

Meter System Upgrade Master Agreement between
Town of Apex (Apex) and
Ferguson & Sensus

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1 MSU Master Agreement

This MSU Master Agreement (hereinafter “Agreement”) for the delivery and installation of a turnkey Meter System Upgrade (“MSU”) and the related products and services is entered into effective _____, ___2023, (“the “Effective Date”) by and between the Town of Apex North Carolina (Apex), (hereinafter referred to as “Apex” or “Purchaser”) whose general office is located at 73 Hunter Street Apex, NC 27502, and Ferguson Enterprises, LLC dba Ferguson Waterworks having a place of business at 1044 Taylors Creek Dr. Greenville, NC 27835 (“Ferguson” or ”Supplier”) and Sensus USA Inc. having a place of business at 637 Davis Drive Morrisville, NC 27560 (“Sensus” or “MSU System Manufacturer” or “Manufacturer”) (individually referred to as “Party” or collectively as “Parties”).

1.1 RECITALS

A. Town of Apex North Carolina is a municipal electric and water, serving over 26,000 electric and 26,000 water meters in Apex North Carolina.

B. Apex desires to purchase and obtain from Supplier, and Supplier desires to provide to Apex, a turnkey Meter System Upgrade (or “System”), meter exchange, and associated maintenance services for the System as more fully described below and in the Attachments to this Agreement.

For and in consideration of the foregoing Recitals and the mutual promises, terms, conditions and warranties, set forth herein, Purchaser and Supplier, hereby agree as follows:

2 Terms and Conditions

2.1 Term

This Agreement is effective for a period of fifteen (15) years from the Effective Date. Thereafter, this Agreement shall automatically renew from year to year (each year, a “Renewal Term”), unless terminated as follows: (i) by either Party providing prior written notice to the other Party at least one hundred twenty (120) days before expiration of the Term or a given Renewal Term; or (ii) in accordance with Section 2.39 (Termination) herein.

Subject to Article 2.40 and in the event Supplier is unable to fulfill its obligations under this agreement, Supplier shall assign and MSU System Manufacturer agrees to assume the Agreement and meet all obligations of the Supplier contained herein. For clarity and avoidance of doubt, in the event that any particular default cannot reasonably be cured by Supplier within the (10) day period outlined in Article 2.38, provided the Supplier is exerting continuous, good faith efforts to cure the breach, the ten (10) day period shall toll for so long as such efforts continue.

2.2 Definitions

The terms listed below are defined as follows:

The term “Agreement” means this Meter System Upgrade Master Agreement including all Attachments and Statements of Work, which are by and between Purchaser, Supplier, and Manufacturer. In the event there are any conflicting provisions or requirements among the Agreement documents, the terms, provisions, and requirements of this Master Agreement, including any amendments, control and the Agreement documents must be enforced in the following order of descending priority:

- i. Any amendment to this Agreement;
- ii. The body of this Agreement;
- iii. Documents in response to Apex’s Request for Proposal to said Response and its Attachments:
 - a. Attachment A MSU, MDMS, and Meter Exchange Requirements (Confidential)
 - b. Attachment B Pricing Schedule and Bill of Materials (Confidential)
 - c. Attachment C-1 Propagation Study (confidential)
 - d. Attachment C-2 Propagation Study Base Station Locations (confidential)
 - e. Attachment D-1 MSU Initial System Acceptance Test (ISAT)
 - f. Attachment D-2 reserved
 - g. Attachment D-3 reserved
 - h. Attachment D-4 reserved
 - i. Attachment E MSU Final System Acceptance Test (FSAT)
 - j. Attachment F-1 Apex Data Flow and Interfaces (confidential)
 - k. Attachment F-2 Apex Interface Summary and System of Truth (confidential)
 - l. Attachment F-3 Multispeak Integration (confidential)
 - m. Attachment G Responsibility Summary
 - n. Attachment H reserved
 - o. Attachment I reserved
 - p. Attachment J reserved
- iv. The preliminary Statement of Work (installation and supply) documents as reviewed and accepted by both parties:
 - a. Attachment K reserved
 - b. Attachment L Statement of Work Electric Meter and Water MSU Node Exchange (confidential)
 - c. Attachment M Statement of Work MSU (confidential)
 - d. Attachment N Manufacturer Warranties
 - e. Attachment O Catastrophic Warranty (confidential)
 - f. Attachment P reserved
 - g. Attachment Q reserved
 - h. Attachment R reserved
- v. Software and support documents as reviewed and accepted by both parties:

- a. Attachment S Spectrum License and Software as a Service (SaaS) Agreement (confidential)
- b. Attachment T reserved

The term “Annual Maintenance Fee” means annual fees relating to Software, System Support, and Equipment maintenance and support Services including, but not limited to those Services described in Attachment S the SaaS Agreement and priced in Attachment B.

The term “MSU” means a Meter System Upgrade, including, as further determined in this Agreement, including any and all Attachments hereto.

The term “Available Endpoint” means an installed Sensus FlexNet meter (with a SmartPoint Module installed) or a Sensus SmartPoint Module which has been installed on a third party meter, and which, in either case, is not an Unavailable Meter (or on an Unavailable Meter in the case of SmartPoint Modules on third party meters) and which satisfies all of the following criteria: (i) it functions properly, is powered and is not a damaged or failed meter; (ii) it is in a deployment area of meters for Customer such that a sufficient number of two-way meters are in range of each other; (iii) it is serviced by RF Field Equipment that has not been subjected to a power failure greater than eight (8) total hours; (iv) neither it nor the RF Field Equipment that serves that meter has been affected by a Force Majeure event; (v) jamming of the radio spectrum is not preventing or interfering with radio communication to or from the meter; (vi) it is installed in the Service Territory; (vii) it has not been reported to Customer under Sensus' or Customer's preventative maintenance; (viii) its functioning or performance has not been adversely affected by a failure of Customer to perform its obligations or tasks for which it is responsible under this Agreement, including, but not limited to, testing and confirming that the socket to which the meter will be/is connected is in safe operating condition, is fully functional, is not corroded, does not contain improperly installed jaws or other deficiencies, complies with ANSI standards, and is not hot, damaged, or otherwise in need of maintenance or repair; (ix) its functioning or performance has not been adversely affected by a failure or insufficiency of the back haul telecommunications network of Customer for communications among the components of the Sensus FlexNet System; and (x) it has been installed in compliance with the procedures and specifications approved by Customer and Sensus.

The term “Available Meter Locations” means a meter that is accessible at member's or consumer's meter location and physically accessible by the installation crew.

The term “Collector” means Supplier two-way radio collector that transmits data between the Meters/Modules, and the data center.

The term “Consultant” shall include Power System Engineering, Inc., acting as advisor, agent, and consultant to Purchaser on engineering matters relating to this Agreement.

The term “Coverage Commitment” shall mean reaching ninety-nine and a half percent (99.5%) of the installed base of Available Endpoints via on-request read twenty four (24) hours per day and seven (7) days a week in all weather conditions, excluding non-reporting Meters/Modules and Endpoints found to be in failure due to Purchaser-side problems not caused by and outside of the control of Supplier (such as meter tampering, a damaged Meter or Endpoint, or a damaged transformer, or other Purchaser-related or non-MSU related problem), and except for a Force Majeure event. 100% of electric meters and 98.5% of water endpoint must be read within a rolling three-day billing cycle and in the same three-days 99.5% of electric and 98.5% of water all interval reads are obtained.

The term “Coverage Commitment Term” shall mean two (2) years from the Effective Date that ninety-five percent (95%) of the Available Endpoint Locations and Endpoints required by this Agreement have been installed and have associated with the System.

The term “Delivery Date(s)” means (i) for Equipment, the date on which such Equipment is delivered in accordance with [Section 2.32 \(Transportation and Risk of Loss\)](#); and (ii) for Software, the earlier of the date on which Purchaser downloads the Software, or thirty days after the Supplier makes the Software available to Purchaser for electronic download.

The term “Endpoint” means a sensory-type device, including, but not limited to, electric meter, water meter endpoint, load management switch.

The term “Equipment” means Network Equipment, Meters, Collectors, Endpoints, and/or hardware that Purchaser purchases from Supplier.

The “Equipment Warranty Period” is based upon the shipment date of the Equipment.

- Water Endpoint have a warranty period of 20 years. 15 years full warranty and 63 months pro-rated at default transmission based upon date of shipment.
- Electric MSU Meters (polyphase and single phase) have a 63-month full warranty based upon date of shipment.
- MSU Collectors have an annual fee for warranty coverage that does not include acts of God and labor to replace such items.

The term “Field Tools” means Supplier proprietary tools to be used in the field, including but not limited to software and handheld devices.

The term “Final System Acceptance” means that Purchaser has, at the completion of Phase II Full Deployment, accepted the Work provided by Supplier after both parties have mutually performed a Final System Acceptance Test (FSAT) with results satisfactory to Purchaser as measured against the FSAT criteria set forth in Attachment E and satisfying Specifications in Attachment A and as identified in any and all Attachments to this Agreement.

The term “Initial System Acceptance” means the Purchaser has accepted the Work and Equipment provided by Supplier after Purchaser and Supplier have jointly performed an Initial System Acceptance Test (ISAT) with results satisfactory to Purchaser as measured against the ISAT criteria set forth in Attachment D-1.

The term “Firmware” means Software embedded in and provided with the Equipment.

The term “Meter/Module” means a device that measures consumption of an end user, comprised of a meter and an MSU module, and provided by Purchaser to Purchaser's consumers. Note that Purchaser will provide Supplier with purchase order for an integrated Meter/Module (single part number) that will be supplied by Supplier.

The term “Network Association” means the event in which a Meter/Module or Endpoint takes to establish its initial registration with the Collector and MSU system and is exchanging data and information available to the user on the MSU software platform.

The term “Network Equipment” means the Collectors, Routers, and radios that are in these devices for radio frequency (RF) that are, or will be, under this Agreement physically deployed in Purchaser’s service territory. The term does not include the System backhaul, the network operations center, any system Equipment that is not located in Purchaser service territory, Meters/Modules, or any aspect or component of the System components that is not used by Purchaser.

The term “Network Reconnection Time” means the period of time for a Meter/Module, Endpoint, or Equipment to reconnect to the Collector and MSU System after a period of network stress caused by events such as; power outages, loss of communications at the Collector or Endpoint, resulting in no connection or communication or transmit and receiving of data or information.

The term “Permitted Use” means the MSU related activities allowed within the service territory as defined by Attachment C (Propagation Study)

The term “Project Manager” shall mean Purchaser or Purchaser’s designated representative, acting as consultant to Purchaser on matters relating to this Agreement. As a representative of Purchaser, the Project Manager would be acting only on Purchaser’s behalf and has no responsibility to Supplier to direct, oversee, or supervise any of the Work to be performed and delivered by Supplier under this Agreement.

The term “Purchaser” refers to the Town of Apex North Carolina (Apex).

The term “RF Field Equipment” shall mean Network Equipment.

The term “Specifications” shall mean any requirements for any product contained in the documentation and Attachments, specifically, but not limited to, Attachment A

The term “Software” means computer application and programs in any form that Purchaser licenses from Supplier.

The term “Services” means project management services, training, project delivery services, commissioning services, and/or other services described in Attachment A, Attachment B, and Attachment G.

The term “Service Territory” means the endpoints served by the MSU system as defined in Attachment C (Propagation Study) with the locations provided by Purchaser and geocoded at the time of the study.

The term “SmartPoint Module” refers to the Sensus trademarked name for their MSU modules for electric, water, and gas meters.

The term “Subcontractor” refers to a person, persons, partnership, association, company, or corporation engaged by Supplier to furnish any portion of the Work, as defined below, to Supplier.

The term “Supplier” in this Agreement refers to the MSU vendor and it’s designated installation sub-contractor(s).

The term “Support” in this Agreement means that deployed system Meters/Modules, subject to defined Warranty provisions, will continue to have the ability to operate and communicate with the software and other hardware components deployed in the field even if Supplier were to cease manufacturing these devices or introduces alternate solution offerings.

The term “System” means the integrated, installed system providing MSU to Purchaser, comprised of the Supplier’s Equipment, Firmware, Field Tools, Software, and any other components as may be necessary to complete the Agreement as herein defined, to include (but not limited to) Collectors, Endpoints, Meters/Modules, Network Equipment, Routers, and, as herein defined, whether or not fully detailed on drawings (if any) or listed in detail in this Agreement.

The “System Warranty Period” shall mean sixty-three (63) months from the successful completion and Purchaser’s acceptance of the FSAT.

The term “Work” includes any and all labor, materials and other services as may be necessary for Supplier to complete the System, including but not limited to completion of the electric meter exchange, water node exchange and network equipment installation to meet obligations under this Agreement as herein defined.

2.3 Shipments, Meter Exchange, and Title Transfer

Supplier is providing the Purchaser a turnkey supply and installation of an MSU system as outlined in this Agreement and Attachments. Supplier is providing meter exchange including project management, lead interface development, warehousing and inventory management for new MSU water modules and electric meters, inventory management of removed meters for 6 months from removal, option for disposal of removed electric and water meters, system training, and support as detailed in this Agreement and Attachments.

For equipment installed by the Supplier, Purchaser takes title when material is delivered to the designated Supplier warehouse. Supplier is responsible for all loss and damage when equipment is under Supplier control.

For equipment not installed by Supplier (spares, test units, other) title is transferred to the Purchaser upon delivery to the Purchaser warehouse.

Mass meter exchange (Phase II) cannot start until the Supplier completion and the Purchaser acceptance of the ISAT and completing all interfaces as outlined in Attachment F-1, Attachment F-2, and Attachment F-3 to Supplier provided software and databases are accepted by the Purchaser.

2.4 Cost

The Parties have agreed upon pricing for the System and the Work as set forth in Attachment B, Pricing Schedule and Bill of Material and as otherwise described herein.

All System, Annual Maintenance Fee, License fees, Hosting fees, Endpoint, and Equipment prices shall be fixed for three years from August 2, 2022 (date of the proposal). In year 4, Supplier may adjust pricing by an amount not to exceed the cumulative Consumer Price Index (“CPI”) from years 1 to 3. Starting in year 5, Supplier may adjust any equipment or service (maintenance, license, hosting, other) line items annually by an amount not to exceed 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 CPI – Urban Consumers, All Cities Average, All Items (“CPI-U”).

For material only, Supplier may, from time-to-time, issue surcharges on new purchase orders in order to mitigate and/or recover increased operating costs arising from or related to, without limitation: (a) foreign currency exchange variation; (b) increased cost of third-party content, labor and materials; (c) impact of duties, tariffs, and other government actions; and (d) any other circumstances that increase Supplier’s costs, including, without limitation, increases in freight, labor, and unforeseen material or component costs (collectively, “Economic Surcharges”). Supplier will invoice Purchaser through a revised or separate invoice, and Purchaser agrees to pay for the Economic Surcharges pursuant to the payment terms herein. If a surcharge is issued, Supplier must provide Purchaser a detailed summary and explanation of the basis of the surcharge.

2.5 Taxes

The Town of Apex may be eligible for a refund of sales taxes paid. Supplier and its subcontractors shall properly itemize invoices on sales that are made to Purchaser during the term of this Agreement.

2.6 General Scope of MSU System to be Purchased

Supplier shall provide Purchaser with a System that achieves Advanced Metering Infrastructure (“MSU”) access to all of Purchaser’s water and electric Meters/Modules within Purchaser’s service territory based on the information provided by the Purchaser.

The responsibilities of Supplier and functionality of its MSU System shall also be comprised of all commitments made in this Agreement, including but not limited to, the Requirements in Attachment A and the responsibilities in Attachment G, and all materials including product specifications attached hereto as Attachments.

2.7 Entire Agreement

This Agreement and the Attachments and documents attached hereto or referenced herein and hereby expressly incorporated by this reference, when fully executed by Supplier, Manufacturer, and Purchaser, shall be deemed to include the entire Agreement between the Parties and shall supersede all other previous and contemporaneous understandings, commitments or representations, whether oral or written, and all subsequent oral agreements concerning the subject matter hereof. Neither Supplier, Manufacturer, nor Purchaser shall claim any modification resulting from any representation or promise made at any time, by an officer, agent, the Consultant, or employee of any Purchaser or by any other person. Each Party acknowledges that the other Party has not made any representations other than those that are contained herein.

2.8 General Statement of Responsibility of Supplier

Supplier shall perform the Work in accordance with the terms of this Agreement. The obligation of Supplier shall be deemed to carry with it the obligation to incur all items of necessary expense to perform the Work.

Supplier shall have complete and undivided responsibility for complying with the Agreement, including sole discretion for the means by which the Work is to be performed. Without any qualification of such undivided responsibility, Supplier shall have the right to enter into such subcontracts, purchase orders, and other commitments with third parties for the performance of any part of the Work, as may, in Supplier’s opinion, be advantageous or necessary for the proper and expeditious or economical prosecution of the Work. Notwithstanding the foregoing, Supplier shall remain primarily responsible for completion of the Work, provision of the System and performance of the Subcontractors. Supplier shall ensure that all Subcontractors comply with the terms and conditions of this Agreement. Except as otherwise provided in Section 2.1 of this Agreement, Supplier may not assign this Agreement or any of its duties or responsibilities herein (including due to a change of control, merger, or other similar transaction) without consent of Purchaser. Supplier shall notify the Purchaser of any use of Subcontractors.

2.9 Independent Contractor

The relationship between Purchaser and Supplier and between Purchaser and Manufacturer shall be that of contracting party to independent contractor. Accordingly, subject to the specific terms of the Agreement, neither Party shall have any general right to prescribe the means by which the other Party shall meet its obligations under the Agreement. This Agreement is not intended to create, nor shall it be construed to create any partnership, joint venture, employment or agency relationship between Supplier and Purchaser or between Manufacturer and Purchaser, nor shall either Party have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party. No Party shall be liable for the payment or performance of any debts, obligations, of the other Party, unless expressly assumed in writing herein or otherwise. Each Party retains full control over the employment, direction, compensation and discharge of its employees, and will be solely responsible for all compensation of such employees, including social security, withholding and worker’s compensation responsibilities.

2.10 Purchaser Review and Approval

Unless otherwise agreed to by express written statement in the Agreement, Purchaser’s review and/or approval of the specifications, drawings, and related documents developed by Supplier as part of its proposal to the Purchaser or pursuant to this Agreement shall in no way or manner relieve or lessen Supplier’s responsibility under this Agreement for the professional quality, technical accuracy, and completeness of such documents.

2.11 Supplier Representations

In order to induce Purchaser to enter into this Agreement, Supplier makes the following representations and warranties:

1. Supplier has examined and carefully studied this Agreement, including all Attachments hereto and information provided by Apex;
2. Supplier has fully acquainted itself with the information provided by Purchaser within its Request for Proposals – Advanced Metering Infrastructure System. Supplier pricing is based on standard system design and typical installation conditions as defined in this Agreement and the supporting Attachments.

3. Supplier is fully qualified to complete the Work in accordance with the terms of this Agreement within the time specified;
4. Supplier, its employees, agents and any subcontractors have all licenses, permits, qualifications, and approvals that are legally required to practice their respective professions and to complete the Work in accordance with the terms of this Agreement.
5. Supplier is familiar with, is in compliance with, and shall perform all of its obligations hereunder in compliance with all federal, state, and local statutes, laws, rules, and regulations including but not limited to OSHA, NEC, and NESC, regulations that may affect cost, progress, and performance of the Work.
6. There are no complaints, claims, suits, actions, mediations, arbitrations or proceedings or investigations pending or, to the knowledge of Supplier, threatened against or affecting Supplier that would, if adversely determined, have a material adverse effect on Supplier's ability to perform its obligations hereunder, or on the validity or enforceability of this Agreement.

2.12 Change-Orders

Changes to the System to be provided under this Agreement, the Work, the sums to be paid, or the time permitted for performance of the Work under this Agreement can only be made by a written change-order signed by duly authorized representatives of both Purchaser and Supplier following the procedure and requirements described below. No other verbal or written communication or action or failure to act on the part of Purchaser or any of Purchaser's representatives including its consultants, can substitute for a written change-order signed by a duly authorized representative of Purchaser.

The change-order shall identify all affected items in the Agreement including technical matters (i.e., functions, performance, reliability, etc.), cost, schedule, process and all other factors affected. Only items specifically identified in a written change-order as modified are affected.

Purchaser may request a change by providing a written change-order as described above to Supplier as a legal notice under this Agreement or as the Parties may otherwise agree in advance and in writing. Supplier agrees it will make all reasonable efforts to meet the request for a change in the Work and shall promptly respond regarding its ability to meet the request.

Supplier may request a change by providing a written change-order as described above to Purchaser as a legal notice under this Agreement or as the Parties may otherwise agree in advance and in writing. Supplier must secure prior Purchaser approval for all change orders. Purchaser shall respond within ten (10) business days to either accept or deny the change-order as written, provided that if no response is made, Purchaser's silence shall be deemed a denial of the change-order.

If the terms of a change-order are agreed to, the requesting Party shall provide two executed copies to the other Party for signature. The Party accepting the request shall sign both copies and return one original copy of the signed change-order to the requesting Party.

When invoicing for change-order items, Supplier shall reference the change-order and itemize it separately.

2.13 Right to Use System Not Yet Accepted

At all times prior to the Initial System Acceptance Test (ISAT) and Final System Acceptance Test (FSAT), Purchaser shall have the right to use the System as installed, provided the Purchaser's use of the system does not adversely affect Supplier's setup and install. Use of the System prior to Final System Acceptance shall not result in any waiver of any Purchaser rights under this Agreement and shall not be deemed acceptance of the System. This use of the System prior to acceptance is intended to assist Supplier and Purchaser in evaluating the System functionality in advance of Initial System Acceptance Test (ISAT) and Final System Acceptance Test (FSAT). Following Initial Acceptance, Purchaser may use any of the System prior to FSAT for billing and other related purposes.

2.14 Right to Use Accepted System

Upon Final System Acceptance, Purchaser shall have the right to use, modify, and adapt the System in any manner it desires as long as it is in accordance with the terms and conditions of this Agreement and does not void Manufacturer's warranty requirements or the system performance capabilities.

2.15 Defective Work and System (Warranty)

Notwithstanding the acceptance of the System by the Purchaser or the provision of any certificate with respect to delivery or acceptance of the System, the following warranties shall apply:

- A. Equipment Warranty. The Warranty is included in Attachment N and below. With respect to the underlying products, PURCHASER'S SOLE AND EXCLUSIVE WARRANTY IS THAT PROVIDED BY THE PRODUCT'S MANUFACTURER. SUPPLIER HEREBY DISCLAIMS ALL EXPRESSED OR IMPLIED WARRANTIES, WHETHER IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS OR FITNESS FOR A PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES, AND IN NO EVENT, WILL SUPPLIER BE LIABLE FOR PERSONAL INJURY OR PROPERTY DAMAGE OR ANY OTHER LOSS, DAMAGE, COST OF REPAIRS OR INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES RELATED TO THE UNDERLYING PRODUCTS PROVIDED.

MSU System Manufacturer provides the full warranty period for all single phase and polyphase meters provided under this Agreement.

- B. MSU Water Module Warranty ("Water Module Warranty"); Expressly subject to the terms of the Manufacturer's Warranty, Supplier warrants from the date of shipment from the manufacturer and for twenty (20) years thereafter, MSU Water modules for residential and commercial meters, under standard operating profile, use and service, will be (a) new, (b) conform in all material respects to their specifications, (c) be free from all liens, claims and encumbrances and (d) not fail when Deployed in the field as a result of a material Defect. Purchaser's exclusive remedy for each Defective MSU water module for the initial fifteen (15) years from date of shipment from Manufacturer ("**free replacement period**") will be replacement of the Defective MSU water module and for years 16-20, at a prorated replacement fee. The prorated purchase price of any MSU water module which becomes Defective after the lapse of the free replacement period, and prior to the end of the warranty period, will be credit toward the purchase by Purchaser of another MSU water module. The amount of the proration for each MSU water module shall be set forth in the table

below. When a MSU water module is replaced, the warranty on the replaced MSU water module shall be the balance of the original warranty period from shipment of the replacement.

MSU Water Module Warranty/Replacement Fee Table

| Year of Failure Based on Time of Shipment | Replacement Price Discount taken by Purchaser applied to the list price in effect at the time such replacement is purchased |
|---|---|
| 1-15 | Full Replacement at no charge to Purchaser |
| 16 | 30% |
| 17 | 40% |
| 18 | 50% |
| 19 | 60% |
| 20 | 70% |

Example #1:

- MSU Water Module fails in year 13
- Defective module will be replaced at no charge to Customer

Example #2:

- MSU Water Module fails in year 18
- Defective module will be replaced with Customer paying 50% of the then list price of the module (e.g., the cost of module in year 18 is \$50, Customer will pay \$25 for the replacement)

- C. **System Warranty.** Supplier and Manufacturer warrants that the System will perform in accordance with Documentation and this Agreement including, but not limited to, the Specifications set forth in any System supporting documentation. This System Warranty only covers problems reported to Supplier and Manufacturer in writing during such System Warranty Period. In the event of a breach of the foregoing System Warranty, in addition to Supplier's and Manufacturer's other obligations under this Agreement, Supplier and Manufacturer will, at their sole expense, repair, modify, or adjust the System to make it conform to the foregoing System Warranty. For clarity and avoidance of doubt, the herein described System Warranty does not include labor to reinstall Equipment covered under warranty described in Sec. 2.15.D. **THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, CONDITIONS OR TERMS OF WHATEVER NATURE RELATING TO THE SYSTEM PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED AND EXCLUDED. EXCEPT AS OTHERWISE PROVIDED BY LAW, BUYER'S EXCLUSIVE REMEDY AND SERVICE PROVIDER'S AGGREGATE LIABILITY FOR BREACH OF THE FOREGOING WARRANTY.**
- D. **Installation Warranty.** For those materials installed by Supplier, if any, for a period of twelve (12) months from installation, Supplier warrants that services shall be performed in a professional and workmanlike manner and in accordance with manufacturer's installation instructions and local code requirements. Upon receipt of notice from Purchaser that installation services were not performed in accordance with the limited warranty herein, Supplier shall re-perform the services to the Purchaser's satisfaction. The foregoing shall not apply if there is evidence of abuse or misuse by Purchaser or any third party. **THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, CONDITIONS OR TERMS OF WHATEVER NATURE RELATING TO THE INSTALLATION SERVICES PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED AND EXCLUDED. EXCEPT AS OTHERWISE PROVIDED BY LAW, BUYER'S EXCLUSIVE REMEDY AND SERVICE PROVIDER'S AGGREGATE LIABILITY FOR BREACH OF THE FOREGOING WARRANTY.**
- E. **Intellectual Property (IP) Warranty.** Manufacturer warrants that the sale, use, or incorporation into manufactured products of all machines, parts, components, services, devices, material and rights furnished or licensed hereunder which are not of Purchaser's design, composition or manufacture shall be free from any patent, copyright, trademark, or other proprietary rights for the payment of any license fee or royalty to others by Purchaser. Manufacturer shall be liable for, defend and save Purchaser harmless from any loss, damage, or expense whatsoever that Purchaser may suffer from Manufacturer breach of any of these warranties. Purchaser's sole and exclusive remedy for breach of the IP warranty is indemnification.
- F. **Compliance with Laws.** The Supplier warrants that the Work and the System, upon delivery and when operated in accordance with the Documentation, will comply with and will have been produced, processed, delivered, and sold in conformity with all applicable federal, state, and local laws and administrative regulations and orders.

For any Equipment under warranty that does not comply with the warranties herein, Supplier shall coordinate with the Manufacturer to repair or replace such defective or non-conforming Equipment.

All warranties for any repaired or replaced products will hold the existing warranty issued at time of delivery of original product to the Purchaser (see Attachment N).

2.16 System Life Expectancy

Manufacturer represents and warrants that the System and Equipment purchased hereunder shall be commercially supported for a minimum of fifteen (15) years from the Effective Date ("Life Expectancy"), through Manufacturer making available for purchase products and services that are compatible with those purchased under this Agreement. Manufacturer shall make available for purchase spare parts for all Equipment purchased or provided under this Agreement and corrections for any Software purchased or provided under this Agreement during the Life Expectancy of the System. Manufacturer and Supplier shall take commercially reasonable steps to make available for purchase maintenance service, additional equipment and spare parts for all equipment ordered under this Agreement, and corrections for any software ordered for the life expectancy of the System. In the event Manufacturer's business changes such that it no longer offers the equipment or spare parts, Manufacturer shall offer equivalent and backwards compatible next generation products.

Supplier and Manufacturer recognize and acknowledge that if the Supplier and Manufacturer fail to meet the Life Expectancy specified above, the Purchaser will see substantial damages including stranding the MSU investment made under this Agreement. In the event System support is

terminated by Supplier and Manufacturer during the term of the Life Expectancy, other than for Force Majeure, Purchaser shall be entitled to make a claim for any reasonable, direct, and verifiable losses incurred as a result of such termination.

2.17 Deployment Plan

The deployment shall occur in two phases. Phase I shall mean deployment within the Initial Deployment Area and completion of all software and database integration as defined in the RFP and Attachments. Phase II shall mean full deployment and shall commence upon the completion of Phase I and Initial System Acceptance and shall mean deployment within the remaining service territory of Purchaser not covered in Phase I. The Parties shall work together to develop a deployment plan and schedule at a project kick-off meeting that meets the required acceptance dates for the ISAT and FSAT.

2.18 Payment to Supplier

Supplier will issue invoices to Purchaser for all amounts owed to Supplier hereunder. Invoices: (i) for Work and Services will be issued upon completion of the Work or Service; and (ii) for the Equipment shall be issued upon delivery to either the Supplier or Purchaser warehouse or installed per this agreement.

Invoicing and payment shall be commensurate with retainage as shown in the table below and the Pricing Schedule set forth in Attachment C. Written authorization shall be required from Purchaser before Services commence.

The “Milestone Description” as stated below in the Milestone Schedule is provided as a summary only; this entire Agreement provides the detail of what comprises deliverables for each Milestone.

Table 1: Milestone Payment Schedule

| Milestone | Description | Payment |
|---------------------------------------|--|---|
| Phase I* | Initial Deployment Area | <p>90% of all monthly invoices for software and hardware related to Phase I* deployment area. Paid net 45.</p> <p>Invoices for material delivered to Purchaser for Purchaser storage or installation issued upon Purchaser receipt of material at Purchaser warehouse.</p> <p>Invoices for material installed by Supplier or Supplier subcontractor are issued upon delivery to Supplier Apex project warehouse.</p> <p>Invoicing for meter installations will occur on a monthly basis and include, with proper documentation, any adders as specified in the pricing or through change order.</p> <p>A lien-waiver must be provided by Supplier prior to release of payment by Purchaser.</p> <p>(Purchaser shall exercise a 10% holdback on all Phase I invoices).</p> |
| Initial System Acceptance Test (ISAT) | <p>Successful completion of the Initial System Acceptance Test (ISAT) for the Phase I Initial Deployment Area.</p> <p>Phase I including the ISAT must be completed within 9 months of the execution of this Agreement (unless delayed by Purchaser interface development).</p> | <p>Release of the 10% holdback is made upon successful completion and acceptance of the ISAT.</p> <p>Year 1 annual support, maintenance, and hosting fees will be invoiced at the time of software installation.</p> |
| Phase II | Full Deployment | <p>After successful completion of the ISAT, and starting with the Phase II Full Deployment, 90% of all monthly invoices for Equipment and items associated with the Phase II deployment area according to a mutually accepted schedule. Paid net 45.</p> <p>Invoices for material delivered to Purchaser for Purchaser storage or installation issued upon Purchaser receipt of material at Purchaser warehouse.</p> <p>Invoices for material installed by Supplier or Supplier subcontractor are issued upon delivery to Supplier Apex project warehouse.</p> <p>Invoicing for meter installations will occur on a monthly basis and include, with proper</p> |

| Milestone | Description | Payment |
|-------------------------------------|---|--|
| | | <p>documentation, any adders as specified in the pricing or through change order.</p> <p>A lien-waiver must be provided by Supplier prior to release of payment by Purchaser.</p> <p>(Purchaser shall exercise a 10% holdback on all Phase II invoices).</p> |
| Final System Acceptance Test (FSAT) | <p>Successful completion of the Final System Acceptance Test (FSAT) for all System components installed during Phase II Full Deployment.</p> <p>The FSAT acceptance must be completed within 24 months of the completion of the ISAT.</p> | Release of the 10% holdback is made upon successful completion and acceptance of the FSAT and the Final Inspection. |

*Phase I shall include but not be limited to:

- Project design meeting; receipt of standard System documentation and training manuals covering the scope of this Agreement; review and approval of Purchaser’s coverage area and design drawings for the initial deployment area; receipt of proof of insurance.
- Configuration of Master System server and hardware components and delivery of configured software and hardware to Purchaser; training on use of the MSU Master software System.
- Delivery of Phase I base stations, Collectors, Repeaters, load management end devices, gateways, electric Meters/Modules and Endpoints as determined prior to Agreement signing.
- Completion of onsite support and training covering equipment installation, meter/module, inspection of work and training installation, Master System training including support on report generation.
- Successful completion of the ISAT and Initial System Acceptance.

Purchaser will review, approve, and pay each undisputed invoice within forty-five (45) days of receiving such invoice and other documents required hereunder. Supplier may collect a late fee of no more than one and one-half percent (1.5%) per month of the unpaid amount of an undisputed invoice if not paid in the forty-five (45) day period.

After delivery and inspection at destination, Purchaser will be responsible for any loss, theft, physical damage, or abuse that affects the operation of the System and occurs while System is in the control of Purchaser.

Notwithstanding any provision in this Agreement to the contrary, Purchaser may withhold any or all payment or payments for the affected portion of Work done to the extent of protecting Purchaser against loss on account of:

- Defective workmanship and materials;
- Failure of Supplier to make payments promptly to Subcontractors or Suppliers for material or labor;
- Damages to structures or property caused by a Supplier Party; and
- Other specified reasons set forth in this Agreement.

Except as provided for in the Agreement (Sec 2.4), all prices for Work and Equipment are firm and fixed.

Upon receipt of payment, Supplier shall provide to Purchaser a Lien Waiver for the labor and material covered by said payment. If said payment included labor and supplies by a subcontractor, Supplier shall obtain a Lien Waiver from the subcontractor and provide to Purchaser within three business days of receipt of the payment. In the event the Supplier does not provide a Lien Waiver from an applicable subcontractor, to the extent payment has been received, the Supplier shall defend, indemnify and hold harmless Purchaser, for any and all expenses and costs, incurred due to the subcontractor filing a lien or claim against Purchaser.

2.19 Equipment Forecasts

Within sixty (60) days after the Effective Date of this Agreement, Purchaser shall supply to Supplier a written forecast of total anticipated Supplier Equipment needs by month. Any changes to the Equipment forecast should also be furnished to Supplier.

Supplier has the responsibility to ensure supply and availability of equipment matches the installation crew schedules. Purchaser is not responsible for payments or costs of installation crews that do not have required material. Supplier shall use commercially reasonable efforts to ensure availability of supply of equipment matches installation crew schedules.

2.20 Purchase Orders

Purchases shall be authorized by Purchaser’s issuance of a written Purchase Order (“Purchase Order”) to Supplier by electronic mail. Supplier may accept Purchaser’s Purchase Order by signing it, acknowledging it, using electronic mail, or by delivering the System Component that Purchaser ordered. Notwithstanding any other provision herein, Purchaser’s Purchase Order will be accepted solely for purposes of establishing the items and quantities ordered and the desired shipment dates and shipment method. Purchaser’s desired shipment

dates shall take into account Supplier's and Manufacture's current lead times at the time of the Purchase Order. Lead times will be provided to Purchaser by a Supplier representative. It is Supplier's responsibility to coordinate with the Manufacture, not the Purchaser. It is acknowledged by the Parties that all instruments and documents issued or delivered pursuant to this Agreement, including any and all Purchase Orders, Purchase Order acceptance, Purchase Order acknowledgements, invoices and other instruments ("Purchase Order Documents") shall incorporate by reference the terms and conditions of this Agreement, irrespective of whether any such Purchase Order Document expressly references this Agreement, and shall be subject to the terms and conditions contained in this Agreement. In the event of a conflict or inconsistency as between the terms and conditions of any and all Purchase Order Documents and this Agreement, this Agreement controls. Any terms and conditions contained in a Purchase Order Document now or hereafter delivered by a Party pursuant to this Agreement other than quantities, service description and other required details and shipping instructions, will not apply and each Party hereby waives and rejects all such terms and conditions.

2.20.1 Cancellation and Modifications

Purchaser may, without penalty, cancel or reduce a Purchase Order for Equipment on written notice to Supplier no later than sixteen (16) weeks prior to scheduled delivery of the order. If Purchaser cancels or modifies an Equipment order within sixteen (16) weeks prior to delivery, such Equipment order may be subject to cancellation charges. Notwithstanding the foregoing, Purchaser may not cancel, change or modify a special order or nonstock product without the written consent of Supplier and payment by Purchaser of all applicable cancellation or re-stocking fees.

2.21 Coverage and Performance Commitment

Supplier agrees to satisfy the Coverage Commitment as defined herein for the duration of the Coverage Commitment Term.

Regardless of the number of towers or Collectors described in the Pricing Schedule (Attachment B), Supplier must achieve the Coverage Commitment. In the event the Coverage Commitment is not met, the costs of additional Collectors will be the responsibility of Supplier.

Supplier certifies that the network as quoted and deployed under this Agreement will meet the following performance criteria:

- a. Meets the Coverage Commitment term and meets the requirements listed in the Coverage Commitment based on the Propagation Study criteria in Attachment C-1 and C-2.
- b. That no network element (collector, gateway, base station, other) is loaded to no more that 30 percent of its capacity for the system as quoted and deployed to meet all requirements in this Agreement,
- c. Network Association and Network Reconnection Time: Network association time represents the time it takes for a device to establish its initial registration. Once the stress is removed from the local area network, 95% of electric meters that were Available Endpoints prior to the event will reconnect within 120 minutes assuming the stress was less than 8 hours in duration.
- d. Read Success Rate. For Available Endpoints, customer will be able to achieve a minimum 98.5 percent daily read for each electric meter by 8 a.m. Over any three consecutive day billing window, electric read rate will be 100% and water read rate will be 98.5%. For a requested read of one (1) electric meter, a return read rate of equal to or less than 30 seconds and for a requested read of up to 100 meters, a return read rate of 99% within 30 seconds or less.
- e. Remote Connect/Disconnect. It is expected that the individual electric meters with remote connect/disconnect capability will action a remote disconnect request with no major system events (such as a major power outage) occur during this duration. Reconnect functionality will be the same. For Available Endpoints, any reconnect and disconnect the return time to complete either action will be within 30 seconds or less.

As stated in the FSAT after Supplier has completed any required network optimization and upon Supplier or its installation contractor completing installation of at least 95 percent of Available Meter Locations and in a condition to allow a new meter install (socket condition, etc.) Supplier shall configure the network to support the following interval recording and reporting configurations for Available Endpoints:

- a. 100 percent of single-phase meters reporting (6) channels of 15-minute interval data at least every 4 hours. This is addition to the daily report, disconnect and reconnect, alarms and events.
- b. 100 percent of all socket based polyphase meters reporting (12) channels of 15-minute interval data at least every 4 hours. This is addition to the daily report, and alarms and events.
- c. 100 percent of all transformer based polyphase meters reporting (6) channels of 15-minute interval data and (6) channels of 5-minute interval data at least every hour. This is addition to the daily report, and alarms and events.
- d. 100 percent of all water meter modules reporting 1-hour interval data at least once per day. This is addition to the daily report, and alarms and events.

As part of the FSAT, after 10 days of operation, at least 100 percent of all interval channels shall be obtained within the above interval recording and reporting cycles for 100% of the electric meters and 98.5% of the water meter endpoints, provided they are Available Endpoints and Network Equipment identified in the propagation study is installed and such installation is in the locations and heights identified therein. In addition, review and update the "Implementation Punch List" mutually developed and agreed upon during the implementation. Prepare a "Final Punch List" to be completed by Supplier.

Manufacturer warrants to Purchaser that the System meets the performance criteria set forth in this Agreement, including but not limited to Section 2.21. If the Purchaser System does not meet such test standards prior to acceptance of System by Purchaser (acceptance of FSAT including the above performance), Manufacturer shall take necessary steps to cause the System to satisfy the performance criteria. Such steps may include Manufacturer's delivery to the Purchaser (without charge to the Purchaser) the hardware for additional RF Field Equipment, provided that all RF Field Equipment shall be located and installed as directed by Manufacturer. Installation of this additional equipment is the responsibility of the Purchaser.

The above performance shall be maintained after acceptance of System by Purchaser provided the RF Field Equipment is operating and that the Purchaser:

- Maintains System per Manufacture’s specifications, and
- Maintains the ratio of Endpoints to Network Equipment (collectors) as Apex growth continues.

AFTER ACCEPTANCE OF THE SYSTEM BY PURCHASER, SUPPLIER AND MANUFACTURER ASSUME NO LIABILITY FOR COSTS OR EXPENSES ASSOCIATED WITH LOST REVENUE OR WITH THE REMOVAL OR INSTALLATION OF EQUIPMENT. THE FOREGOING REMEDIES ARE CUSTOMER’S SOLE AND EXCLUSIVE REMEDIES FOR THE PERFORMANCE OF THE SYSTEM.

2.21.1 Final Inspection

Upon Supplier notification of completion of item(s) mutually agreed upon in the “Final Punch List” the Purchaser will conduct the final inspection and verification of such completion. Supplier may request the Purchaser to conduct inspection on a line-by-item basis. Then, upon completion and passing of the above (test and final punch list), the Purchaser will release the 10 percent holdback outlined in Section 2.18 .

2.22 Major Endpoint Failure

Manufacturer will provide Purchaser with a catastrophic failure warranty according to the terms located in Attachment O.

2.23 Endpoint Failure upon Installation

For Endpoint failures and defects, including but not limited to, zero consumption and non-association discovered within 24 hours of installation of that Endpoint during Phase I and Phase II Deployment and during any warranty period, other than failures due to Purchaser-side problems not caused by and outside of the control of Supplier (such as meter tampering, a damaged Meter or Endpoint, inoperable meter base or other electric service components, or a damaged transformer), and except for a Force Majeure event, Supplier shall remedy or repair the failure or defect within fourteen (14) days after notice from Purchaser based on material availability from the Manufacturer as stated in [Section 2.15 \[Defective Work and System \(Warranty\)\]](#) and Supplier shall provide Purchaser replacement Endpoints as needed at no cost and pay for shipping. Defective product will proceed through the standard RMA process. Items found to be failed or defective will be replaced by installation contractor at no additional cost if found within 24 hours of initial installation. Purchaser is responsible for repair of inoperable meter bases and other electric service components.

2.24 Tests and Inspections

The Equipment furnished pursuant to the Specifications in Attachment A shall be in compliance with all of the standard commercial inspections and tests normally performed by Supplier and its Subcontractors or other suppliers in the industry. Supplier shall furnish Purchaser with such certified information and test certificates as are normally made available to customers of Supplier’s manufacturing divisions and subsidiaries and other manufacturers of equipment specified within. Purchaser or its agent has the right to witness all factory and/or site tests and inspections. Purchaser shall not be required to accept any Equipment until the Equipment has undergone and successfully met such tests and inspections.

2.25 Initial System Acceptance Test (ISAT)

The Supplier and Purchaser will complete an Initial System Acceptance Test (ISAT) to validate the completion of Phase I Initial Deployment of System by Supplier, in accordance with the Specifications identified in any and all Attachments to this Agreement, including Supplier’s Proposal dated August 2, 2022, specifically incorporated by reference, and the Functional Testing and System Acceptance Testing Criteria set forth in the attached Attachment D. ISAT shall be completed within 9 months of the completion of the execution of this Agreement unless the ISAT needs to be extended due to Supplier side material delays, delays in Purchaser interface development, or force majeure events. The ISAT schedule details will be developed in a project planning workshop.

If all testing meets the pass criteria as set forth in Attachment D, the ISAT will be considered successful. Initial System Acceptance, as that term is used herein, shall occur on the date Purchaser indicates in writing its acceptance of satisfactory completion of the ISAT, which acceptance shall be provided within 10 days of the successful completion of the ISAT. Deployment of the System will proceed to Phase II following Initial System Acceptance MSU network software will be invoiced upon installation of software to Purchaser at initial set up.

In the event testing criteria cannot be met or a defined functionality requirement cannot be remedied as part of the testing, the Supplier shall notify the Purchaser in writing as soon as is practicable and suggest alternate remedies to resolve the problem without further costs to the Purchaser. In all such cases, the Purchaser, without stating any reasons, reserves the right to accept or reject any and all remedies proposed by the Supplier and treat this as a breach of contract.

For purposes of testing load control functionality, Supplier shall make load control software available at no cost to Purchaser for a minimum of six months following start of Phase I deployment.

2.26 Final System Acceptance Test (FSAT)

The Supplier and Purchaser will complete a Final System Acceptance Test (FSAT) to validate the completion of Phase II Full Deployment and the provision of the System by Supplier in accordance with the Specifications identified in any and all Attachments to this Agreement, including Supplier’s Proposal dated August 2, 2022, specifically incorporated by reference, and the Functional Testing and System Acceptance Testing Criteria set forth in the attached Attachment D. FSAT shall be completed within thirty (30) days of the completion of Phase II or 24 months from the start of Phase II Full Deployment, whichever is shorter, unless the FSAT needs to be extended due to Supplier side material delays or force majeure events.

Final System Acceptance, as that term is used herein, shall occur on the date Purchaser indicates in writing its acceptance of satisfactory completion of the FSAT, which acceptance shall be provided within 10 days of the successful completion of the FSAT.

In the event testing criteria cannot be met or a defined functionality requirement cannot be remedied as part of the testing, the Supplier shall notify the Purchaser in writing as soon as is practicable and suggest alternate remedies to resolve the problem without further costs to

the Purchaser. In all such cases, the Purchaser, without stating any reasons, reserves the right to accept or reject any and all remedies proposed by the Supplier and treat this as a breach of contract.

2.27 Applicable Laws and Courts

Supplier will comply with all applicable federal, state, and local statutes, laws, rules, codes, professional standards, industry best practices and guidelines, and regulations.

This Agreement will be governed by and construed and enforced in accordance with the laws of the State of North Carolina without regard to its conflicts of law principles. Venue of any legal proceedings arising from or concerning this Agreement shall be in the applicable Court in Wake County, State of North Carolina.

2.28 Licenses

Supplier shall provide to Purchaser all necessary licenses (i.e., software and others as may apply) for the System and the Work. These licenses shall be paid in full, shall be perpetual, and shall provide all rights described in this Agreement regardless of whether or not such rights are included in any license agreement form made part of this Agreement or applied otherwise.

2.28.1 FCC Licensed Frequency (when applicable)

- A. **Acquisition.** Supplier warrants that sufficient radio frequency licenses are available for lease to support the equipment and performance requirements under this Agreement. Supplier will assist Purchaser in obtaining required licenses, including any coordination with the FCC or other U.S government agency regarding radio transmission.
- B. **Interference.** Supplier agrees to promptly assist and support Purchaser in remedying any frequency interference causing undue system harm or data loss, including where Purchaser experiences harmful interference, receives a complaint or other notice of having caused harmful interference, or receives any type of communication from the FCC or U.S. or Canadian other government agency regarding radio transmission.

2.29 Insurance

As additional security for Purchaser and as separate obligation of Supplier not in conjunction with any other provisions of this Agreement, Supplier agrees to carry and maintain the during the term of this Agreement and all warranty periods occurrence-based liability insurance with coverages and limits of liability not less than those shown herein. Each of Supplier's subcontractors, if any, shall also provide and maintain during the term of their respective agreements the insurance coverages specified as follows, with limits of liability determined appropriate by Supplier. In the event work is performed by a subcontractor, Supplier shall be primarily responsible for any liability caused directly or indirectly out of the Services performed that is not otherwise covered by any subcontractor's insurance. All such insurance shall be primary with respect to any other insurance or self-insurance programs afforded to or maintained by or for the benefit of Purchaser and shall not require the exhaustion of any other coverage.

Supplier shall procure at its expense, and maintain, and shall require all of its subcontractors, if any, to procure and maintain in full force during the full term of this Agreement, insurance policies, from an insurer, or insurers, licensed to do business in the State of North Carolina where the work hereunder is to be performed. Each of such policies shall be in such form and issued by such insurer as shall be satisfactory to Purchaser; and the said policies shall provide insurance of the type and, at a minimum, in the amounts below indicated:

1. Workers' Compensation Insurance (including Occupational Disease Coverage) and Employer's Liability coverage, with limits as required by applicable law covering all of Supplier's employees, or any individual who may be deemed Supplier's employee, who perform any obligations relating to or under this Agreement. Workers' compensation insurance is required, and no "alternative" forms of insurance shall be permitted.
2. Employers Liability Insurance with limits of not less than \$1,000,000 per occurrence and \$1,000,000 per disease/each employee.
3. Commercial General Liability Insurance under an occurrence policy form with a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, including Premises/Operations, Personal Injury Liability, Products/Completed Operations, Blanket Contractual Liability assumed in the Agreement, including Completed Operations Coverage (minimum 2 years past completion of the Work). The policy must be endorsed to provide that aggregates limits apply on a per project basis. Coverage shall also be included for any construction or work on or within 50 feet of a railroad.
4. Business Automobile Liability Insurance covering liability arising out of any auto (owned, hired and non-owned) with a combined single limit of at least \$1,000,000.
5. Umbrella Insurance (Excess Liability) with minimum limits of \$10,000,000 per occurrence.

Additional Insured: All policies except for Workers' Compensation/Employers Liability, shall name, by policy endorsement, Purchaser as an additional insured.

Waiver of Subrogation: Supplier hereby waives all rights of subrogation against Purchaser and its respective directors, officers, members, employees, agents and insurers, and all policies of insurance (except Professional Liability and Pollution Liability) provided for above shall contain a provision and/or endorsement stating that the insurance carriers and underwriters waive all rights of subrogation in favor of Purchaser and its respective directors, officers, members, employees, agents and insurers.

Primary & Non-Contributory: Purchaser and Supplier intend that the Supplier shall ensure that all policies purchased and/or maintained in accordance with this section will protect Purchaser and Supplier, and will be primary and non-contributory with any other coverage elsewhere afforded or available to Purchaser, as well as provide primary coverage for all losses and damages caused by the perils covered thereby related to or arising out of the Work, and shall not require the exhaustion of any other coverage.

Severability & Cross Liability: The policies shall also include standard severability provisions that state each insured is provided coverage as though a separate policy had been issued to each, except with respects to limits of insurance. The policies shall not contain a cross liability or a cross-suit exclusion that prevent Purchaser from asserting claims against the Supplier or any other Insured under the policies.

Proof of Insurance and Replacement: The insurance required hereunder shall be maintained in effect during the entire duration of this Agreement. A certified copy of each of the endorsements and or a certificate or certificates evidencing the existence thereof shall be delivered to Purchaser prior to the commencement of the Work. Replacement certificates of insurance evidencing continuation of such coverage shall be furnished to Purchaser prior to the expiration of the current policies. Each copy or certificate shall contain a valid provision or endorsement that the policy may not be canceled or terminated without giving thirty (30) days written advance notice thereof to Purchaser. Purchaser's receipt of or failure to object to any insurance certificates or policies submitted by Supplier or its subcontractors does not release or diminish in any manner the liability or obligations of Supplier or its subcontractors or constitute a waiver of any of the insurance requirements under this Agreement. Should Supplier or any subcontractor at any time neglect, refuse to provide or cancel the insurance required herein, such failure shall constitute a default under this Agreement, and Purchaser shall have the right to terminate this Agreement and/or pursue any remedy available at law.

2.30 Settlement Preferred

Purchaser and Supplier will attempt to settle any claim or controversy arising from this Agreement (except for a claim relating to intellectual property) through consultation and negotiation in good faith and a spirit of mutual cooperation. It is anticipated that the respective Project Managers will confer and attempt to settle a dispute when appropriate before escalating the dispute to appropriate higher-level managers of the Parties, if necessary. Unresolved disputes may either be litigated or, with the mutual consent of the Parties, mediated on such terms and conditions as the Parties may mutually agree.

2.31 Indemnification

1. Supplier shall indemnify, defend and hold harmless Purchaser, Purchaser's officers, directors, partners, employees, consultants, contractors, and agents from and against and in respect to any third party claims, actions, suits, proceedings, demands, assessments, judgments, costs, losses, damages, fines, penalties, fees, and any expense whatsoever and fees (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of personal injury, death, violation of any federal, state, or local law, rule, or regulation, unauthorized disclosure of Confidential Information, and any damage to tangible or intangible property, including the loss of use thereof, hereinafter referred to as "Liabilities" to the extent that such Liabilities were caused in whole or in part by the negligent acts, errors, or omissions of Supplier, its agents, employees, Subcontractors or others for whom Supplier is responsible, caused by the performance and furnishings of the Work or other services performed by any Supplier Party for or on behalf of Purchaser.
2. Purchaser agrees that it will give prompt written notice to Supplier of any Liabilities asserted against Supplier for which Purchaser believes Supplier is responsible for indemnification, in whole or in part. Upon receipt of such written notice, Supplier shall defend at its own expense, with counsel of its choosing, any suit, claim or action brought against any Purchaser Party based upon such Liabilities.
3. Supplier agrees that it maintains Insurance ("Insurance") for purposes of insuring against loss as a result of Liabilities caused in whole or in part Supplier; such insurance coverage is acknowledged to comply with the requirements as designated in [Section 2.29 \(Insurance\)](#). Supplier understands and agrees and further warrants and represents to Purchaser that, notwithstanding any other provision to the contrary herein contained, Supplier's Liability for any and all losses, whether to Purchaser or to third parties, resulting from any Liabilities caused in whole or in part by Supplier's negligence shall not be limited to the amount of any insurance proceeds payable to or on behalf of Supplier under such Insurance, and Supplier agrees to immediately indemnify and hold Purchaser harmless for any and all such Liability in excess of such insurance proceeds. Supplier shall furnish written proof of such insurance upon execution of this Agreement, and at least annually to Purchaser with Purchaser as additional named insured.

2.32 Transportation and Risk of Loss

1. Supplier shall be responsible for the proper packaging of equipment, materials, items and components of the System and Work provided or purchased hereunder and shall exercise every precaution to adequately protect all shipments against damage in transit. The method of transportation and routing shall be at the option of Supplier for delivery to the Suppliers provided warehouse. Shipping will be F.O.B. Purchaser's designated destination, freight prepaid by Supplier. Supplier shall be responsible for correcting and collecting for any damage or loss while the equipment, items, components or materials it ships are in transit, prior to the installation of Supplier installed equipment, receipt of the equipment or materials at Purchaser's designated destination, and while any such equipment, items, components or materials are in control of any Supplier Party.
2. Supplier is responsible for all damage or loss of equipment will equipment is in Supplier warehouse or under Suppliers control.
3. All material and workmanship shall be subject to inspection and testing at reasonable times and places by Purchaser before, during, and after performance and delivery at Purchaser expense. If any loss of or damage to the Work or System or component thereof occurs prior to delivery to Purchaser, Supplier will follow manufacturer's standard terms & conditions for product repair or replacement as necessary to place the Work and System in the condition required by this Agreement.
4. Purchaser's failure to inspect or test does not relieve Supplier of any responsibility to perform according to the terms of this Agreement. Acceptance of the System and Work comprised of goods by Purchaser shall not constitute acceptance as to latent or hidden defects not subject to discovery upon reasonable inspection or testing.
5. Supplier shall notify Purchaser in writing when any material, equipment, item or component is ready for shipment. One (1) copy of the notice of shipment covering all items shipped shall be issued by Supplier and forwarded to Purchaser's office. In addition to the preceding, a complete packing list of every individual item in each box, crate, or other shipping enclosure shall be sent to Purchaser with a duplicate enclosed with each box, crate or other shipping container.

2.33 Confidential and Proprietary Information

The following language shall supersede any prior Non-Disclosure Agreement (a.k.a., "Confidentiality Agreement") entered into by the Parties relating to this MSU System and/or Work upon the execution of this Agreement:

In the course of performing the Work covered by this Agreement, both Parties may disclose certain confidential and proprietary information to the other. Confidential or proprietary information must be of such a nature that it would reasonably be concluded to be of a confidential nature or be clearly marked as confidential or proprietary and may include but is not limited to all data, materials, products, technology, computer programs, designs, drawings, specifications, manuals, business plans and information, marketing plans, financial information,

and customer information (including names, addresses, email addresses, telephone numbers, and personal financial information) (“Confidential Information”). Both Parties agree to maintain the confidential and proprietary nature of this information, along with any information developed under this Agreement, and shall disclose it only to its officers, directors, agents, suppliers, consultants, or employees with a specific need to know in the performance of this Agreement. To the extent permitted by North Carolina law, neither Party shall publish, distribute or disclose the existence or subject matter of Confidential Information to any third party without prior written consent of the Party providing Confidential Information. Confidential Information shall not include material which: (i) at the time of disclosure is in the public domain or which, after disclosure, becomes part of the public domain by publication or otherwise; or (ii) is information which Purchaser can show was in its possession at the time of disclosure and was not acquired directly or indirectly from Supplier; or (iii) is information received by Purchaser from a third entity having legal right to transmit the same.

Each Party may disclose the other Party’s Confidential Information if and to the extent that such disclosure is required by applicable law or legal process, provided that the receiving Party shall, prior to making such a disclosure, use commercially reasonable efforts to notify the disclosing Party of such requirements (as allowed by law) to afford the disclosing Party the opportunity to seek, at the disclosing Party’s sole cost and expense, a protective order or other remedy.

Upon request, either Party shall return to the other Party any Confidential Information given to it by the other Party, except that information provided by Supplier to Purchaser for the operation and use of the Work or provisioning the System made part of this Agreement, shall remain with Purchaser as long as Purchaser continues to have the associated software licenses. The Party returning Confidential Information shall destroy or provide to the other Party any documents or other media it created that contains Confidential Information. The Party returning Confidential Information shall certify in writing that such documents or other media it created are destroyed if such is requested.

To the extent permitted by North Carolina law, disclosure of Confidential Information beyond what is outlined above shall be approved in writing by the other Party in advance of such disclosure.

2.34 Safety and Compliance with Codes and Other Laws

Supplier shall at all times be solely responsible for complying with all applicable federal, state, and local laws, ordinances, regulations, and codes in connection with the Work, including those relating to the safety of all persons and property. This shall include obtaining all licenses and permits required for the Work. Supplier understands that the obligations of the Parties hereunder are subject to the applicable regulations and orders of governmental agencies having jurisdiction in the matters.

Should at any point Supplier find any unsafe or hazardous areas or conditions, Supplier will immediately report the said condition to Purchaser.

No obligations shall be imposed upon Purchaser, Purchaser's officers, directors, partners, employees, consultants, and agents to review or supervise Supplier’s compliance with any safety measures, laws, ordinances, regulations, or codes. Supplier is solely responsible for its acts, errors, and omissions and the acts, errors, and omissions of any Subcontractor, of any Supplier or of any other individual or entity performing any of the Work.

2.35 Site, Supervision, and Safety

The Site (all equipment staging areas and field work locations) will be furnished to Supplier by Purchaser in its presently existing condition, and Supplier shall leave the Site in the same condition as it was received, except as otherwise provided herein.

Supplier shall be responsible for furnishing proper protection for the health and life of personnel, for the public, for the Work and all materials, machinery, equipment, tools, and supplies used in the performance thereof, and for the property of others.

Supplier shall make sure Supplier Parties and any other individual or entity performing any of the Work are informed of dangers associated with the electric distribution systems, line facilities, and communications facilities and know how to exercise proper precautions and follow appropriate safety procedures. Supplier shall provide regular and appropriate safety briefings for its personnel and others involved in the Work.

Supplier shall cause any construction work under this Agreement to receive constant supervision by a competent superintendent (hereinafter called the “Superintendent”) who shall be present at all times during working hours where construction is being carried on. Supplier shall also employ, in connection such construction work, capable, experienced and reliable forepersons and such skilled workers as may be required for the various classes of work to be performed. Directions and instructions given to the Superintendent shall be binding upon those doing the Work.

Supplier shall at all times take all reasonable precautions for the safety of employees on the work and of the public, and shall comply with all applicable provisions of federal, state, and municipal safety laws and building and construction codes, as well as the safety rules and regulations of Purchaser. All machinery and equipment and other physical hazards shall be guarded in accordance with the most current version of “Manual of Accident Prevention in Construction” of the Associated General Suppliers of America unless such instructions are incompatible with federal, state, or municipal laws or regulations.

The following provisions shall not limit the generality of the above requirements:

1. Supplier shall at no time and under no circumstances cause or permit any employee of Supplier to perform any work upon energized lines, or upon poles carrying energized lines, unless otherwise specified or agreed to in writing.
2. Supplier shall conduct the Work so as to cause the least possible obstruction of public highways.
3. Supplier shall provide and maintain all such guard lights and other protection for the public as may be required by applicable statutes, ordinances and regulations or by local conditions.

2.36 Time

Time is of the utmost importance and shall remain a material element of this Agreement, and no acts of Purchaser, including without limitation, modifications of this Agreement or acceptance of late deliveries, shall constitute waiver of this provision. Purchaser also reserves the right to refuse or return at Supplier’s risk and expense shipments made in advance of required schedules, or to defer payment on advance deliveries until scheduled delivery dates. Supplier shall notify Purchaser in writing immediately of any actual or potential delay to the

performance of this Agreement and such notice shall include a revised schedule and shall not constitute a waiver to Purchaser's rights and remedies hereunder.

2.37 No Implied Waiver

Either Party's failure to insist upon strict performance by the other Party of any of the terms of this Agreement shall not be construed as a waiver of terms of this Agreement. No waiver shall be deemed a continuing waiver or waiver in respect of any subsequent breach or default, either of a similar or dissimilar nature, unless expressly so stated in writing by a duly authorized representative of the waiving Party.

2.38 Right to Cure

If default shall be made by the Supplier or any Supplier Party in the performance of any of the terms of this Agreement, Purchaser, without in any manner limiting its legal and equitable remedies in the circumstances may provide to Supplier a written notice requiring Supplier to cause such default to be corrected forthwith. Unless within ten (10) days after the provision of such notice to Supplier such default shall be corrected or arrangements for the correction thereof satisfactory to Purchaser shall be made by the Supplier, Purchaser shall be entitled to any right or remedy available herein or existing at law or in equity including termination of this Agreement.

2.39 Termination

Purchaser may terminate this Agreement with or without cause, in whole or in part, at any time by written notice to Supplier. In such an event, Purchaser shall pay Supplier for any outstanding undisputed invoices and for all actual labor and material costs incurred prior to such termination notice in accordance with Attachment B less salvage value, unless termination is for cause such as non-performance or default by Supplier.

Upon receipt of a notice of termination of some or all of the System, Supplier shall discontinue the provisioning of the System and make every effort to cancel all subcontracts, orders and other agreements, or portions thereof that involve the terminated System. If Purchaser specifically requests, Supplier shall attempt to transfer subcontracts to Purchaser. Purchaser shall not be liable for any damage to any subcontractor in case of termination.

Supplier will also make every effort to preserve the terminated portion of the System regardless of location, assist with inventory of the terminated System, identify outstanding orders and subcontracts, and as requested by Purchaser, transfer the System and title to the System to Purchaser. Purchaser may decline title to any portion of the System.

Supplier shall not be entitled to damages resulting from termination of any Work or provisioning of the System, including loss of anticipated revenue or costs such as idle personnel or equipment.

If the Supplier defaults in the performance of the Work, the Purchaser may at its option, finish the Work by any method possible, including contracting with another supplier.

2.40 Extension to Successors and Assigns

Each and all of the covenants, obligations and agreements contained in this Agreement shall extend to and be binding upon the successors and assigns of the parties hereto.

2.41 Intellectual Property Infringement

Manufacturer shall defend, indemnify and hold harmless Purchaser and its employees, contractors, officers and directors from and against all actions, proceedings, demands, claims, liabilities, losses, damages, costs, documented expenses (including without limitation actual and reasonable legal fees), judgment by a court of competent jurisdiction, or settlement reached from any litigation instituted against Purchaser, by a third-party which alleges that the System or Services provided hereunder, or any portion thereof, infringes upon the patents, trade secrets, trademarks, or copyrights of such third-party, provided that Manufacturer shall have the right to select counsel in such proceedings and control such proceedings provided Manufacturer promptly accepts responsibility for indemnification hereunder. Notwithstanding the foregoing, Manufacturer shall have no liability under this indemnity unless Purchaser cooperates with and assists Manufacturer in any such proceedings and gives Manufacturer written notice of any claim hereunder within twenty (20) business days of receiving it. Further, Manufacturer shall have no liability hereunder if such claim is related to; (i) any change, modification or alteration made to the System by Purchaser or a third party at Purchaser's direction and without Manufacturer's prior consent, (ii) use of the System in combination with any goods or services not provided by Manufacturer or Supplier or Supplier's subcontractor hereunder and without Manufacturer's prior consent; (iii) Purchaser's failure to use the most recent version of the Software or to otherwise take any reasonable corrective action as reasonably directed by Manufacturer, provided that Purchaser has the right to utilize such most recent Software version; (iv) compliance by Manufacturer with any non-standard designs, specifications or instructions provided by Purchaser and without Manufacturer's prior consent, or (v), any use of the System other than for the Permitted Use without Manufacturer's prior consent. In the event the System is adjudicated to infringe a patent or copyright of a third party and its use is enjoined, or, if in the reasonable opinion of Manufacturer, the System is likely to become the subject of an infringement claim, Manufacturer shall, at its sole discretion and expense, either ; (i) procure for Purchaser the right to continue using the System or, (ii) modify or replace the System so that it becomes non-infringing, provided such replaced or modified version of the System does not detract from the functionality agreed upon by the parties in this Agreement or (iii) remove the System and provide a refund to the Purchaser for sums paid for the System. THIS SECTION STATES PURCHASER'S SOLE AND EXCLUSIVE REMEDY AND MANUFACTURER'S ENTIRE LIABILITY FOR ANY CLAIM OF IP INFRINGEMENT.

2.42 Legal Notices

Any legal notice required or permitted by this Agreement or given in connection with it shall be in writing and shall be given to the appropriate Party by personal delivery, certified mail, or other recognized delivery service that confirms delivery. All notices required, permitted, or desired to be given hereunder shall be deemed duly given and effective (i) when received after being delivered by hand or (ii) five (5) days after being deposited with the United States Postal Service, properly addressed, sent by registered or certified mail, return

receipt requested, postage prepaid. Any Party may change its address for the purpose of this Paragraph by giving written notice of such change to the other Parties in the manner provided in this Paragraph.

Legal notices to Purchaser shall be sent to:

Apex Town Manager
Apex Town Hall
73 Hunter Street
P.O. Box 250
Apex, NC 27502

With a copy to:
Apex Town Attorney
Apex Town Hall
73 Hunter Street
P.O. Box 250
Apex, NC 27502

Legal notices to Supplier shall be sent to:

Contact Name: Robby Atkins
Supplier Name: Ferguson Enterprises, LLC 1044 Taylors Creek Dr. Greenville, NC 27835

Legal notices to MSU System Manufacturer shall be sent to:

Supplier Name: Sensus USA Inc
Sensus 637 Davis Dr. Morrisville, NC 27560

2.43 No Construction Against Drafter

This Agreement has been negotiated and prepared by Purchaser and Supplier and the Parties' respective attorneys and, should any provision of this Agreement require judicial interpretation, the court interpreting or construing such provision shall not apply the rule of construction that a document is to be construed more strictly against one Party.

2.44 Force Majeure

Neither Purchaser nor Supplier shall be considered in default in the performance of its obligations under this Agreement to the extent that the performance of its obligations is prevented or delayed by any cause beyond the Party's control, including without limitation: acts or omissions of governmental authorities; acts of public enemy; wars; blockades; riots; civil disturbances; unavailability of supplier components or parts, floods; hurricanes; tornadoes; pandemics; epidemics; and any other similar events, acts, or conditions (individually and collectively referred to as "Force Majeure"). "Unavailability of supplier components or parts" means that Supplier and Manufacturer are unable to provide the same or similar components or parts to another customer and such unavailability is not limited to the Purchaser's needs under this Agreement. Further, if Supplier or Manufacturer claims Force Majeure due to the unavailability of component parts for the goods provided under this Agreement, Supplier and Manufacturer will additionally communicate to the Purchaser the following: (i) the cause of the unavailability of component parts, and (ii) the efforts taken by Manufacturer to identify alternative suppliers. As components or parts become available, Supplier and Manufacturer shall use commercially reasonable efforts to complete delivery of the goods on a schedule agreeable to the Parties in writing.

In the event that Supplier considers Supplier's performance is prevented or delayed by a cause beyond its control, Supplier shall inform Purchaser in writing within five (5) days after Supplier knows or by reasonable diligence should know of the event causing or likely to impact Supplier's performance. If an event of Force Majeure continues for a period of 90 or more days, Purchaser shall have the right to terminate this Agreement for convenience in accordance with Article 2.39 herein.

2.45 Conflict

Except as the Parties may otherwise explicitly agree, pursuant to the terms of this Agreement pertaining to any changes to the Work or amendments to this Agreement, the following rules of conflict shall apply:

1. In the event of a conflict or inconsistency between this Agreement and the terms or conditions of any attachments to this Agreement, the priority of the documents is as listed in Section 2.2.
2. In the event of a conflict or inconsistency between this Agreement and any Purchase Order Documents, the priority is as listed in Section 2.20.

In the event of an ambiguity in the specifications, drawings, or other requirements of this Agreement, Supplier must, before proceeding, consult Purchaser whose written interpretation shall be final.

2.46 Severability

Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Purchaser and Supplier who agree that this Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision, provided that such stricken clause is not material to the performance of this Agreement and neither Party is aggrieved by the omission of such clause or the reformation of this Agreement.

2.47 Amendment

Notwithstanding the requirements for change-orders described above, this Agreement may not be changed, amended, modified or released or discharged, in whole or in part, except by an instrument in writing referred to as an amendment to this Agreement signed by authorized representatives of both Parties hereto.

2.48 Section Titles

The section and subsection names in this Agreement are only provided for convenience. In no way do the section and subsection names restrict the applicability of the requirements to the topic area given in the section or subsection name. For example, it is possible requirements under a section labeled "hardware" could actually include software requirements unrelated to the section or subsection title. Furthermore, it is possible that requirements listed under a particular section or subsection name are not all the requirements for that topic within this Agreement, as requirements on that topic may be listed in other sections, subsections or Attachments.

2.49 E-Verify

The Supplier shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Supplier shall require all of the Supplier's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

2.50 Anti-Human Trafficking

The Supplier warrants and agrees that no labor supplied by the Supplier or the Supplier's subcontractors in the performance of this Agreement shall be obtained by means of deception, coercion, intimidation or force, or otherwise in violation of North Carolina law, specifically Article 10A, Subchapter 3 of Chapter 14 of the North Carolina General Statutes, Human Trafficking.

2.51 Non-Appropriation

Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the Purchaser are from appropriations and monies from the Town Council and any other governmental entities. In the event sufficient appropriations or monies are not made available to the Town to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the Town.

2.52 Nondiscrimination.

Pursuant to Section 3-2 of the Town of Apex Code of Ordinances, Supplier hereby warrants and agrees that Supplier will not discriminate against a protected class in employment, subcontracting practices, or the solicitation or hiring of vendors, suppliers, or commercial customers in connection with this Agreement. For the purposes of this Agreement "protected class" includes age, race, religious belief or non-belief, ethnicity, color, national origin, creed, sex, sexual orientation, gender identity, marital status, natural hair style, genetic information, pregnancy, familial status, disability, veteran or military status, or disabled veteran status.

2.53 Survival

The rights and obligations of the Parties under this Agreement that would by their nature survive the expiration or termination of this Agreement, including but not limited to those pertaining to further assurances, confidentiality, applicable laws and courts, safety and compliance with codes and other laws, warranty, indemnification, insurance, limitations of liability, and severability shall survive the expiration or termination of this Agreement.

2.54 Limitation of Liability

Only in the manner and to the extent permitted under North Carolina law and without waiver of Purchaser's governmental immunity, the aggregate liability for Supplier and Manufacturer in any and all causes of action arising under, out of or in relation to this Agreement, its negotiation, performance, breach or termination (collectively "Causes of Action") shall not exceed the greater of; (a) the total amount paid by Purchaser under this Agreement; or (b) ten thousand US dollars (USD 10,000.00). This is so whether the causes of action are in tort, including, without limitation, negligence or strict liability, in contract, under statute or otherwise. As separate and independent limitations on liability, each party's liability shall be limited to direct damages. Further, Supplier and Manufacturer shall not be liable for; (i) any indirect, incidental, special or consequential damages; nor (ii) any revenue or profits lost by Purchaser or its affiliates from any end user(s), irrespective whether such lost revenue or profits is categorized as direct damages or otherwise; nor (iii) any In/Out Costs; nor (v) damages arising from maincase or bottom plate breakage caused by freezing temperatures, water hammer conditions, or excessive water pressure.

In witness whereof, the Parties have, by their duly authorized representatives, executed this Agreement on the date(s) indicated below.

Town of Apex (Apex)

By: _____

Print Name: _____

Title: _____

Date: _____

Ferguson Enterprises, LLC

Sensus USA Inc.

By:

By:

Print Name:

Print Name:

Title:

Title:

Date:

Date:

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Antwan Morrison, Finance Director

Attachments

It is hereby mutually agreed by the Parties that the following list documents are to be included as part of this Agreement and herein incorporated by reference for all purposes:

- Attachment A MSU, MDMS, and Meter Exchange Requirements (Confidential)
- Attachment B Pricing Schedule and Bill of Materials (Confidential)
- Attachment C-1 Propagation Study (confidential)
- Attachment C-2 Propagation Study Base Station Locations (confidential)
- Attachment D-1 MSU Initial System Acceptance Test (ISAT)
- Attachment D-2 reserved
- Attachment D-3 reserved
- Attachment D-4 reserved
- Attachment E MSU Final System Acceptance Test (FSAT)
- Attachment F-1 Apex Data Flow and Interfaces (confidential)
- Attachment F-2 Apex Interface Summary and System of Truth (confidential)
- Attachment F-3 Multispeak Integration (confidential)
- Attachment G Responsibility Summary
- Attachment H reserved
- Attachment I reserved
- Attachment J reserved
- Attachment K reserved
- Attachment L Statement of Work Electric Meter and Water MSU Node Exchange (confidential)
- Attachment M Statement of Work MSU (confidential)
- Attachment N Manufacturer Warranties
- Attachment O Catastrophic Warranty (confidential)
- Attachment P reserved
- Attachment Q reserved
- Attachment R reserved
- Attachment S Spectrum License and Software as a Service (SaaS) Agreement (confidential)
- Attachment T reserved