

Master Utility Service Agreement (“M-USA”) - Overview

This summary is provided as a courtesy to assist potential customers by providing a general overview of the M-USA and its different components and features. The M-USA is a service contract that functions as a master contract between Sustainability Partners (“SP”) and our customers. The M-USA sets the foundation for our entire relationship. SP solves the capital needs for infrastructure and partners with our Customers to keep it reliable, safe, and improving.

The M-USA is a simple and transparent agreement that is uniform across all customers, assets, and geographies with no margins added to vendor, product, installation, or capital sourcing costs. Typical legal contracts of this nature may be hundreds of pages in length. SP’s M-USA is only 10 pages! As this is a standardized and underwritten agreement, any agreed upon material changes to the M-USA must be set forth in the Additional Terms contained in the Service Addendum.

The M-USA has the following components:

- M-USA Signature Page
- Exhibit 1: General Terms and Conditions, which includes the Glossary
- Exhibit 2: Service Addendum
- Exhibit 3: Notice to Proceed
- Exhibit 4: Certificate of Acceptance
- Exhibit 5: ACH Agreement

SP Services

Included in the M-USA are different service offerings provided by SP. The services are part of every master contract to address the flexibility needed by our Customers. Every Customer has specific goals they are trying to achieve today and unexpected goals that will arise in the future they will have to address. SP’s main services are *Infrastructure as a Service®* and *Capital Recovery Service™* are just two of the tools among many provided by SP that give our Customers the flexibility they need.

Infrastructure as a Service

This is our traditional utility-like service in which SP owns the infrastructure and the Customer pays a Usage Rate for that infrastructure. There is no upfront payment required from the Customer.

Capital Recovery Service

This service allows Customers to monetize their current infrastructure assets and directly own the new infrastructure assets when needed. SP provides the funds directly for the Customer to use, which allows the Customer to own the infrastructure. The repayment of the funds provided (the “Rights Fee”) is based on a percentage of an identified revenue stream. This payment method is necessary to meet the requirements of GASB 60.

As a result of the many flexibilities and options in the master contract, there are specific provisions that will and will not apply depending on each specific Service Addendum project and Customer need.

M-USA & Exhibits Summarized

Exhibit 1 – General Terms and Conditions, and a Glossary of Terms

This Exhibit consists of a ten-page document that contains governing terms, conditions, and defined terms for the contractual relationship between SP and our Customer.

Section 1. The Sustainability Services

In this Section, the Customer engages the SP Entity as an independent contractor to provide Services at the Location specified in the Service Addendum.

Section 2. USA Payments

The USA Payment is the amount listed in the Service Addendum and paid directly to the SP Entity.

The monthly USA Payment is calculated as follows: Usage + Capacity + Availability + Minor Maintenance and Care (MMC) + Major Maintenance and Renewal (MMR) + Deferred Catchup. As set forth above, although the USA Payment can consist of each of these components, they may not be applicable for each specific Service Addendum.

The payment process begins once the Certificate of Acceptance (“CoA”) is executed. The SP Entity will electronically send the Customer a monthly invoice. Customers must pay in full within 30 days. If the Payment is late, then there is a 1.5% interest charge per month until payment is made. If applicable, invoices are subject to state law provisions requiring government entities to pay valid and proper invoices in a timely manner (“Prompt Payment Act”).

If there is an interruption in collecting usage data (“Data Interruption”) from the Units and the USA Payment could not be calculated, then the SP Entity may estimate the payment based on historical usage. If the data becomes available within six months, the SP Entity will reconcile the next invoice with actual data and provide a true-up.

Customers which are government entities are subject to legislative appropriation whereby funds are set aside for USA Payments. Lack of appropriations does not cause breach or default as long as USA Payments are treated the same as (“pari-passu”) all other utilities.

Section 3. Unit Procurement, Installation and Acceptance

This Section includes details about selecting specific Units and vendors or contractors (“Vendors” or “Contractors”). Simply put, both selections must be agreed upon by both the SP Entity and the Customer, then written agreements with all vendors will be executed, which is termed a Master Goods and Services Agreement (“MGSA”).

If a government entity requires a competitive bid process (“Competitive Bidding”), then those rules will be applied and followed.

Following the execution of the NtP, the SP Entity proceeds with procuring the Units. This section also specifies an amount that may not be exceeded known as the installation limit (“Installation Limit” or “Installation Limit/Unit”) to prevent excessive or unexpected costs. If for some unexpected reason (e.g., concealed or unknown physical conditions), costs are expected to exceed the Installation Limit, then the Customer and SP Entity will jointly and promptly investigate and determine what to do. If additional costs are incurred, the Customer can either choose to pay those costs directly, the SP Entity can pay for the costs and then adjust the Usage Rates in the Service Addendum, or choose to terminate the M-USA.

Section 4. Unit Operation

The Customer is solely responsible for the Units and required to keep the Units at the Location specified in the Service Addendum. The Customer must notify SP if there is a malfunction, defect, or interruption in operation or condition of the Units.

Section 5. Customer Care at the Location

The Units are entrusted in the Customer's care while at the Location, so the Customer is responsible for protecting the Units from damage, modification, vandalism, interference, or destruction.

The Customer is required to have property and liability insurance on the Units; the SP Entity can obtain the insurance for the Units on behalf of the Customer, the cost for which is added to Customer's monthly invoices, or the Customer may acquire insurance for the Units directly.

Section 6. Ownership & Reporting

When the SP Entity is the owner of Units, the Units are not deemed part of the Customer's Location.

There may be grants, federal funding, rebates, etc. ("Incentives") with respect to the Units. If so, the Customer is responsible for obtaining such Incentives.

The Customer will not directly or indirectly cause nor create any lien ("Lien") to be placed on Units.

Section 7. Major Maintenance / Renewal

SP refers to Major Maintenance / Renewal as "MMR." MMR means a replacement, major overhaul, substitution, or material upgrade of the Units from time to time. This is completed using a reserve fund ("Support Reserves") for unplanned maintenance, breakdown, or emergency repair. Support Reserves are also a way to pre-fund a Unit's replacement at the Customer's option. The MMR values are identified separately in the Service Addendum.

Section 8. Minor Maintenance / Care

SP refers to Minor Maintenance / Care as "MMC." MMC is the performance of warranty services, ongoing maintenance, repairs, and updates for the Units. MMC is determined in collaboration with the original equipment manufacturer ("OEM") for expected annual maintenance necessary to keep Units efficient and in a condition sufficient for the asset to operate reliably, safely and at performance targets ("State of Good Repair"). This may include inspections, scheduled replacement of ancillary components or preventative measures to keep Units operating at their best. MMC is paid for with Support Reserves.

Section 9. Reserves and Costs

A portion of the USA Payments will be applied to Support Reserves as agreed upon in the Service Addendum.

Section 10. The Term

The commencement or M-USA initial term ("Initial Term") starts when the Customer executes the CoA. It automatically renews every 30 days, unless the Customer gives written nonrenewal notice 30 days' prior to terminate the M-USA.

Section 11. Changes

If there are unused contingency reserves related to the Units installation ("Installation") 90 days after the CoA is signed, the SP Entity will calculate and appropriately lower the Customer's monthly Usage Rate.

Section 12. Limitations on Liability

The SP Entity is not liable for indirect, special, or other damages, and the SP Entity's total liability does not exceed the total USA payments actually paid to the SP Entity.

Section 13. Default; Remedies

If either the Customer or SP fails to pay anything agreed upon within 30 days of its due date and also does not make the payment within 10 business days of written notice of non-payment, then the non-defaulting party, either Customer or SP, may terminate the M-USA.

If either Customer or SP fails to substantially perform any material obligations agreed upon in the M-USA and does not fix the performance within 10 business days of written notice, then the non-defaulting party, either Customer or SP, may terminate this M-USA.

Section 14. Obligations Following Termination

This section sets forth options for parties if the agreement terminated. Customers may either acquire ownership or a sole use license of the Units, or when the Service Addendum allows, uninstall and return the Units in good condition. If a positive balance is remaining in the Support Reserve after paying any unpaid obligations, the amount shall be distributed to the Customer.

Section 15. Dispute Resolution; Governing Law

The Customer and SP agree to arbitration if Customer is not a governmental entity. For governmental entities, the governing law and venue in the Location State of the project is defined as the ("Dispute Resolution State"), which is where the project is located.

Section 16. SP Entity Agent

SP is the authorized agent of the SP Entity to receive notices, invoices, collect payments and make SP Entity decisions, give instructions and take actions contemplated in the M-USA.

Sections 17-28. Standard Legal Clauses

The M-USA is a service contract, and no other representations or warranties are made by either Customer or SP. Customers are responsible for taxes, if any, and SP maintains its patents, trade secrets and intellectual property.

A force majeure event is an event or circumstance or series of such beyond the reasonable control of either the Customer or SP (e.g., acts of terrorism, war, riot, earthquake, hurricane, etc. causing loss of internet, electricity, etc.), which then may cause obligations under the M-USA to change.

Additionally, the M-USA may not be transferred to another party without written consent and no third-party beneficiaries are allowed.

Exhibit 2 – Service Addendum (“Service Addendum”)

The Service Addendum specifies the project details, including assets (“Units”), location(s) (“Location”), and monthly usage charge (“USA Payment”). There is no financial obligation or cost to Customers when signing the Service Addendum.

Exhibit 3 – Notice to Proceed (“NtP”)

The NtP is signed after the M-USA and the Service Addendum have been executed and all of the approved vendor contracts and pricing have been finalized. The NtP will also confirm the number and type of the Units.

Fully executing the NtP creates a binding legal agreement for the particular project, and it is not until this point that the Customer is financially obligated to pay the USA Payment when the Units are installed.

Depending on the project, there may be multiple NtP’s signed. This often happens with very large projects involving increased volume Unit orders (e.g., water meters). If a NtP is not utilized for this purpose, a Change Order will document the increase in the scope and pricing.

Exhibit 4 – Certificate of Acceptance (“CoA”)

The CoA is signed by the Customer to accept delivery, installation, and performance of the Units provided under the Service Addendum and verifies that the Units have been fully and properly installed, tested, are fully operational and ready for use.

The CoA will list the Units being accepted for that point in time.

For some Customer projects, there may only be one CoA and other projects may have several CoA’s as the project proceeds and Units become available for use.

Exhibit 5 – ACH Agreement

The ACH Agreement allows the Customer to conveniently make the monthly USA Payments utilizing the Automatic Clearing House (“ACH”) network for all Customer payments to the SP Entity.