under this Agreement if such delay or default is caused by conditions beyond its reasonable control, including without limitation acts of God, natural disasters, war or other hostilities, labor disputes, civil disturbances, governmental acts, orders or regulations or failures or fluctuations in electrical power, heat, lights, air conditioning or telecommunications equipment (each of the foregoing, a “**Force Majeure Event**”), provided that the non-performing party is without fault in causing such condition. Subject to the party so delaying promptly notifying the other party in writing of the reason for the delay and the likely duration of the delay, the performance of the delaying party’s obligations, to the extent affected by the delay, will be suspended during the period that the cause persists, provided that if performance is not resumed within thirty (30) days after that notice, the non-delaying party may by notice in writing immediately terminate this Agreement. Service Provider understands and agrees that this provision in no way limits rights and remedies available the Customer by law.

~~14.~~13. General Provisions.

~~14.1.~~13.1. Compliance with Laws/Export. The Parties will comply with all applicable laws, regulations and codes, including procurement of permits and licenses, when needed, of their respective states, territories, and/or countries in the performance of this Agreement, provided such is not in violation of the U.S. Government's Export and Anti-boycott Rules and Regulations. The SaaS Services and Deliverables and related technical information, documents and materials are subject to export controls under the U.S. Export Administration Regulations and other applicable laws. Customer will (a) comply strictly with all legal requirements established under these controls; (b) cooperate fully with Service Provider in any audit or inspection that relates to these controls; and (c) not export, re-export, divert or transfer, directly or indirectly, any such item to any country or person who or which is embargoed by Executive Order or any applicable law, including any rules, regulations or policies promulgated thereunder.

~~14.2.~~13.2. Further Assurances. Each party will, upon the reasonable request, and at the sole cost and expense, of the other party, promptly execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.

~~14.3.~~13.3. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement will be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party will have authority to contract for or bind the other party in any manner whatsoever.

~~14.4.~~13.4. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder, other than routine communications having no legal effect, will be in writing and addressed to the parties as follows (or as otherwise specified by a party in a notice given in accordance with this Section):

If to Service Provider:

Landis+Gyr Technology, Inc.
3000 Mill Creek Avenue, Suite 100
Alpharetta, GA 30022
Attn: Legal Department
Facsimile: 678.258.1686

If to Customer:

City of Oxford
Attn: Mayor of the City of Oxford
107 Courthouse Square
Oxford, MS 38655
Facsimile: [FAX NUMBER]
E-mail: [E MAIL ADDRESS]
Attention: [NAME OF OFFICER TO RECEIVE NOTICES]

Notices sent in accordance with this **Section 13.4** will be deemed effectively given: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile with confirmation of transmission, if sent during normal business hours of the recipient, and on the next business day, if sent after normal business hours of the recipient; or (d) on the third (3rd) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

~~14.5.~~**13.5. Interpretation.** For purposes of this Agreement: (a) the words “include,” “includes” and “including” are deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; [and] (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole; and all personal pronouns, whether used in the feminine, masculine, or neuter gender, include all other genders and the singular will include the plural and vice versa. Unless the context otherwise requires, references herein: (x) to Sections, Schedules and Exhibits refer to the sections of, and schedules and exhibits attached to, this Agreement; (y) to an agreement, instrument or other document (including this Agreement) means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof, and together with all schedules and exhibits thereto; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement will be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing an instrument to be drafted. The Schedules and Exhibits referred to herein will be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

~~14.6.~~**13.6. Headings.** The headings in this Agreement are for reference only and will not affect the interpretation of this Agreement.

~~14.7.~~**13.7. Entire Agreement.** This Agreement, including all Service Orders and other Schedules and Exhibits and any other documents, agreements or instruments incorporated by reference herein, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any conflict between the terms of this Agreement and those of any Schedule, Exhibit or other document, the following order of precedence will govern: (a) first, this Agreement, excluding its Exhibits and Schedules; (b) second, the Exhibits and Schedules to this Agreement as of the Effective Date; and (c) third, any other documents, instruments or agreements incorporated herein by reference. This Agreement and all Service Orders take precedence over any purchase order issued by Customer, which may be accepted by Service Provider for administrative convenience only.

~~14.8.~~**13.8. Assignment.** Neither party will assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement without the other party's prior written consent, which consent will not unreasonably be withheld or delayed. Any purported assignment, delegation or transfer in violation of this Section 14.8 is void. This

Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

~~14.9.~~13.9. No Third-party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or will confer on any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

~~14.10.~~13.10. Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

~~14.11.~~13.11. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto will negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

~~14.12.~~13.12. Governing Law; Submission to Jurisdiction.

- (a) This Agreement and all related documents, and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the State of Mississippi, without regard to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Mississippi. The Uniform Computer Information Transactions Act does not have any application to this Agreement.
- (b) Any legal suit, action or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of Mississippi and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein will be effective service of process for any suit, action or other proceeding brought in any such court.

~~14.13.~~13.13. Waiver of Jury Trial. Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

~~14.14.~~13.14. Equitable Relief. The Parties will be entitled to seek injunctive or other equitable relief whenever the facts or circumstances would permit a party to seek equitable relief in a court of competent jurisdiction.

~~14.15.~~13.15. Attorneys' Fees. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees, expert witness fees and out-of-pocket and court costs from the non-prevailing party. Service Provider understands and agrees that this provision in no way limits rights and remedies available the Customer by law. Customer in no way indemnifies Service Provider, including but not limited to third party act, including but not limited to recovery of attorneys fees.

~~14.16.~~ Limitations on Actions. ~~No actions, regardless of form, arising from the transactions under this Agreement, may be brought by either party more than two (2) years after the cause of action has accrued.~~

~~14.17.~~13.16. Schedules and Exhibits. All Exhibits that are referenced herein and attached hereto, or are signed by both parties on or after the Effective Date, are hereby incorporated by reference. The following Schedules and Exhibits are attached hereto and incorporated herein:

Schedule A Service Level Agreement

Schedule B Service Order; Pricing

~~14.18.~~13.17. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will be deemed to be one and the same agreement and will become effective and binding upon the parties as of the Effective Date at such time as all the signatories hereto have signed a counterpart of this Agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission (to which a signed PDF copy is attached) will be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

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

Service Provider

Customer

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULE A

DATED _____, 2014

SERVICE LEVEL AGREEMENT

Service Provider shall provide Customer with Service Levels on the terms and conditions set forth in this Schedule and the Software as a Service (SaaS) Agreement dated _____, 2014, by and between City of Oxford ~~Electric Department~~ and Landis+Gyr Technology, Inc. (the “**Main Agreement**”). All capitalized terms that are not defined in this Schedule shall have the respective meanings given to them in the Main Agreement.

1. Definitions. For purposes of this Schedule the following terms have the meanings set forth below.

“**Error**” means any reproducible failure of the Service Software to operate in all material respects in accordance with the Documentation and, to the extent consistent with and not limiting of the Documentation, including any problem, failure or error referred to in the Service Level Table.

“**Service Levels**” means the defined Error severity levels and corresponding required service level responses and response times referred to in the Service Level Table.

“**Service Level Table**” means the table set out in Section 2.4.

“**Support Period**” means the SaaS Term as set forth in the applicable Service Order.

2. Availability Requirement. Subject to the terms and conditions of the Main Agreement and this Schedule, Service Provider will use commercially reasonable efforts to make the SaaS Services Available, as measured over the course of each calendar month during the Term and any additional periods during which Service Provider does or is required to perform any SaaS Services (each such calendar month, a “**Service Period**”), at least 99.5% of the time, excluding only the time the SaaS Services are not Available solely as a result of one or more Exceptions (the “**Availability Requirement**”). “**Available**” means the SaaS Services are available and operable for access and use by Customer and its Authorized Users over the Internet in material conformity with the Documentation.

- 2.1. Exceptions. No period of SaaS Service degradation or inoperability will be included in calculating Availability to the extent that such downtime or degradation is due to any of the following (“**Exceptions**”):

- (a) Customer's misuse of the SaaS Services;
- (b) failures of Customer's or its Authorized Users' internet connectivity;
- (c) internet or other network traffic problems other than problems arising in or from networks actually or required to be provided or controlled by Service Provider or its Subcontractor;
or

- (d) Customer's or any of its Authorized Users' failure to meet any minimum hardware or software requirements set forth in the Documentation.
- (e) Force Majeure Event
- (f) Failure, interruption, outage or other problem with any software, hardware, system, network, facility or other matter not supplied by Service Provider pursuant to the Main Agreement or this Schedule.
- (g) Scheduled Downtime; or
- (h) disabling, suspension or termination of the Services pursuant to Section 3.4 of the Main Agreement.

3. Support Services. Service Provider will provide SaaS Service maintenance and support services (collectively, “**Support Services**”) during the Support Hours throughout the Support Period in accordance with the terms and conditions of this Schedule and the Main Agreement, including the Service Levels and other Service Provider obligations set forth in this Section 2. The Support Services are included in the SaaS Services, and Service Provider will not assess any additional fees, costs or charges for such Support Services.

3.1. Support Service Responsibilities. Service Provider will:

- (a) respond to Support Requests in accordance with the Service Levels;
- (b) provide telephone support as set forth in 2.6.
- (c) Provide online access to technical support bulletins and other user support information and forums, to the full extent Service Provider makes such resources available to its other customers.

3.2. Service Monitoring and Management. Service Provider will continuously monitor and manage the SaaS Services to optimize Availability (defined herein) that meets or exceeds the Availability Requirement. Such monitoring and management will include:

- (a) proactively monitoring on a twenty-four (24) hour by seven (7) day basis all SaaS Services, infrastructure and other components of SaaS Service security;
- (b) if such monitoring identifies, or Service Provider otherwise becomes aware of, any circumstance that is reasonably likely to threaten the Availability of the SaaS Service, taking all necessary and reasonable remedial measures to eliminate such threat and ensure Availability;
- (c) if Service Provider receives knowledge that the SaaS Service or any SaaS Service function or component is not Available (including by notice from Customer pursuant to the procedures set forth herein or in the applicable Service Order):

- i. Service Provider will confirm the outage by a direct check of the associated facility or facilities;
- ii. if Service Provider's facility check in accordance with clause (i) above confirms a SaaS Service outage in whole or in part: (A) notifying Customer pursuant to the procedures set forth herein or in the applicable Service Order that an outage has occurred, providing such details as may be available, including a Service Provider trouble ticket number, if appropriate, and time of outage; and (B) working all problems causing and caused by the outage until they are resolved as Critical Service Errors in accordance with the Support Request Classification set forth in the Service Level Table.
- iii. Service Provider will continuously maintain the SaaS Services to optimize Availability that meets or exceeds the Availability Requirement. Such maintenance services will include providing to Customer and its Authorized Users:
 - a. such updates, bug fixes, enhancements, new releases, new versions and other improvements to the SaaS Services, including the Service Software, that Service Provider provides at no additional charge to its other similarly situated customers. Specific upgrades are set forth in the applicable Service Order; and
 - b. all such services and repairs as are required to maintain the SaaS Services or are ancillary, necessary or otherwise related to Customer's or its Authorized Users' access to or use of the SaaS Services, so that the SaaS Services operate properly in accordance with this Agreement and the Documentation.

3.3. Scheduled Downtime. Planned maintenance and updates are not expected to exceed ten (10) hours in a normal month. Service Provider will use commercial reasonable efforts to provide Customer advance notification of scheduled maintenance that is anticipated to involve system unavailability of two (2) hours or more. Service Provider will use commercially reasonable efforts to notify Customer at least 48 hours in advance to scheduled maintenance and updates (“**Scheduled Downtime**”). Service Provider will use commercially reasonable efforts to perform scheduled maintenance outside the hours of 7:00 AM – 7:00 PM Central Standard Time, Monday – Friday.

3.4. Service Levels.

Response times will be measured from the time Service Provider receives a Support Request until the respective times Service Provider has responded to that Support Request. Service Provider shall respond to all Support Requests within the following times based on Service Provider's designation of the severity of the associated Error, subject to the parties' written agreement to revise such designation after Service Provider's investigation of the reported Error and consultation with Customer:

Severity Level of incident	Definition	Response Time During Business Hours	Response Time During Non-Business Hours
Critical	<u>Critical Business Impact</u> – Impacts multiple users and halts or severely impacts the division's ability to conduct critical operations. Postponement of any critical interface file that can delay Field Services, Billing and daily critical activities.	2 Hours or less	4 Hours or less
High	<u>Significant Business Impact</u> – Impacts individual or small work group. Normal operations may be degraded but can continue.	4 Hours	8 Hours
Medium	<u>Some Business Impact</u> – Impacts individual or small work group. Normal operations may be degraded but can continue, and service response may be delayed until a mutually established future time. Issue is informational in nature, a request, suggestion or report. No immediate remedial action is expected.	1 Business Day	2 Business Days
Low	<u>Non-Business Impact</u> – Maintenance request, data requests, and non-critical process enhancements.	2 Business Days	3 Business Days

3.5. Support Requests and Customer Obligations.

- (a) Support Requests. Customer may request Support Services by way of a Support Request. Customer shall classify its requests for Error corrections in accordance with the severity levels classifications and definitions of the Service Level Table set forth in Section 2.4 (“**Support Request**”). Customer shall notify Service Provider of each Support Request by e-mail, telephone or chat or such other means as the parties may agree to in writing. Customer shall include in each Support Request a description of the reported Error and the time Customer first observed the Error.
- (b) Customer Obligations. Customer will, by and through its employee or consultants provide the Service Provider with:
- i. prompt notice of any Errors; and
 - ii. each of the following to the extent reasonably necessary to assist Service Provider to reproduce operating conditions similar to those present when Customer detected the relevant Error and to respond to the relevant Support Request:
 - a. direct access to the Customer Systems and the Customer’s files and personnel;
 - b. output and other data documents and information, each of which is deemed Customer’s Confidential Information as defined in the Main Agreement; and
 - c. such other reasonable cooperation and assistance as Service Provider may request.

3.6. Service Desk Contact Information. The point of contact for Support Requests is the customer service call center. The phone number for the call center is: (888) 390-5733. Normal support hours are 7:00 AM – 6:00 PM Central Standard Time, Monday through Friday. After hours support is accessible 24 x 7 by calling the call center number and following the prompts.

4. Backup and Recovery. Service Provider will conduct or have conducted at minimum, weekly full backups of Customer Data and perform or cause to be performed other periodic backups (snapshots, differential backups, etc.) of Customer Data. At least one full backup will be stored online (directly accessible) and one full backup will be stored near-line. Both copies will be less than one week old and may be overwritten as they are replaced with newer backups. Backups are available in multiple devices to ensure access and prevent data loss in the event of a disaster. Weekly backups are stored for a minimum of one month. Monthly backups are stored off-site for a minimum of one (1) year. Off-site locations include media storage services at a secure facility.

5. Business Continuity and Disaster Recovery Protection. Service Provider has an ongoing Business Continuity (BC) program (that includes Risk Assessment) that covers its primary locations as well as a Disaster Recovery (DR) program for restoring its data center operations. Service Provider uses industry best practices and exercises its DR program, (i.e. failing over its customers services to an alternate datacenter with client verification) for an additional fee.

6. Communications. In addition to the mechanisms for giving notice specified in the Main Agreement, unless expressly specified otherwise in this Schedule or the Main Agreement, the parties may use e-mail for communications on any matter referred to herein.

IN WITNESS WHEREOF, the parties hereto have executed this Schedule A as of the date first above written.

Landis+Gyr Technology, Inc.

City of Oxford ~~Electric Department~~

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULE B
SERVICE ORDER; PRICING

SERVICE ORDER NO. 001

This Service Order No. 001, effective as of the last signature date set forth below, is issued pursuant to Schedule B to the Software as a Service (SaaS) Agreement dated _____, 2014, by and between City of Oxford (as Customer) and Landis+Gyr Technology, Inc. (as Service Provider) (the “**Main Agreement**”) and is a part of and incorporated into the Main Agreement. All capitalized terms that are not defined in this Schedule shall have the respective meanings given to them in the Main Agreement.

SCOPE OF SERVICE. Service Provider shall provide Customer with access to Services on the terms and conditions set forth in the Main Agreement. Service Provider will provide Services that will enable Customer to access the Service Software.

1. **Service(s) Description**

The Service Software provided to Customer consists of the following items:

- Gridstream Command Center RF
- Gridstream Command Center PLC
- Gridstream Command Center PLX
- Gridstream Advanced Security

2. **Endpoints**

For the SaaS Service Fee stated below, Customer is authorized for up to 6,000 total Endpoints.

3. **SaaS Service Term**

The initial term for this Service Order begins upon Service Software installation and accessible to Customer and ends 36 months thereafter (the “**Initial Service Order Term**”).

Upon expiration of the Initial Service Order Term, this Schedule B shall automatically renew for successive one (1) year periods (each a “**Renewal Term**” and together with the Initial Service Order Term, the “**Service Order Term**”), unless a party provides the other party with written notice of its intent not to renew this Service Order at least ninety (90) days prior to the expiration of the then current term.

4. **SaaS Service Fee**

4.1 The Fee Schedule is determined by the total number of endpoints deployed by Customer. The fee for the Initial Service Order Term for the number of Endpoints set forth in Section 2 of this Service Order (the “**Initial Service Fee**”) payable by Customer to Service Provider is \$1,000.00 USD per month based on up to 12,500 Endpoints. Actual fee will be calculated and billed on a monthly basis and include fees for the total number of endpoints in the “deployed” status on the last business day of the previous month, as indicated by the Command Center Software.

Quantity of Deployed Endpoints in Command Center	Price
Up to 2,000	\$675 flat rate per month
2,001 to 6,000	\$750 flat rate per month
6,001 to 8,000	\$850 flat rate per month
8,001 to 12,500	\$1,000 flat rate per month
12,501 to 30,000	\$0.09 per deployed endpoint, per month
30,001 to 50,999	\$0.07 per deployed endpoint, per month
60,000+	\$0.05 per deployed endpoint, per month

4.2 The fees for the Renewal Terms of SaaS Service are payable by Customer to Service Provider as set forth in the Main Agreement.

5. **Additional Endpoints**

Additional Endpoints may be added to the Service Order for a fee of:

- Gridstream Command Center RF *See table in Section 4. above.*
- Gridstream Command Center PLC \$0.____per Endpoint per Month
- Gridstream Command Center PLX \$0.____per Endpoint per Month
- Gridstream Advanced Security \$0.____per Endpoint per Month

Customer is required to add additional Endpoints prior to beneficial use of such additional Endpoints.

Service Provider's Additional Endpoint Fees are fixed during the Initial Term. Service Provider Additional Endpoint fees for Renewal Terms shall escalate annually as of each anniversary of the Effective Date of the Service Order by the amount of the increase in the Consumer Price Index – All Urban Consumers of the Bureau of Labor Statistics of the U.S. Department of Labor for U.S. for All Items with Base Years 1982-1984=100. Those increases will be measured applying the twelve (12) month period ending in the month for which the most recent index results are available as of that anniversary of the Effective Date.

6. **Summary of Services Included in Service Order**

SaaS Services are detailed in the SaaS Agreement. Services specific to this Service Order are detailed below:

- 6.1 **Project Manager.** Service Provider will provide a project manager to provide direction to Customer relating to SaaS Services. Customer to provide primary point of contact to work the project manager.
- 6.2 **Installation and Configuration.** Installing the Software in the data center with standard configurations. Custom configurations are available for an additional fee as detailed in an applicable SOW. Software includes Service Provider Application Software, operating system software, database software and any software running on the Service Provider Equipment.
- 6.3 **Upgrades.** Service Provider and Customer will mutually agree on an upgrade schedule for Customer Software. Services include at least one (1) Software Upgrade per calendar year. Customer agrees to remain on a Supported Release of Service Software. Service Provider will install all Software Upgrades on the Service Provider Equipment. Software includes Service

Provider Application Software, operating system software, database software and any software running on the Service Provider Equipment. Software DOES NOT INCLUDE any application or tools software running on local Customer computers or other Customer equipment including Mobile Administration Software (“MAS”) upgrades to handheld devices, endpoint programming software upgrades at the Customer site, Endpoint Test Manager (“ETM”), RadioShop or Substation Processing Unit Software Upgrades.

- 6.4 Integration(s). Service Provider will provide integrations to third party systems for an additional fee as detailed in the applicable SOW.
- 6.5 Data Retention. Service Provider will make available on a live basis at least 90 days of data. Data older than 90 days will be archived and available to Customer upon request (additional fees may apply). Archive data will be retained for a minimum of one (1) year. Additional data retention periods are available for an additional fee.
- 6.6 Monitor Collector Communications. Service Provider will monitor the status of system communications. In the event of a fault during normal business hours if the communications fault is a result of a Service Provider Equipment failure, Service Provider will resolve the communications fault. If the communications fault is not the result of a Service Provider Equipment failure, Service Provider will report the fault for resolution by Customer. In the event of a fault as a result of a Service Provider Equipment failure outside of normal business hours, Service Provider will attempt to resolve the issue; however, no notice of the event will be made to the Customer. Should Customer require assistance with respect to communications to the system, after hours assistance is available as described in Schedule A.
- 6.7 Process Collector Communication Fees: If there are any system communication fees that are being incurred by Service Provider (i.e. long distance charges), Service Provider will invoice Customer monthly for the system communication fees, which Customer agrees to pay.

7. Customer Responsibilities:

- 7.1 Conduct Collector Field Maintenance. Customer will perform field maintenance work on the meters/modules and collectors. This includes, but is not limited to, updating the collector, ETM, RadioShop and other field tools software to the latest version.
- 7.2 Interface Billing data to Customer Billing System. Customer is responsible for executing the Billing Extract file utilizing the functionality built into the Command Center Software and loading it into Customer’s billing system. Customer is also responsible for any exception processing that is associated with endpoints that do not have billing data available for a particular billing cycle window.
- 7.3 Provide Collector Communication. Customer is responsible for purchasing and physically maintaining all collector communications infrastructure as applicable.
- 7.4 Administer Login and Passwords. Customer is responsible for assigning security officer(s), administering all Software logins and passwords, to provide Customer-selected configurations and to maintain access rights for the Customer’s employees.
- 7.5 Support Utility Consumer. Customer is responsible for handling all support for its own end-use consumers. Service Provider will not provide any support regarding billing inquiries or any other matter for end-use consumers.

- 7.6 Install and Upgrade Endpoint Programmer Software. Customer is responsible to load and maintain Endpoint Programmer Software on desired hardware at their location including ETM , Radioshop and other field tools.
- 7.7 Loading Files. Customer is responsible for loading MMF, IIF and CIF files to Software.
- 7.8 Application Administration. Customer is responsible to provide Customer-selected configurations and maintain access rights.
- 7.9 Application Operations. Customer is responsible to provide daily business operations of the Software monitoring jobs; reporting; coordination of issues, etc.
- 7.10 IT coordination. Customer is responsible to coordinate management of interfaces to connected customer systems.
- 7.11 Upgrades. Customer is responsible to validate upgrades to Software.

In the event of any conflict between the body of the Main Agreement and this Service Order B, the body of the Main Agreement will govern.

Landis+Gyr Technology, Inc.

City of Oxford ~~Electric Department~~

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULE B
SERVICE ORDER; PRICING

SERVICE ORDER NO. 002

This Service Order No. 002, effective as of the last signature date set forth below, is issued pursuant to Schedule B to the Software as a Service (SaaS) Agreement dated _____, 2014, by and between **City of Oxford Electric Department** (as Customer) and Landis+Gyr Technology, Inc. (as Service Provider) (the “**Main Agreement**”) and is a part of and incorporated into the Main Agreement. All capitalized terms that are not defined in this Schedule shall have the respective meanings given to them in the Main Agreement.

SCOPE OF SERVICE. Service Provider shall provide Customer with access to Services on the terms and conditions set forth in the Main Agreement. Service Provider will provide Services that will enable Customer to access the Service Software.

1. **Service(s) Description:**

The Service Software provided to Customer consists of the following items:

- Gridstream MDMS
- SmartData for Outage Management

2. **Endpoints:**

For the SaaS Service Fee stated below, Customer is authorized for up to 9,200 total Endpoints.

3. **SaaS Service Term:**

The initial term for this Service Order begins upon Service Software installation and accessible to Customer and ends 36 months thereafter (the “**Initial Service Order Term**”).

Upon expiration of the Initial Service Order Term, this Schedule B shall automatically renew for successive one (1) year periods (each a “**Renewal Term**” and together with the Initial Service Order Term, the “**Service Order Term**”), unless a party provides the other party with written notice of its intent not to renew this Service Order at least ninety (90) days prior to the expiration of the then current term.

4. **SaaS Service Fee:**

4.1 The fee for the Initial Service Order Term for the number of Endpoints set forth in Section 2 of this Service Order (the “**Initial Service Fee**”) payable by Customer to Service Provider is \$1,414.00 per month for the first six (6) months and \$ 1,914.00 USD per month for the remainder of the Initial Service Order Term. With respect to the SmartData for Outage Management Service, Customer shall not be invoiced until such service is installed.

4.2 The fees for the Renewal Terms of SaaS Service are payable by Customer to Service Provider as set forth in the Main Agreement.

5. **Additional Endpoints:**

Additional Endpoints may be added to the Service Order for a fee of:

- Gridstream MDMS \$0.110 per Endpoint per Month
- SmartData for Outage Management \$0.033 per Endpoint per Month

Customer is required to add additional Endpoints prior to beneficial use of such additional Endpoints.

6. **Fee Escalation**

Service Provider's base SaaS Service Fee and Additional Endpoint Fees are fixed during the Initial Term. Commencement of each Renewal Term, Service Provider base SaaS Service fee and Additional Endpoint fees shall escalate annually by the amount of the increase in the Consumer Price Index – All Urban Consumers of the Bureau of Labor Statistics of the U.S. Department of Labor for U.S. for All Items with Base Years 1982-1984=100. Those increases will be measured applying the twelve (12) month period ending in the month for which the most recent index results are available.

7. **Summary of Services Included in Service Order.**

SaaS Services are detailed in the SaaS Agreement. Services specific to this Service Order are detailed below:

- 7.1 **Project Coordination.** Service Provider will provide a project coordinator to provide direction to Customer relating to SaaS Services. Customer to provide primary point of contact to work the project coordinator.
- 7.2 **Installation and Configuration.** Installing the Software in the data center with standard configurations. Custom configurations are available for an additional fee as detailed in an applicable SOW.
- 7.3 **Upgrades.** Service Provider and Customer will mutually agree on an upgrade schedule for Customer Software. Services include at least one (1) Software Upgrade per calendar year. Customer agrees to remain on a Supported Release of Service Software. Service Provider will install all Software Upgrades on the Service Provider Equipment. Software includes Service Provider Application Software, operating system software, database software and any software running on the Service Provider Equipment. Software DOES NOT INCLUDE any application or tools software running on local Customer computers or other Customer equipment.
- 7.4 **Integration(s).** Service Provider will provide integrations to third party systems as for an additional fee as detailed in the applicable SOW. Service Provider will provide a standard integration to Landis+Gyr Command Center Software as part of the services agreement.
- 7.5 **Data Retention.** Service Provider will make available on a live basis at least 24 months of data. After 24 months, Data will be archived and available to Customer upon request (additional fees may apply). Archive data will be retained for a minimum of one (1) year for a total of three (3) years of data available. Additional data retention periods are available for an additional fee.

8. **Customer Responsibilities:**

- 8.1 Interface Billing data to Customer Billing System. Customer is responsible for loading the Software generated billing file, in standard format into Customer's billing system.
- 8.2 Loading Files. Customer is responsible for loading MMF, IIF and CIF files to Software.
- 8.3 Administer Login and Passwords. Customer is responsible for assigning security officer(s), administering all Software logins and passwords, to provide Customer-selected configurations and to maintain access rights for the Customer's employees.
- 8.4 Support Utility Consumer. Customer is responsible for handling all support for its own end-use consumers. Service Provider will not provide any support regarding billing inquiries or any other matter for end-use consumers.
- 8.5 Application Administration. Customer is responsible to provide Customer-selected configurations and maintain access rights.
- 8.6 Application Operations. Customer is responsible to provide daily business operations of the Software monitoring jobs; reporting; coordination of issues, etc.
- 8.7 Functional Know-how. Customer is required to provide functional support services.
- 8.8 End User Training. Service Provider will provide remote initial end user training. Customer is responsible to provide user training after initial training is completed. Service Provider will provide end user training after initial training period based on the rates published by the Service Provider training department. In the case of custom training, Service Provider will provide training on an hourly basis per the Rate Card for the applicable training SOW, plus expenses.
- 8.9 IT coordination. Customer is responsible to coordinate management of interfaces to connected customer systems.
- 8.10 Upgrades. Customer is responsible to validate upgrades to Software.

In the event of any conflict between the body of the Main Agreement and this Service Order, the body of the Main Agreement will govern.

Landis+Gyr Technology, Inc.

City of Oxford Electric Department

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULE B
SERVICE ORDER; PRICING

SERVICE ORDER NO. 003

This Service Order No. 003, effective as of the last signature date set forth below, is issued pursuant to Schedule B to the Software as a Service (SaaS) Agreement dated _____, 2014, by and between **City of Oxford Electric Department** (as Customer) and Landis+Gyr Technology, Inc. (as Service Provider) (the “**Main Agreement**”) and is a part of and incorporated into the Main Agreement. All capitalized terms that are not defined in this Schedule shall have the respective meanings given to them in the Main Agreement.

SCOPE OF SERVICE. Service Provider shall provide Customer with access to Services on the terms and conditions set forth in the Main Agreement. Service Provider will provide Services that will enable Customer to access the Service Software.

1. **Service(s) Description:**

The Service Software provided to Customer consists of the following items:

SmartData Connect (Consumer Portal)

2. **Endpoints:**

For the SaaS Service Fee stated below, Customer is authorized for up to 9,200 total Endpoints.

3. **SaaS Service Term:**

The initial term for this Service Order begins upon Service Software installation and accessible to Customer and ends 36 months thereafter (the “**Initial Service Order Term**”).

Upon expiration of the Initial Service Order Term, this Schedule B shall automatically renew for successive one (1) year periods (each a “**Renewal Term**” and together with the Initial Service Order Term, the “**Service Order Term**”), unless a party provides the other party with written notice of its intent not to renew this Service Order at least ninety (90) days prior to the expiration of the then current term.

4. **SaaS Service Fee:**

4.1 The fee for the Initial Service Order Term for the number of Endpoints set forth in Section 2 of this Service Order (the “**Initial Service Fee**”) payable by Customer to Service Provider is \$1,250.00 USD per month for the Initial Service Order Term. Customer shall not be invoiced until the Service is installed.

4.2 The fees for the Renewal Terms of SaaS Service are payable by Customer to Service Provider as set forth in the Main Agreement.

5. **Additional Endpoints:**

Additional Endpoints may be added to the Service Order for a fee of:

- SmartData Connect \$0.125 per Endpoint per Month

Customer is required to add additional Endpoints prior to beneficial use of such additional Endpoints.

6. **Fee Escalation**

Service Provider's base SaaS Service Fee and Additional Endpoint Fees are fixed during the Initial Term. Commencement of each Renewal Term, Service Provider base SaaS Service fee and Additional Endpoint fees shall escalate annually by the amount of the increase in the Consumer Price Index – All Urban Consumers of the Bureau of Labor Statistics of the U.S. Department of Labor for U.S. for All Items with Base Years 1982-1984=100. Those increases will be measured applying the twelve (12) month period ending in the month for which the most recent index results are available.

7. **Summary of Services Included in Service Order.**

SaaS Services are detailed in the SaaS Agreement. Services specific to this Service Order are detailed below:

- 7.1 **Project Coordination.** Service Provider will provide a project coordinator to provide direction to Customer relating to SaaS Services. Customer to provide primary point of contact to work the project coordinator.
- 7.2 **Installation and Configuration.** Installing the Software in the data center with standard configurations.
- 7.3 **Upgrades.** Service Provider and Customer will mutually agree on an upgrade schedule for Customer Software. Services include at least one (1) Software Upgrade per calendar year. Customer agrees to remain on a Supported Release of Service Software. Service Provider will install all Software Upgrades on the Service Provider Equipment. Software includes Service Provider Application Software, operating system software, database software and any software running on the Service Provider Equipment.
- 7.4 **Integration(s).** Service Provider will provide integrations to third party systems as for an additional fee as detailed in the applicable SOW. Service Provider will provide a standard integration to Landis+Gyr Command Center Software as part of the services agreement.
- 7.5 **Data Retention.** Service Provider will make available on a live basis at least 24 months of data. After 24 months, Data will be archived and available to Customer upon request (additional fees may apply). Archive data will be retained for a minimum of one (1) year for a total of three (3) years of data available. Additional data retention periods are available for an additional fee.

8. **Customer Responsibilities:**

- 8.1 **Administer Login and Passwords.** Customer is responsible for assigning security officer(s), administering all Software logins and passwords, to provide Customer-selected configurations and to maintain access rights for the Customer's employees.
- 8.2 **URL Selection.** Mutually agree with Service Provider upon an internet URL for the purpose of a web portal address to access the services.

- 8.3 Support Utility Consumer. Customer is responsible for handling all support for its own end-use consumers. Service Provider will not provide any support regarding billing inquiries or any other matter for end-use consumers.
- 8.4 Application Administration. Customer is responsible to provide Customer-selected configurations and maintain access rights.
- 8.5 Application Operations. Customer is responsible to provide daily business operations of the Software monitoring jobs; reporting; coordination of issues, etc.
- 8.6 Functional Know-how. Customer is required to provide functional support services.
- 8.7 End User Training. Service Provider will provide remote initial end user training. Customer is responsible to provide user training after initial training is completed. Service Provider will provide end user training after initial training period based on the rates published by the Service Provider training department. In the case of custom training, Service Provider will provide training on an hourly basis per the Rate Card for the applicable training SOW, plus expenses.
- 8.8 IT coordination. Customer is responsible to coordinate management of interfaces to connected customer systems.
- 8.9 Computer Hardware. The Service Provider needs to transfer certain data from the Customer's systems to the Service Provider's system. This requires that the Service Provider install a data loader software program on the Customer's systems computer to transfer this data. The Customer shall be responsible for supplying and maintaining all computer hardware at its site where the data loader resides. The Customer's computer hardware shall meet the following specifications; computer connected to the internet with at least a 15 MB internet bandwidth capacity, internal computer storage of 12 GB ram, and 150 GB disc space. Additionally, the Customer's computer must be accessible by the Service Provider through secured internet connection.
- 8.10 Transfer File Specifications. The Customer shall provide the required data to the Service Provider in accordance with the file specifications as provided.
- 8.11 Upgrades. Customer is responsible to validate upgrades to Software.

9. Data Ownership

Ownership of Customer Identifiable Data. As between Customer and Service Provider, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Identifiable Data, including all Intellectual Property Rights relating thereto, subject only to the limited license granted under this Agreement. "Customer Identifiable Data" means all data which is used in the identification of a Customer and linking it to the Customer Data.

10. Disclosure of Software

The Customer shall not disclose or reveal any of the Software application's screens or text to anyone other than its employees and its members and users as intended by this Agreement.

11. Security

Landis+Gyr shall cause its supplier to use commercially reasonable practices to prevent unauthorized access to the restricted areas of the Application and any databases or other sensitive material

generated from or used in conjunction with the Application; and Landis+Gyr shall promptly notify Customer of any known security breaches. Use of the Application shall be password protected. It shall be Customer's responsibility to administer the use, distribution and security and of such passwords. Customer shall immediately notify Landis+Gyr in the event that such passwords are compromised or being used by unauthorized users.

In the event of any conflict between the body of the Main Agreement and this Service Order, the body of the Main Agreement will govern.

Landis+Gyr Technology, Inc.

City of Oxford ~~Electric Department~~

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULE B
SERVICE ORDER; PRICING

SERVICE ORDER NO. 004

This Service Order No. 004, effective as of the last signature date set forth below, is issued pursuant to Schedule B to the Software as a Service (SaaS) Agreement dated _____, 2014, by and between **City of Oxford Electric Department** (as Customer) and Landis+Gyr Technology, Inc. (as Service Provider) (the “**Main Agreement**”) and is a part of and incorporated into the Main Agreement. All capitalized terms that are not defined in this Schedule shall have the respective meanings given to them in the Main Agreement.

SCOPE OF SERVICE. Service Provider shall provide Customer with access to Services on the terms and conditions set forth in the Main Agreement. Service Provider will provide Services that will enable Customer to access the Service Software.

1. **Service(s) Description:**

The Service Software provided to Customer consists of the following items:

Bill Pay and Presentment

2. **Endpoints:**

For the SaaS Service Fee stated below, Customer is authorized for up to 9,200 total Endpoints.

3. **SmartData Connect Service Required:**

Customer must have current and active Service Order for SmartData Connect in order to use the Bill Pay and Presentment service.

4. **SaaS Service Term:**

The initial term for this Service Order begins upon Service Software installation and accessible to Customer and ends 36 months thereafter (the “**Initial Service Order Term**”).

Upon expiration of the Initial Service Order Term, this Schedule B shall automatically renew for successive one (1) year periods (each a “**Renewal Term**” and together with the Initial Service Order Term, the “**Service Order Term**”), unless a party provides the other party with written notice of its intent not to renew this Service Order at least ninety (90) days prior to the expiration of the then current term.

5. **SaaS Service Fee:**

5.1 The fee for the Initial Service Order Term for the number of Endpoints set forth in Section 2 of this Service Order (the “**Initial Service Fee**”) payable by Customer to Service Provider is \$416.67 USD per month for the Initial Service Order Term. Customer shall not be invoiced until the Service is installed.

5.2 Customer shall be responsible for payment of all third party fees including but not limited to credit card processor set up fees, account fees, credit card transaction processing fees, financial institution fees and financial institution transaction processing fees. Service Provider will use USAEPAY as the credit card processor payment gateway.

5.3 The fees for the Renewal Terms of SaaS Service are payable by Customer to Service Provider as set forth in the Main Agreement.

6. **Additional Endpoints:**

Additional Endpoints may be added to the Service Order for a fee of:

- Bill Presentment and Payment \$0.04 per Endpoint per Month

Customer is required to add additional Endpoints prior to beneficial use of such additional Endpoints.

7. **Fee Escalation**

Service Provider's base SaaS Service Fee and Additional Endpoint Fees are fixed during the Initial Term. Commencement of each Renewal Term, Service Provider base SaaS Service fee and Additional Endpoint fees shall escalate annually by the amount of the increase in the Consumer Price Index – All Urban Consumers of the Bureau of Labor Statistics of the U.S. Department of Labor for U.S. for All Items with Base Years 1982-1984=100. Those increases will be measured applying the twelve (12) month period ending in the month for which the most recent index results are available.

8. **Summary of Services Included in Service Order.**

SaaS Services are detailed in the SaaS Agreement. Services specific to this Service Order are detailed below:

8.1 **Project Coordination.** Service Provider will provide a project coordinator to provide direction to Customer relating to SaaS Services. Customer to provide primary point of contact to work the project coordinator.

8.2 **Installation and Configuration.** Installing the Software in the data center with standard configurations.

8.3 **Upgrades.** Service Provider and Customer will mutually agree on an upgrade schedule for Customer Software. Services include at least one (1) Software Upgrade per calendar year. Customer agrees to remain on a Supported Release of Service Software. Service Provider will install all Software Upgrades on the Service Provider Equipment. Software includes Service Provider Application Software, operating system software, database software and any software running on the Service Provider Equipment.

8.4 **Integration(s).** Service Provider will provide integrations to third party systems as for an additional fee as detailed in the applicable SOW. Service Provider will provide a standard integration to Landis+Gyr Command Center Software as part of the services agreement.

8.5 **Data Retention.** Service Provider will make available on a live basis at least 24 months of data. After 24 months, Data will be archived and available to Customer upon request (additional fees

may apply). Archive data will be retained for a minimum of one (1) year for a total of three (3) years of data available. Additional data retention periods are available for an additional fee.

9. **Customer Responsibilities:**

- 9.1 **Administer Login and Passwords.** Customer is responsible for assigning security officer(s), administering all Software logins and passwords, to provide Customer-selected configurations and to maintain access rights for the Customer's employees.
- 9.2 **Support Utility Consumer.** Customer is responsible for handling all support for its own end-use consumers. Service Provider will not provide any support regarding billing inquiries or any other matter for end-use consumers.
- 9.3 **Application Administration.** Customer is responsible to provide Customer-selected configurations and maintain access rights.
- 9.4 **Application Operations.** Customer is responsible to provide daily business operations of the Software monitoring jobs; reporting; coordination of issues, etc.
- 9.5 **Functional Know-how.** Customer is required to provide functional support services.
- 9.6 **End User Training.** Service Provider will provide remote initial end user training. Customer is responsible to provide user training after initial training is completed. Service Provider will provide end user training after initial training period based on the rates published by the Service Provider training department. In the case of custom training, Service Provider will provide training on an hourly basis per the Rate Card for the applicable training SOW, plus expenses.
- 9.7 **IT coordination.** Customer is responsible to coordinate management of interfaces to connected customer systems.
- 9.8 **Computer Hardware.** The Service Provider needs to transfer certain data from the Customer's systems to the Service Provider's system. This requires that the Service Provider install a data loader software program on the Customer's systems computer to transfer this data. The Customer shall be responsible for supplying and maintaining all computer hardware at its site where the data loader resides. The Customer's computer hardware shall meet the following specifications; computer connected to the internet with at least a 15 MB internet bandwidth capacity, internal computer storage of 12 GB ram, and 150 GB disc space. Additionally, the Customer's computer must be accessible by the Service Provider through secured internet connection.
- 9.9 **Transfer File Specifications.** The Customer shall provide the required data to the Service Provider in accordance with the file specifications as provided.
- 9.10 **Upgrades.** Customer is responsible to validate upgrades to Software.

10. **Data Ownership**

Ownership of Customer Identifiable Data. As between Customer and Service Provider, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Identifiable Data, including all Intellectual Property Rights relating thereto, subject only to the limited license granted under this Agreement. "Customer Identifiable Data" means all data which is used in the identification of a Customer and linking it to the Customer Data.

11. **Disclosure of Software**

The Customer shall not disclose or reveal any of the Software application's screens or text to anyone other than its employees and its members and users as intended by this Agreement.

12. Security

Landis+Gyr shall cause its supplier to use commercially reasonable practices to prevent unauthorized access to the restricted areas of the Application and any databases or other sensitive material generated from or used in conjunction with the Application; and Landis+Gyr shall promptly notify Customer of any known security breaches. Use of the Application shall be password protected. It shall be Customer's responsibility to administer the use, distribution and security and of such passwords. Customer shall immediately notify Landis+Gyr in the event that such passwords are compromised or being used by unauthorized users.

In the event of any conflict between the body of the Main Agreement and this Service Order, the body of the Main Agreement will govern.

Landis+Gyr Technology, Inc.

City of Oxford ~~Electric Department~~

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**SCHEDULE B
SERVICE ORDER; PRICING**

SERVICE ORDER NO. 005

This Service Order No. 005, effective as of the last signature date set forth below, is issued pursuant to Schedule B to the Software as a Service (SaaS) Agreement dated _____, 2014, by and between **City of Oxford Electric Department** (as Customer) and Landis+Gyr Technology, Inc. (as Service Provider) (the “**Main Agreement**”) and is a part of and incorporated into the Main Agreement. All capitalized terms that are not defined in this Schedule shall have the respective meanings given to them in the Main Agreement.

SCOPE OF SERVICE. Service Provider shall provide Customer with access to Services on the terms and conditions set forth in the Main Agreement. Service Provider will provide Services that will enable Customer to access the Service Software.

1. **Service(s) Description:**

The Service Software provided to Customer consists of the following items:

- SmartData Prepay (Pay As You Go)

2. **Subscribers:**

For the SaaS Service Fee stated below, Customer is authorized for up to 200 total enrolled users of the Pay As You Go subscription (“**Subscribers**”).

3. **SmartData Connect Service Required:**

Customer must have current and active Service Order for SmartData Connect in order to use the Prepay (Pay As You Go) service.

4. **SaaS Service Term:**

The initial term for this Service Order begins upon Service Software installation and accessible to Customer and ends 36 months thereafter (the “**Initial Service Order Term**”).

Upon expiration of the Initial Service Order Term, this Schedule B shall automatically renew for successive one (1) year periods (each a “**Renewal Term**” and together with the Initial Service Order Term, the “**Service Order Term**”), unless a party provides the other party with written notice of its intent not to renew this Service Order at least ninety (90) days prior to the expiration of the then current term.

5. **SaaS Service Fee:**

- 5.1 The fee for the Initial Service Order Term for the number of Subscribers set forth in Section 2 of this Service Order (the “**Initial Service Fee**”) payable by Customer to Service Provider is \$1,758.33 USD per month for the Initial Service Order Term. Customer shall not be invoiced until the Service is installed.

5.2 The fees for the Renewal Terms of SaaS Service are payable by Customer to Service Provider as set forth in the Main Agreement.

6. **Additional Subscribers:**

Additional Subscribers may be added to the Service Order in 50 subscriber increments for a fee of:

- SmartData Prepay (Pay As You Go)
 - \$2.00 per Subscriber per Month for Subscribers 201-500
 - \$1.00 per Subscriber per Month for each Subscriber over 500 Subscribers

Customer is required to add additional Subscribers prior to beneficial use of such additional Subscribers.

7. **Third Party Fees**

Customer shall be responsible for payment of all third party fees including but not limited to credit card processor set up fees, account fees, credit card transaction processing fees, financial institution fees and financial institution transaction processing fees. Service Provider will use USAEPAY as the credit card processor payment gateway.

8. **Fee Escalation**

Service Provider's base SaaS Service Fee and Additional Subscriber Fees are fixed during the Initial Term. Commencement of each Renewal Term, Service Provider base SaaS Service fee and Additional Subscriber fees shall escalate annually by the amount of the increase in the Consumer Price Index – All Urban Consumers of the Bureau of Labor Statistics of the U.S. Department of Labor for U.S. for All Items with Base Years 1982-1984=100. Those increases will be measured applying the twelve (12) month period ending in the month for which the most recent index results are available

9. **Summary of Services Included in Service Order.**

SaaS Services are detailed in the SaaS Agreement. Services specific to this Service Order are detailed below:

- 9.1 **Project Coordination.** Service Provider will provide a project coordinator to provide direction to Customer relating to SaaS Services. Customer to provide primary point of contact to work the project coordinator.
- 9.2 **Installation and Configuration.** Installing the Software in the data center with standard configurations.
- 9.3 **Upgrades.** Service Provider and Customer will mutually agree on an upgrade schedule for Customer Software. Services include at least one (1) Software Upgrade per calendar year. Customer agrees to remain on a Supported Release of Service Software. Service Provider will install all Software Upgrades on the Service Provider Equipment. Software includes Service Provider Application Software, operating system software, database software and any software running on the Service Provider Equipment.
- 9.4 **Integration(s).** Service Provider will provide integrations to third party systems as for an additional fee as detailed in the applicable SOW. Service Provider will provide a standard integration to Landis+Gyr Command Center Software as part of the services agreement.

9.5 Data Retention. Service Provider will make available on a live basis at least 24 months of data. After 24 months, Data will be archived and available to Customer upon request (additional fees may apply). Archive data will be retained for a minimum of one (1) year for a total of three (3) years of data available. Additional data retention periods are available for an additional fee.

10. **Customer Responsibilities:**

- 10.1 Administer Login and Passwords. Customer is responsible for assigning security officer(s), administering all Software logins and passwords, to provide Customer-selected configurations and to maintain access rights for the Customer's employees.
- 10.2 Support Utility Consumer. Customer is responsible for handling all support for its own end-use consumers. Service Provider will not provide any support regarding billing inquiries or any other matter for end-use consumers.
- 10.3 Application Administration. Customer is responsible to provide Customer-selected configurations and maintain access rights.
- 10.4 Application Operations. Customer is responsible to provide daily business operations of the Software monitoring jobs; reporting; coordination of issues, etc.
- 10.5 Functional Know-how. Customer is required to provide functional support services.
- 10.6 End User Training. Service Provider will provide remote initial end user training. Customer is responsible to provide user training after initial training is completed. Service Provider will provide end user training after initial training period based on the rates published by the Service Provider training department. In the case of custom training, Service Provider will provide training on an hourly basis per the Rate Card for the applicable training SOW, plus expenses.
- 10.7 IT coordination. Customer is responsible to coordinate management of interfaces to connected customer systems.
- 10.8 Computer Hardware. The Service Provider needs to transfer certain data from the Customer's systems to the Service Provider's system. This requires that the Service Provider install a data loader software program on the Customer's systems computer to transfer this data. The Customer shall be responsible for supplying and maintaining all computer hardware at its site where the data loader resides. The Customer's computer hardware shall meet the following specifications; computer connected to the internet with at least a 15 MB internet bandwidth capacity, internal computer storage of 12 GB ram, and 150 GB disc space. Additionally, the Customer's computer must be accessible by the Service Provider through secured internet connection.
- 10.9 Transfer File Specifications. The Customer shall provide the required data to the Service Provider in accordance with the file specifications as provided.
- 10.10 Upgrades. Customer is responsible to validate upgrades to Software.

11. **Data Ownership**

Ownership of Customer Identifiable Data. As between Customer and Service Provider, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Identifiable Data, including all Intellectual Property Rights relating thereto, subject only to the limited

license granted under this Agreement. "Customer Identifiable Data" means all data which is used in the identification of a Customer and linking it to the Customer Data.

12. Disclosure of Software

The Customer shall not disclose or reveal any of the Software application's screens or text to anyone other than its employees and its members and users as intended by this Agreement.

11. Security

Landis+Gyr shall cause its supplier to use commercially reasonable practices to prevent unauthorized access to the restricted areas of the Application and any databases or other sensitive material generated from or used in conjunction with the Application; and Landis+Gyr shall promptly notify Customer of any known security breaches. Use of the Application shall be password protected. It shall be Customer's responsibility to administer the use, distribution and security and of such passwords. Customer shall immediately notify Landis+Gyr in the event that such passwords are compromised or being used by unauthorized users.

In the event of any conflict between the body of the Main Agreement and this Service Order, the body of the Main Agreement will govern.

Landis+Gyr Technology, Inc.

City of Oxford ~~Electric Department~~

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

STATEMENT OF WORK NO. 002

SmartData Connect Customizations

This Statement of Work No. 002, effective as of the last signature date set forth below, is issued pursuant to the Software as a Service (SaaS) Agreement dated _____, 2014, by and between **City of Oxford, a Mississippi municipal corporation-Electric Department** (as Customer) and **Landis+Gyr Technology, Inc.** (as Service Provider) (the "~~Main~~-Agreement") and is a part of and incorporated into the ~~Main~~-Agreement. All capitalized terms that are not defined in this Schedule shall have the respective meanings given to them in the ~~Main~~-Agreement.

1. Service Description. Service Provider is retained by Customer to provide services that comprise a project entitled "SmartData Connect Customizations" (the "**Project**").

Customer has procured SaaS Services for the Software and retained Service Provider to complete the integration of the Software to other Systems as detailed in this SOW all under the terms of the ~~Main~~ Agreement between the parties dated _____, 2014 and related Service Order NO. 003 and Service Order 004 between the parties dated _____, 2014.

The purpose of this SOW add additional functionality to the Software to meet Customer requirements as defined below. The components of the Project, and the major work elements, deliverable items, and expected duration for each component, are summarized in the "Project Summary" set forth in Attachment 1 to this SOW.

During the initial "Planning Phase" of the Project, the parties will develop a planning document referred to as the "Schedule". The Parties will update the Schedule to reflect any mutually agreed changes in the scope or schedule of this Project in accordance with Section 4 of this SOW.

The Services shall be performed partially in Customer's offices and partially from the Service Provider's location, according to the Schedule.

2. Customer Responsibilities. In addition to the specific Customer responsibilities set forth in the Agreement and those that are set forth in the Project Summary and the Schedule, Customer shall:
 - 2.1 Provide necessary access to Customer personnel to assist in determining business requirements according to the Schedule.
 - 2.2 Provide Customer personnel to assist Service Provider with the operation of the SaaS Services throughout all phases according to the Schedule.
 - 2.3 Provide appropriate test data throughout the Project phases to enable all Parties to test the Software and Systems according to the Schedule.
 - 2.4 Provide Customer personnel to perform the user acceptance test planning and execution at the end of each phase and as required.
 - 2.5 Be responsible for determining whether the Services and deliverables provided by Service hereunder, including any revised business processes implemented pursuant to this SOW: (i) meet Customer's business requirements; (ii) comply with all federal, state and local laws, ordinances, codes, regulations and policies; and (iii) comply with Customer's applicable internal guidelines, long-term goals and any related agreements.

2.6 Provide prompt review and acceptance of properly completed Services.

2.7 Obtain all consents from any third parties that may be required in relation to Customer or its operations in order for Service Provider to be permitted to perform its responsibilities under this SOW.

3. SOW Term. The Services shall be provided throughout the term of this SOW, which begins on the effective date and ends upon completion of the Project, unless earlier terminated according to the ~~Main~~ Agreement.

4. Change Management. No changes to this SOW will be binding upon either party unless set forth in a written amendment to this SOW.

5. Service Charges. The Services are provided by Service Provider on a time and materials plus reimbursement of travel and related expenses, at its cost. Such fees will be payable as follows:

5.1 The estimated price for the Services described in this SOW is fifteen thousand Dollars (\$15,000.00) payable in arrears on a monthly basis.

5.2 Customer shall pay Service Provider for all time and material hours worked in performing the Services, billed to the nearest quarter hour, at the applicable "Hourly Rate" set forth on the Rate Card in Attachment 2 to this SOW.

5.3 Overtime rates apply for any time and material hours worked in excess of nine hours in any workday, and for weekend and holiday work; Service Provider will not incur overtime rates without the approval of Customer. Service Provider shall maintain detailed time records showing all work performed for each billing period. Customer may establish authorization limits on the number of hours of authorized Services and when communicated in writing to Landis+Gyr with at least ten (10) day's advance notice, Service Provider shall not be obligated to work beyond those limits and shall refrain from billing for Services in excess of those limits.

5.4 Customer shall reimburse Service Provider for all out-of-pocket costs incurred directly in connection with performing the Services, including, but not limited to, the cost of all materials used by Service Provider solely for Customer and all travel-related costs such as transportation, lodging, and meals, all as reasonably incurred and documented to Customer by Service Provider.

5.5 Customer shall pay all fees, charges and other amounts due hereunder in accordance with the ~~Main~~ Agreement.

6. General. This SOW is incorporated in the ~~Main~~-Agreement. In the event of a conflict between the body of the ~~main~~-agreement and this SOW, the body of the ~~Main~~-Agreement will govern.

Accepted and agreed:

_____ (“**Customer**”)

Landis+Gyr Technology, Inc. (“**Landis+Gyr**”)

Authorized Signature

Name: _____

Title: _____

Date: _____

Authorized Signature

Name: _____

Title: _____

Date: _____

**Attachment 1 to SOW NO. 002
SmartData Connect Customizations**

I. Project Summary

This SOW consists of planning, executing and validating customizations to the Software as required by Customer.

II. Project Description

Customer and Service Provider will mutually develop a Schedule. Customer and Service Provider will execute the plan/design. Service Provider and Customer will then execute unit, system and user tests to confirm functionality in conformance to Customer requirements, through the use of mutually generated and agreed test cases. Service Provider and Customer will migrate system over to operational status.

Project Scope

The Service Provider understanding of SOW deliverables at the time of the execution of this SOW are listed below. Service Provider and Customer will mutually agree on all final requirements and deliverables prior to development and delivery of customizations.

- Add Bill Pay into Web Portal for base Electric Meter Customers.
- Add Water Endpoints into Web Portal for Water Meter Customers.
- Add Water, Sewer, Sanitation to Bill Pay – Payments for Multi Commodity Customers.
- Add Water, Sewer, Sanitation to Pre Pay – Pre Pay for Multi Commodity Customers.

**Attachment 2 to SOW NO. 001
Service Provider Rate Card**

Vendor Role	Functional Description	Rate (\$/hour)
PROGRAM MANAGEMENT RESOURCES		
Program Sponsor/Program Director	Executive sponsorship and leadership	\$300.00
Program Manager/PMO Manager	Leads and manages programs and supports overall project portfolio	\$250.00
Senior Project Manager	Leads and manages projects	\$225.00
Project Manager	Leads and manages projects	\$210.00
TECHNICAL PROFESSIONALS		
Network Design Engineer	Designs field network solutions, provides network optimization support	\$175.00
Solution Architect	Provides overall strategic consulting on various existing and future technical solutions to solve customer business challenges	\$275.00
Integration Architect	Provides consulting services for integrating various systems and solutions	\$250.00
Technical Implementation Manager	Accountable for end-to-end implementation of technical solutions to meet customer requirements as well as consulting on technical domains including security	\$210.00
Business & Integration Analyst	Leads detailed integration requirements session, provides standard APIs and specifications, provides best practices, and supports customer integration activities to facilitate integration with customer systems	\$200.00
Field Analyst/Data Analyst	Analyzes data from various software systems and provides actionable information and reports to customers	\$175.00
Systems Administrator/Database Administrator	Performs IT-related system and database administration and maintenance	\$225.00
Technical Implementation Engineer/ Product Support Specialist/ Application Engineer/ Field Quality Assurance	Responds to technical inquiries and provides in-depth technical support to customers and project teams, and provides network monitoring and troubleshooting services	\$190.00
Technical Trainer/Technical Writer	Provides formal technical training to customers and develops technical documentation for customers	\$175.00
FIELD RESOURCES		
Field Service Representative/RF Technician	Provides field commissioning services, on-site surveys, field troubleshooting, network equipment maintenance	\$150.00
SUPPORT STAFF		
Customer Account Representative/ Sr Customer Account Rep/ Sr Product Customization Specialist	Enters orders, manages logistics, and tracks status of orders and RMAs	\$150.00
Sr. Technical Business Analyst/Sr. Operations Analyst	Provides process improvement, business consulting and PMO services	\$200.00
Lead Warehouse Operator (Cross-dock Worker)	Manages cross-dock and inventory levels	\$150.00

Footnote: Unless otherwise noted, rates do not include travel expenses, which are billed at cost

STATEMENT OF WORK NO. 001

MDMS Integration

This Statement of Work No. 001, effective as of the last signature date set forth below, is issued pursuant to the Software as a Service (SaaS) Agreement dated _____, 2014, by and between **City of Oxford, a Mississippi municipal corporation-Electric Department** (as Customer) and **Landis+Gyr Technology, Inc.** (as Service Provider) (the "~~Main~~-Agreement") and is a part of and incorporated into the ~~Main~~-Agreement. All capitalized terms that are not defined in this Schedule shall have the respective meanings given to them in the ~~Main~~-Agreement.

1. Service Description. Service Provider is retained by Customer to provide services that comprise a project entitled "MDMS Integration" (the "Project").

Customer has procured SaaS Services for the Software and retained Service Provider to complete the integration of the Software to other Systems as detailed in this SOW all under the terms of the ~~Main~~ Agreement between the parties dated _____, 2014 and related Service Order NO. 002 between the parties dated _____, 2014.

The purpose of this SOW is to complete the integration of the Software to other Systems. The components of the Project, and the major work elements, deliverable items, and expected duration for each component, are summarized in the "Project Summary" set forth in Attachment 1 to this SOW.

During the initial "Planning Phase" of the Project, the parties will develop a planning document referred to as the "Schedule". The Parties will update the Schedule to reflect any mutually agreed changes in the scope or schedule of this Project in accordance with Section 4 of this SOW.

The Services shall be performed partially in Customer's offices and partially from the Service Provider's location, according to the Schedule.

2. Customer Responsibilities. In addition to the specific Customer responsibilities set forth in the Agreement and those that are set forth in the Project Summary and the Schedule, Customer shall:
 - 2.1 Provide necessary access to Customer personnel to assist in determining business requirements according to the Schedule.
 - 2.2 Provide Customer personnel to assist Service Provider with the operation of the SaaS Services throughout all phases according to the Schedule.
 - 2.3 Provide appropriate test data throughout the Project phases to enable all Parties to test the Software and Systems according to the Schedule.
 - 2.4 Provide Customer personnel to perform the user acceptance test planning and execution at the end of each phase and as required.
 - 2.5 Be responsible for determining whether the Services and deliverables provided by Service hereunder, including any revised business processes implemented pursuant to this SOW: (i) meet Customer's business requirements; (ii) comply with all federal, state and local laws, ordinances, codes, regulations and policies; and (iii) comply with Customer's applicable internal guidelines, long-term goals and any related agreements.

2.6 Provide prompt review and acceptance of properly completed Services.

2.7 Obtain all consents from any third parties that may be required in relation to Customer or its operations in order for Service Provider to be permitted to perform its responsibilities under this SOW.

3. SOW Term. The Services shall be provided throughout the term of this SOW, which begins on the effective date and ends upon completion of the Project, unless earlier terminated according to the ~~Main~~ Agreement.

4. Change Management. No changes to this SOW will be binding upon either party unless set forth in a written amendment to this SOW.

5. Service Charges. The Services are provided by Service Provider on a time and materials plus reimbursement of travel and related expenses, at its cost. Such fees will be payable as follows:

5.1 The estimated price for the Services described in this SOW is sixty thousand Dollars (\$60,000) payable in arrears on a monthly basis.

5.2 Customer shall pay Service Provider for all time and material hours worked in performing the Services, billed to the nearest quarter hour, at the applicable "Hourly Rate" set forth on the Rate Card in Attachment 2 to this SOW.

5.3 Overtime rates apply for any time and material hours worked in excess of nine (9) hours in any workday, and for weekend and holiday work; Service Provider will not incur overtime rates without the approval of Customer. Service Provider shall maintain detailed time records showing all work performed for each billing period. Customer may establish authorization limits on the number of hours of authorized Services and when communicated in writing to Landis+Gyr with at least ten (10) day's advance notice, Service Provider shall not be obligated to work beyond those limits and shall refrain from billing for Services in excess of those limits.

5.4 Customer shall reimburse Service Provider for all out-of-pocket costs incurred directly in connection with performing the Services, including, but not limited to, the cost of all materials used by Service Provider solely for Customer and all travel-related costs such as transportation, lodging, and meals, all as reasonably incurred and documented to Customer by Service Provider.

5.5 Customer shall pay all fees, charges and other amounts due hereunder in accordance with the ~~Main~~ Agreement.

6. General. This SOW is incorporated in the ~~Main~~-Agreement. In the event of a conflict between the body of the ~~main~~-agreement and this SOW, the body of the ~~Main~~-Agreement will govern.

Accepted and agreed:

_____ (“Customer”)

Landis+Gyr Technology, Inc. (“Landis+Gyr”)

Authorized Signature

Name: _____

Title: _____

Date: _____

Authorized Signature

Name: _____

Title: _____

Date: _____

**Attachment 1 to SOW NO. 001
MDMS Integration**

I. Project Summary

This SOW consists of planning, executing and validating the extension and integration of the Software system into Customer's AMI and other internal business systems ("Systems"). The result is a Go-Live event placing the Software in production use. Integration is often undertaken in a phased approach and can be broken down into discrete milestones based on Customer requirements.

II. Project Description

Customer and Service Provider will mutually develop a Schedule. Customer and Service Provider will execute the integration plan/design, including finalization of data and communications details. Service Provider and Customer will set up data scheduler and initial data communications. Service Provider and Customer will then execute unit, system and user tests to confirm functionality in conformance to Customer requirements, through the use of mutually generated and agreed test cases. Service Provider and Customer will migrate system over to operational status, using historical data and execution of initial full synchronization, WAVE and analytics.

III. Project Scope

Base MDM

- AMI Meter Read from AMI to Software
- AMI Meter Events from AMI to Software
- AMI Interval Reads from AMI to Software
- AMI Provisioning/Synchronization from Software to AMI
- Historical Meter Read Load from CIS or AMI to Software
- Meter Asset Periodic Full Synchronization from CIS to Software
- Meter Asset Daily Incremental Synchronization from CIS to Software
- Synchronization In-Reads and Out-Reads (Published Read Service or "PRS")
- Manual Meter Reads from Handheld System to Software
- On-Demand Request/Response between CIS and Software
- AMI On-Demand Request/Response between Software and AMI
- Meter Read Data from Software to Customer (daily data)
- Interval Data from Software to Customer (daily data)
- Billing Meter Reads from Software to Customer

Outage

- Outage Status Notifications from AMI to Software
- Outage Status Notifications from OMS to Software
- Outage Status Notifications from Software to OMS
- Anticipated Outages from CIS to Software
- Restoration/Verification Request/Response from OMS to Software

**Attachment 2 to SOW NO. 001
Service Provider Rate Card**

Vendor Role	Functional Description	Rate (\$/hour)
PROGRAM MANAGEMENT RESOURCES		
Program Sponsor/Program Director	Executive sponsorship and leadership	\$300.00
Program Manager/PMO Manager	Leads and manages programs and supports overall project portfolio	\$250.00
Senior Project Manager	Leads and manages projects	\$225.00
Project Manager	Leads and manages projects	\$210.00
TECHNICAL PROFESSIONALS		
Network Design Engineer	Designs field network solutions, provides network optimization support	\$175.00
Solution Architect	Provides overall strategic consulting on various existing and future technical solutions to solve customer business challenges	\$275.00
Integration Architect	Provides consulting services for integrating various systems and solutions	\$250.00
Technical Implementation Manager	Accountable for end-to-end implementation of technical solutions to meet customer requirements as well as consulting on technical domains including security	\$210.00
Business & Integration Analyst	Leads detailed integration requirements session, provides standard APIs and specifications, provides best practices, and supports customer integration activities to facilitate integration with customer systems	\$200.00
Field Analyst/Data Analyst	Analyzes data from various software systems and provides actionable information and reports to customers	\$175.00
Systems Administrator/Database Administrator	Performs IT-related system and database administration and maintenance	\$225.00
Technical Implementation Engineer/ Product Support Specialist/ Application Engineer/ Field Quality Assurance	Responds to technical inquiries and provides in-depth technical support to customers and project teams, and provides network monitoring and troubleshooting services	\$190.00
Technical Trainer/Technical Writer	Provides formal technical training to customers and develops technical documentation for customers	\$175.00
FIELD RESOURCES		
Field Service Representative/RF Technician	Provides field commissioning services, on-site surveys, field troubleshooting, network equipment maintenance	\$150.00
SUPPORT STAFF		
Customer Account Representative/ Sr Customer Account Rep/ Sr Product Customization Specialist	Enters orders, manages logistics, and tracks status of orders and RMAs	\$150.00
Sr. Technical Business Analyst/Sr. Operations Analyst	Provides process improvement, business consulting and PMO services	\$200.00
Lead Warehouse Operator (Cross-dock Worker)	Manages cross-dock and inventory levels	\$150.00

Footnote: Unless otherwise noted, rates do not include travel expenses, which are billed at cost