



**Agreement for Professional Services
("Agreement")
Mission Springs Water District 66575
Second Street
Desert Hot Springs, CA 92240 Telephone
(760) 329-6448 - FAX (760) 329-2482**

For your protection, make sure that you read and understand all provisions before signing. The terms and attachments are incorporated in this document and will constitute a part of the Agreement between the parties when signed.

TO: WaterSmart Software, Inc.
1321 Upland Dr.
Houston, TX 77043

DATE: _____

TITLE: Keith Foerster, CFO

The undersigned Consultant agrees to furnish the following:

All Work/Services per the attached and Exhibit A – SaaS Provisions, and Exhibit B – Order Form provided by CONSULTANT.

Contract price \$: Not to Exceed \$180,570

Term: 12 months 60 Months from the Contract Effective Date. In addition to the forgoing, the Term shall automatically extend at the end of the initial term (and any extended term) by another one year period for up to four additional one year periods unless Mission Springs Water District gives written notice of termination to WaterSmart Software, Inc. at least thirty (30) days in advance of the end of the then applicable one year period. The maximum Term shall be five (5) years.

Instructions: Sign and return via email. Upon acceptance by Mission Springs Water District, a copy will be signed by its authorized representative(s) and promptly returned to you. Insert the names of your authorized representative(s) below.

Accepted: _____
Mission Springs Water District

Consultant: _____
WaterSmart Software, Inc.
(Business Name)

By: _____
Arden Wallum
Title General Manager

By: _____
Keith Forester
Title CFO



Consultant agrees with the Mission Springs Water District that:

- a. When the law establishes a professional standard of care for Consultant's services, to the fullest extent permitted by law, Consultant will immediately defend, indemnify and hold harmless Mission Springs Water District, its directors, officers, employees, and authorized volunteers from all claims and demands of all persons that arise out of, pertain to, or relate to the Consultant's gross negligence, recklessness, or willful misconduct in the performance (or actual or alleged non-performance) of the work under this agreement. Consultant shall defend itself against any and all liabilities, claims, losses, damages, and costs arising out of or alleged to arise out of Consultant's performance or non-performance of the work hereunder and shall not tender such claims to Mission Springs Water District nor to its directors, officers, employees, or authorized volunteers, for defense or indemnity.
- b. Other than in the performance of professional services, to the fullest extent permitted by law, Consultant will immediately defend, indemnify and hold harmless Mission Springs Water District, its directors, officers, employees and authorized volunteers from all claims and demands of all persons arising out the performance of the work or furnishing of materials; including but not limited to, claims by the Consultant or Consultant's employees for damages to persons or property except for the sole negligence or willful misconduct or active negligence of Mission Springs Water District, its directors, officers, employees, or authorized volunteers. Consultant's defense and indemnification obligations under the Agreement shall be limited and shall not exceed the fees received by Consultant for the services that give rise to the liability in the twelve months preceding the accrual of such liability.
- c. Each party has the right to terminate this Agreement if the other party has materially breached the Agreement and such breach remains uncured for a period of thirty days after written notice of such breach is sent to the breaching party.
- d. By his/her signature hereunder, Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and that Consultant will comply with such provisions before commencing the performance of the professional services under this agreement. Consultant and sub-consultants will keep workers' compensation insurance for their employees in effect during all work covered by this agreement.
- e. Consultant will file with Mission Springs Water District, before beginning professional services, a certificate of insurance satisfactory to Mission Springs Water District evidencing professional liability coverage of not less than \$1,000,000 per claim and \$2,000,000 annual aggregate, that coverage shall not be cancelled except with notice to Mission Springs Water District. Coverage is to be placed with a carrier with an A.M. Best rating of no less than A-: VII, or equivalent, or as otherwise approved by Mission Springs Water District. The retroactive date (if any) is to be no later than the effective date of this agreement. Consultant shall maintain such coverage continuously for a period of at least one (1) years after the completion of the contract work. In the event that the Consultant employs other consultants (sub-consultants) as part of the work covered by this agreement, it shall be the Consultant's responsibility to require and confirm that each sub-consultant meets the minimum insurance requirements specified above.



- f. Consultant will file with Mission Springs Water District, before beginning professional services, certificates of insurance (Acord Form 25 or equivalent) satisfactory to Mission Springs Water District evidencing

Coverage – Coverage for commercial general liability and automobile liability insurance shall be at least as broad as the following:

1. Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001)
2. Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering Symbol 1 (any auto)

Limit – The consultant shall maintain limits no less than the following

1. General liability - coverage of not less than one million (\$1,000,000) per occurrence or two million (\$2,000,000) in aggregate,
2. Auto liability - One million dollars \$1,000,000 for bodily injury and property damage each accident limit.
3. Workers' compensation (statutory limits) and employer's liability (\$1,000,000) (if applicable).

Required Provisions –

- The general liability coverage shall give Mission Springs Water District, its directors, officers, employees (collectively the District), and authorized volunteers insured status (via ISO endorsement at least as broad as CG 2010 1185 or **both** CG 2010 plus CG 2037 if a later editions is used) specifically naming the Mission Springs Water District, its directors, officers, employees, or authorized volunteers; or using the language that states "as required by written contract."
- The general liability coverage is to state or be endorsed (with as broad as ISO endorsement CG 20 01 04 13) to state "such insurance shall be primary, and any insurance, self-insurance or other coverage maintained by Mission Springs Water District, its directors, officers, employees, or authorized volunteers shall not contribute to it".
- Coverage is to be placed with a carrier with an A.M. Best rating of no less than A- VII, or equivalent, or as otherwise approved by Mission Springs Water District.
- The coverage shall contain no special limitations on the scope of protection afforded to Mission Springs Water District, its directors, officers, employees, or authorized volunteers.
- In the event that the Consultant employs other consultants (sub-consultants) as part of the work covered by this agreement, it shall be the Consultant's responsibility to require and



confirm that each sub-consultant meets the minimum insurance requirements specified above.

If any of the required coverages expire during the term of this agreement, the Consultant shall deliver the renewal certificate(s) to Mission Springs Water District at least ten (10) days prior to the expiration date.

- g. All fees will be invoiced annually in advance. Payment by MSWD under this Agreement for are outlined in the Order Form in Exhibit B. Consultant shall invoice MSWD upon signing of the Agreement and MSWD shall pay invoices within 30 days of receipt. Consultant shall be entitled but not obligated to suspend services due to delinquent payments more than 30 days after written notice from Consultant.
- h. Professional permits required by governmental authorities will be obtained at Consultant's expense, and Consultant will comply with applicable local, state and federal regulations and statutes including but not limited to Cal/OSHA requirements.
- i. Any change in the scope of the professional services to be done, method of performance, nature of materials or price thereof, or to any other matter materially affecting the performance or nature of the professional services will not be paid for or accepted unless such change, addition or deletion is approved in advance, in writing by a supplemental agreement executed by Mission Springs Water District.
- j. Intellectual Property Rights. Except as expressly described in the Agreement or Order Form the Agreement does not grant either party any rights, implied or otherwise, to the other's content or Intellectual Property. As between the parties, Client retains all Intellectual Property Rights in Client data, and VertexOne retains all Intellectual Property Rights in the VertexOne data, Services and Software. At its option, Client may provide feedback and suggestions about the Services to VertexOne ("Client Feedback"). If Client provides Client Feedback, then VertexOne and its Affiliates may use that Feedback without restriction and without obligation to Client. At its option, VertexOne may provide feedback and suggestions about its use of the Services to Client ("VertexOne Feedback"). If VertexOne provides VertexOne Feedback, then Client and its Affiliates may use that Feedback without restriction and without obligation to VertexOne.
- k. Consultant shall not disclose, publish, or authorize others to disclose or publish, design data, drawings, specifications, reports, or other information pertaining to the projects assigned to the Consultant by the Mission Springs Water District or other information to which the Consultant has had access during the term of this Agreement without the prior written approval of an Authorized Representative during the term of this Agreement. Consultant's covenant under this section shall survive the termination of this Agreement. The foregoing obligations are subject to the following clarification of the parties' rights and obligations with respect to aggregated and anonymous data. MSWD hereby gives its permission to Consultant to use and disclose on an anonymous and/or aggregated basis (excluding any personally identifiable information) any data pertaining to MSWD end customers and their water consumption, including without limitation derivative data and data combined with the data of other utilities, for purposes of project evaluation and any research, product development, marketing, or other legitimate business purposes. This section shall survive any termination or expiration of the Agreement.

- i. Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by the Mission Springs Water District or the Authorized Representative. The Consultant shall maintain adequate records on services provided in sufficient detail to permit an evaluation of service. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. At all times during regular business hours, Consultant shall provide access to such books and records to the Authorized Representative or his or her designees, and shall give the Authorized Representative or his or her designees the right to examine and audit such books and records and to make transcripts as necessary, and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement.
- m. This Agreement is personal to the Consultant. Any attempt to assign or subcontract any right or obligation hereunder by the Consultant shall be void unless approved in writing in advance by the Authorized Representative. Neither party shall assign, sublet or transfer any right, privilege or interest in this contract, or any part thereof, without prior written consent of the other party, which consent shall not be unreasonably delayed, withheld or conditioned; provided, however, that either party may assign or delegate its rights and obligations under this Agreement, in whole or in part, without the other party's consent to (i) an Affiliate, or (ii) to an entity that acquires all or substantially all of the assets of such party or which is the successor in a merger or acquisition involving such party.
- n. Consultant shall not maintain, commit, or permit the maintenance or commission of any nuisance in connection with the performance of services under this Agreement.
- o. Consultant agrees to be familiar with and comply with all applicable federal, state, and local conflict of Interest laws, including, but not limited to, the Political Reform Act (California Government Code Sections 81000, et seq.) and California Government Code Section 1090. During the term of this Agreement, Consultant shall retain the right to perform similar services for other clients, but Consultant and its officers, employees, associates and subcontractors shall not, without the prior written approval of the Authorized Representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute.
- p. A waiver by the Mission Springs Water District of any breach of any term, covenant, or condition contained in this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this Agreement whether of the same or different character.
- q. The Consultant shall commence, carry on, and complete all required tasks with all practicable dispatch, in a sound, economical, and efficient manner in accordance with all applicable laws and generally accepted industry standards.
- r. No Third-Party Beneficiaries. The Mission Springs Water District shall not be obligated or liable under this Agreement to any party other than the Consultant



In no event shall the making by the Mission Springs Water District of any payment to the Consultant constitute or be construed as a waiver by the Mission Springs Water District of any breach of covenant, or any default which may then exist, on the part of the Consultant, and the making of any such payment by the Mission Springs Water District while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the Mission Springs Water District with regard to such breach or default.

- s. If any legal action is necessary to enforce any provision of this Agreement or for damages by reason of an alleged breach of any provisions of this Agreement, the prevailing Party shall be entitled to receive from the losing Party all costs and expenses in such amount as the courts may determine to be reasonable. In awarding the cost of litigation, the court shall not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' and experts' fees paid or incurred in good faith.
- t. In the performance of the work required by this Agreement, Consultant shall abide by and conform with and to any and all applicable laws of the United States and the State of California, and with the local County and Municipal Code, ordinances, regulations and policies.
- u. If any part, term, or provision of this Agreement shall be held illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Agreement, the validity of the remaining portions or provisions shall not be affected by such holding.
- v. The terms of this Agreement shall be interpreted according to the laws of the State of California. Should litigation occur, venue shall be the Superior Court of Riverside County, California.
- w. This Agreement represents the entire Agreement between the Mission Springs Water District and Consultant with respect to the subject matter hereto and supersedes all prior oral or written negotiations, representations or agreements. No verbal agreement or implied covenant shall be held to vary the provisions of this Agreement. This Agreement shall bind and inure to the benefit of the parties to this Agreement and any subsequent successors and assigns. In the event of any inconsistency between the provisions of this Agreement and Consultant's proposal or Quote, and Exhibits hereto, the provisions of this Agreement shall control.
- aa. Precedence of Exhibits. All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.
- bb. Consultant will act hereunder as an independent contractor. This agreement shall not and is not intended to constitute Consultant as an agent, servant, or employee of the Mission Springs Water District and shall not and is not intended to create the relationship of partnership, joint venture or association between the Mission Springs Water District and Consultant.
- cc. Each of the signatories herein hereby represents that he or she has the authority to execute the Agreement on behalf of his or her contracting party.



EXHIBIT A

SaaS TERMS AND CONDITIONS

SOFTWARE-AS-A-SERVICE PROVISIONS

BACKGROUND: WATERSMART's customer engagement and data analytics services are to be provided primarily by utilization of WATERSMART's proprietary software hosted on WATERSMART's computer systems and accessed by authorized users over the Internet. This is a shared cost software utilization model which enables customers to achieve substantial cost savings versus commissioning custom development of software or licensing software for installation and maintenance on customers' computer systems. Companies like WATERSMART are commonly referred to as "SaaS" or "software-as-a-service" providers. Certain supplemental provisions which are customary within the SaaS sector and essential to enabling WATERSMART's SaaS service model and providing substantial cost savings for Utility, are set forth below and incorporated by reference in the Agreement.

A. WATERSMART's reservation of intellectual property rights

WATERSMART has created, acquired or otherwise currently has rights in, and may, in connection with the performance of this Agreement or otherwise develop, create, employ, provide, modify, acquire or otherwise obtain rights in various inventions, concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates, software, applications, documentation, user interfaces, screen and print designs, source code, object code, databases, algorithms, development framework repositories, system designs, processing techniques, tools, utilities, routines and other property or materials, including without limitation any and all subject matter protected or which may be protected under patent, copyright, mask work, trademark, trade secret, or other laws relating to intellectual property, whether existing now or in the future, whether statutory or common law, in any jurisdiction in the world ("WATERSMART IP"). Utility acknowledges that WATERSMART owns and shall own all intellectual property rights in and to deliverables hereunder, the WATERSMART IP and derivative works of WATERSMART IP (whether independently or jointly conceived), regardless of whether or not incorporated in any print or electronic Water Reports, Customer Portal, Utility Dashboard, or other software or deliverable provided to Utility by WATERSMART, and that Utility shall acquire no right or interest in the same.

Utility agrees to assign, and hereby does assign, any right, title and interest in any suggestions, enhancement requests, or other feedback provided by Utility relating to services offered by WATERSMART. If and to the extent any such assignment is ineffective, Utility hereby grants to WATERSMART a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into its services any such suggestions, enhancement requests, or other feedback provided by Utility.

Subject to the foregoing, authorized employees and customers of Utility may during the term of the Agreement access and use the WATERSMART SaaS services, print and electronic Water Reports, Customer Portal, Utility Dashboard, and other deliverables provided to Utility by WATERSMART, and applicable bill presentment and payment services for purposes of Utility's customer engagement program, customer billing, and for Utility's internal purposes, so long as Utility is current with respect to its financial and other obligations under the Agreement. Such authorization is limited to Utility's service territory and is non-exclusive, non-transferable, and non-sublicenseable. If Utility enters into an agreement with a third party contractor of WaterSmart related to bill payment services, the intellectual property provisions of such agreement shall apply with respect to intellectual property owned or controlled by such third party. Any rights not expressly granted herein are reserved by WATERSMART and its licensors.

B. Utility's cooperation in providing necessary inputs

Deliverables to be provided by WATERSMART via its proprietary software require certain data from Utility. Utility shall provide WATERSMART with those data, records, reports, approvals and other inputs identified for Utility to provide to WATERSMART. Utility shall ensure that such inputs are accurate and within Utility's legal rights to share with WATERSMART subject to the confidentiality and other applicable provisions of the Agreement. Time is of the essence, and Utility shall provide its inputs within the timeframes specified for Utility. If bill payment services are included, Utility shall cooperate with WATERSMART and its applicable third party partner(s) in timely providing the data, records, reports, approvals and other inputs requested for such services. WATERSMART shall not be responsible for delays outside WATERSMART's control, and deadlines for WATERSMART's performance shall be adjusted, if necessary, to accommodate delays by Utility.

C. Confidentiality and WATERSMART's use of aggregated data

All data, documents and other information received or accessed by one party ("Receiver") from the other party or its end users (collectively, "Discloser") for performance of this Agreement, including without limitation personally identifiable information and financial information, are deemed confidential. Such information shall not be used or disclosed by the Receiver without the prior written consent of the Discloser or owner (which may include without limitation consent by end users to share any information with additional users they authorize), except to the Receiver's employees and contractors on a need-to-know basis for performance of this Agreement with appropriate confidentiality protections. For this purpose, protected confidential information shall not include (i) information that, at the time of disclosure, is publicly available or generally known or available to third parties, or information that later becomes publicly available or generally known or available to third parties through no act or omission by the Receiver; (ii) information that the Receiver can demonstrate was in its possession prior to receipt from the Discloser; (iii) information received by the Receiver from a third party who, to the Receiver's knowledge and reasonable belief, did not acquire such information on a confidential basis from the Discloser; (iv) information the Receiver can demonstrate was independently developed by it or a third party; or (v) information that the Receiver is legally required or compelled by a court to disclose.

The foregoing confidentiality obligations are subject to the following clarification of the parties' rights and obligations with respect to aggregated and anonymous data. Utility hereby gives its permission to WATERSMART to use and disclose on an anonymous and/or aggregated basis (excluding any personally identifiable information) any data pertaining to Utility end customers and their water consumption, including without limitation derivative data and data combined with the data of other utilities, for purposes of project evaluation and any research, product development, marketing, or other legitimate business purposes. This Section C shall survive any termination or expiration of the Agreement.

Each party shall post and comply with its applicable privacy policy.

The forgoing confidentiality obligations and also subject the following exception. The Utility is subject to the California Public Records Act which requires the Utility to disclose all records in its possession to members of the public and that the Utility may be subject to judgments, legal fees and other sanctions for failing to comply with the California Public Records Act. Consequently, the Utility is required to disclose information provided to it by WATERSMART to any member of the public upon request under the Public Records Act. However, if a member of the public requests a copy of the source code or object code Utility will provide WATERSMART with a copy of the request and will cooperate with WATERSMART in protecting such information from public disclosure that constitutes a trade secret or is otherwise non-disclosable under the Public Records Act provided that if any legal action is required to protect the confidentiality of such information, if WATERSMART directs the Utility to pursue any legal action to retain the confidentiality, WATERSMART shall be obligated to reimburse Utility for all costs and expenses it incurs in cooperating with WATERSMART to retain the confidentiality of such trade secret information and may be required to submit advanced deposits towards such amounts. If WATERSMART fails to pay the Utility for such costs or expenses with five business days of request Utility's obligation to cooperate with WATERSMART in the protection of the trade secret information shall terminate and be of no further force or effect unless and until the amounts requested are paid in full.

D. Software corrections and third party acts; limitation of liability for SaaS services

In the event that WATERSMART's services fail to meet specifications or other requirements of Utility, Utility shall promptly notify WATERSMART and WATERSMART shall promptly correct any defect or substitute services, software, or products to achieve the functionality and benefits originally specified or reasonably expected by Utility. If WATERSMART promptly makes such correction or substitution within no less than thirty (30) days, WATERSMART shall have no further liability with respect to said defect(s), notwithstanding any other provision of the Agreement. All warranties not expressly stated in the Agreement are disclaimed. Utility understands that Utility's use of WATERSMART's services provided online may be interrupted by circumstances beyond WATERSMART's control involving third parties, including without limitation computer, telecommunications, network, Internet service provider or hosting facility failures or delays involving hardware, software, networks, or power systems not within WATERSMART's possession or direct control, and network intrusions or denial of service attacks (collectively, "Third Party Acts"). WATERSMART shall not be responsible or otherwise liable for any Third Party Acts, including, without limitation, any delays, failures, or security breaches and damages resulting from or due to any Third Party Acts, provided that WATERSMART has exercised due care. However, in the case of any Third Party Act which will delay or prevent WATERSMART from providing online services to Utility, WATERSMART will promptly notify Utility and assist in mitigating any impact. NEITHER PARTY WILL BE LIABLE TO THE OTHER, UNDER ANY CLAIM RELATING TO THIS AGREEMENT, FOR ANY INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL, RELIANCE or CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS OR REVENUE OR LOSS OF DATA, EVEN IF ADVISED OF THE POSSIBILITY OF THESE DAMAGES. Except to the extent covered by insurance, under no circumstances or event shall WATERSMART's or Utility's total cumulative liability for losses or damages of any kind arising under or relating to this Agreement and under any theory (contract, tort, defense and indemnity, or otherwise), exceed the fees received by

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WATERSMART for the services that give rise to the liability in the twelve months preceding the accrual of such liability. If Utility enters into an agreement with a third party contractor of WaterSmart related to bill payment services which specifies a lower limit of liability with respect to such services, the same limit shall apply to WATERSMART's liability (if any) with respect to such services. The foregoing limited remedy and limitation of liability provisions shall apply notwithstanding any conflicting provisions or any failure of essential purpose with respect to a limited remedy or limitation of liability, and shall survive any termination or expiration of the Agreement.

E. Technology and services infrastructure vendors WATERSMART as a SaaS provider utilizes the secure cloud hosting platform of a third party industry leader in cloud computing with state-of-the art security to host the data of all WATERSMART customers. WATERSMART utilizes a reputable third party vendor to perform printing and mailing services when included within the scope of WATERSMART's work. For bill payment services, including credit card, debit card, and ACH payments and authentication, WATERSMART works with leading edge, reputable third party vendors specializing in such functions. Since the referenced cloud hosting platform, printing and mailing vendors, bill payment services providers, and certain other vendors performing similar or related functions, are integral components of WATERSMART's technology and services infrastructure used across its pertinent customer base and are not specific to Utility and services under this Agreement, Utility acknowledges that such utilization or collaboration is not considered subcontracting of WATERSMART's services under this Agreement.

If Utility elects to make bill payment services available to its end customers, the pertinent end users and Utility assume all risks associated with such services, and no indemnity provisions in favor of Utility shall apply to such services, except in the event of WATERSMART's gross negligence or willful misconduct. In the absence of gross negligence willful misconduct by WATERSMART, Utility's sole remedies related to bill payment services shall be from the independent third party provider of such services in accordance with any contract between Utility and such provider. If Utility enters into an agreement with any third party contractor of WATERSMART for any other services ancillary or related to the services provided by WATERSMART during the term of this Agreement, Utility shall first seek and exhaust all remedies from such third party contractor prior to seeking any remedy from WATERSMART with respect to such services.

With respect to all bill payment services, as well as any services provided by independent third party contractors not in contract with WATERSMART, including without limitation any such services which at Utility's request or direction are integrated by WATERSMART into its electronic interfaces for Utility, WATERSMART shall not be responsible for and shall have no liability of any kind with respect to services provided by such third parties except to the extent of the gross negligence or willful misconduct of WATERSMART.

F. Compliance With Laws WaterSmart shall comply with all federal, state and local laws, regulations, regulatory rulings, and ordinances as may be applicable to the performance of its services under this Agreement. Utility shall comply with all federal, state and local laws, regulations, regulatory rulings, and ordinances related to this Agreement, and shall have sole responsibility for securing any necessary regulatory approvals, if any, for this Agreement and/or the services hereunder.

Utility shall be responsible for obtaining from its end customers any consents and providing any notices, if any are legally required, for the services to be provided by WaterSmart hereunder, as well as any bill payment or other third party services elected by Utility.

G. Extended Messaging Services If Utility elects to utilize WATERSMART's leak alert or group messenger services, certain supplemental legal terms shall apply. These supplemental terms ("Extended Messaging Terms") are set forth below and shall prevail in the event of any conflict or inconsistency. For avoidance of doubt, the Extended Messaging Terms apply to all WATERSMART services involving automated phone calls (conventional and mobile), pre-recorded messages, text messages, and other such bulk communications (including emails outside of WATERSMART's core customer engagement offerings) (collectively, "Extended Messaging Services").

1. Utility shall be solely responsible for the content of any messages or communications to end customers which Utility initiates or authorizes in connection with the Extended Messaging Services, as well as Utility's selection of any vehicle (ie., conventional phone, mobile phone, text, email) for such messages or communications. WATERSMART shall have no responsibility or liability of any kind with respect to messages or communications initiated or authorized by Utility or its representatives. For avoidance of doubt, if the Agreement has other indemnity provisions in favor of Utility such provisions shall not apply to the Extended Messaging Services, except in the event of WATERSMART's willful misconduct.
2. If Utility elects to make available to its end customers Extended Messaging Services offered by WATERSMART to alert end users of potential leaks or high water usage, the pertinent end users and Utility assume all risks associated with such alerts, and no indemnity provisions in favor of Utility shall apply to such risks (including without limitation any liability claims for failure to alert or inaccurate alerts), except in the event of WATERSMART's willful misconduct.
3. With respect to Extended Messaging Services, WATERSMART's role is limited to delivering via its technology platform Utility's communications through vehicles selected by Utility; accordingly, compliance with applicable laws (which may

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vary by state and locale) is strictly Utility's responsibility with respect to Extended Messaging Services notwithstanding any provision to the contrary.

4. Utility is encouraged to consult legal counsel of its own with respect to this Agreement and in reference to Federal Communications Commission Declaratory Ruling FCC 16-88 (released August 4, 2016), any Extended Messaging Services, and compliance with applicable federal, state and local laws, regulations and regulatory rulings, and ordinances. Utility shall not rely on WATERSMART or WATERSMART's representatives for legal advice or guidance concerning the content or appropriate vehicles (ie., conventional phone, mobile phone, text, email) for communications with Utility end customers.

In order to provide the Extended Messaging Services at efficient cost and with optimal levels of security and reliability, WATERSMART may utilize one or more third party communications technology and communications services providers. Since such providers are utilized across WATERSMART's pertinent customer base and are not specific to Utility and service choices by Utility under the Agreement, Utility acknowledges that such utilization is not considered subcontracting of WATERSMART's services under the Agreement.

WATERSMART, a _____

By: _____

SaaS Terms and Conditions

Plain Language	SaaS
<p>1. Definition of terms. Defines the service model and terms used.</p>	<p>1. Software-as-a-Service (SaaS) as used in this document is defined as the capability provided to the consumer to use the provider's applications running on a cloud infrastructure. The applications are accessible from various client devices through a thin client interface such as a Web browser (e.g., Web-based email) or a program interface. The consumer does not manage or control the underlying cloud infrastructure, including network, servers, operating systems, storage or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.</p>
<p>2. MSWD owns all of its data. The service provider will not access or share the data except as needed to do the work of the contract.</p>	<p>2. Data Ownership: MSWD will own all rights, title and interest in its data that is related to the services provided by this contract. The service provider shall not access or share MSWD user accounts and MSWD data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this contract, or (4) MSWD's written request. The foregoing obligations are subject to the following clarification of the parties' rights and obligations with respect to aggregated and anonymous data. MSWD hereby gives its permission to Consultant to use and disclose on an anonymous and/or aggregated basis (excluding any personally identifiable information) any data pertaining to MSWD end customers and their water consumption, including without limitation derivative data and data combined with the data of other utilities, for purposes of project evaluation and any research, product development, marketing, or other legitimate business purposes. This Section shall survive any termination or expiration of the Agreement.</p>



3. MSWD owns all personal information. The service provider will protect it and will not use the data for anything not related to the customer. The service provider will encrypt personal data and non-public data both at rest and in transit.

3. Data Protection: Protection of personal privacy and data shall be an integral part of the business activities of the service provider to ensure there is no inappropriate or unauthorized use of MSWD information at any time. To this end, the service provider shall safeguard the confidentiality, integrity and availability of MSWD information and comply with the following conditions:

- a. The service provider shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of personal data and non-public data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the service provider applies to its own personal data and non-public data of similar kind.
- b. All data obtained by the service provider in the performance of this contract shall become and remain property of Mission Springs Water District.
- c. The foregoing obligations are subject to the following clarification of the parties' rights and obligations with respect to aggregated and anonymous data. MSWD hereby gives its permission to Consultant to use and disclose on an anonymous and/or aggregated basis (excluding any personally identifiable information) any data pertaining to MSWD end customers and their water consumption, including without limitation derivative data and data combined with the data of other utilities, for purposes of project evaluation and any research, product development, marketing, or other legitimate business purposes. This Section shall survive any termination or expiration of the Agreement.
- d.

Plain Language	SaaS
<p>4. The service provider will not store any of MSWD's non-public data outside the U.S.</p>	<p>4. Data Location: The service provider shall provide its services to the MSWD and its end users solely from data centers in the U.S. Storage of MSWD data at rest shall be located solely in data centers in the U.S. The service provider shall not allow its personnel or contractors to store MSWD data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The service provider shall permit its personnel and contractors to access MSWD data remotely only as required to provide technical support.</p>
<p>5. The service provider will notify MSWD of a security breach. In the case of a SaaS or PaaS, the service provider will notify the MSWD of a security incident.</p>	<p>5. Security Incident or Data Breach Notification: The service provider shall inform MSWD of any security incident or databreach.</p> <p>a. Incident Response: The service provider may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the contract. Discussing security incidents with the MSWD should be handled on an urgent as-needed basis, as part of service provider communication and mitigation processes as mutually agreed upon, defined by law or contained in the contract. This provision is not subject to limitation of liability provisions of the Agreement.</p>
<p>6. If a service provider is responsible for a breach, they will pay the cost of the breach investigation, resolution, notification, credit monitoring and call centers up to a set amount per record/per person. The service provider will take corrective action subject to any limitation of liability in the contract.</p>	<p>6. Breach Responsibilities: This section only applies when a data breach occurs with respect to personal data within the possession or control of service provider.</p> <p>a. The service provider, unless stipulated otherwise, shall immediately notify the appropriate MSWD identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a security incident.</p>

Plain Language	SaaS
	<p>b. Unless otherwise stipulated, if a data breach is a direct result of the service provider's breach of its contract obligation to encrypt personal data or otherwise prevent its release, the service provider shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by state law; (3) a credit monitoring service required by state (or federal) law; (4) a website or a toll-free number and call center for affected individuals required by state law — all not to exceed the average per record per person cost calculated for data breaches in the United States (currently \$201 per record/ person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute³⁴ at the time of the data breach; and (5) complete all corrective actions as reasonably determined by service provider based on root cause; all [(1) through (5)] subject to this contract's limitation of liability.</p> <p>This provision is not subject to limitation of liability provisions of the Agreement.</p>
<p>7. The service provider will notify MSWD of any legal requests that might require access to the MSWD's data.</p>	<p>7. Notification of Legal Requests: The service provider shall contact MSWD upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to MSWD's data under this contract, or which in any way might reasonably require access to the data of MSWD. The service provider shall not respond to subpoenas, service of process and other legal requests related to the MSWD without first notifying MSWD, unless prohibited by law from providing such notice.</p>
<p>8. The service provider will not erase the MSWD's data in the event of a suspension or when the contract is terminated. Specific time periods are established where data will be preserved by the service provider based on the circumstances of termination and the type of service provided. The service provider will destroy data using a NIST approved method when requested by the MSWD.</p>	<p>8. Termination and Suspension of Service:</p> <p>a. In the event of a termination of the contract, the service provider shall implement an orderly return of MSWD data in a CSV or another mutually agreeable format at a time agreed to by the parties and the subsequent secure disposal of MSWD data.</p> <p>b. During any period of service suspension, the service provider shall not take any action to intentionally erase any MSWD data.</p>

Plain Language	SaaS
	<p>c. In the event of termination of any services or agreement in entirety, the service provider shall not take any action to intentionally erase any MSWD data 60 days after the effective date of termination</p> <p>After such period, the service provider shall have no obligation to maintain or provide any MSWD data and shall thereafter, unless legally prohibited, delete all MSWD data in its systems or otherwise in its possession or under its control.</p> <p>d. The MSWD shall be entitled to any post-termination assistance generally made available with respect to the services, unless a unique data retrieval arrangement has been established as part of the S LA.</p> <p>e. The service provider shall securely dispose of all requested data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the MSWD. Data shall be permanently deleted and shall not be recoverable, according to NIST approved methods. Certificates of destruction shall be provided to the MSWD.</p>
<p>9. The service provider will use Web services where possible to interface with MSWD data.</p>	<p>9. Web Services: The service provider shall use Web services exclusively to interface with the MSWD's data in near real time when possible.</p>



EXHIBIT B - ORDER FORM



1321 Upland Dr.
Suite 8389
Houston, TX 77043
United States

Customer Name Mission Springs Water District, CA
Contact Name April Scott
Billing Address 66575 Second St
Desert Hot Springs, CA 92240
US
Phone (760) 329-5169 ext. 120
Email ascott@mswd.org

Quote Number 00000720
Created Date 5/5/2021
Expiration Date 5/31/2021
Contract Effective Date: Utility's signature date below.
Contract End Date 60 months from the Contract Effective Date
Payment Terms Annually in Advance

Billing Contact: _____
Email: _____
Phone: _____

Prepared By Brenda Klem
Email brenda.klem@vertexone.net

Product	Quantity	Sales Price	Total Price
WaterSmart Platform	13,500.00	\$2.00	\$27,000.00
WaterSmart Platform Set Up Fee	1.00	\$8,000.00	\$8,000.00
Premium Integration - Per System	1.00	\$5,500.00	\$5,500.00
WaterSmart Platform Renewal Year 2	13,500.00	\$2.06	\$27,810.00
Premium Integration Renewal Year 2	1.00	\$5,665.00	\$5,665.00
WaterSmart Platform Renewal Year 3	13,500.00	\$2.12	\$28,620.00
Premium Integration Renewal Year 3	1.00	\$5,835.00	\$5,835.00
WaterSmart Platform Renewal Year 4	13,500.00	\$2.19	\$29,565.00
Premium Integration Renewal Year 4	1.00	\$6,010.00	\$6,010.00
WaterSmart Platform Renewal Year 5	13,500.00	\$2.25	\$30,375.00
Premium Integration Renewal Year 5	1.00	\$6,190.00	\$6,190.00

Totals		
Software Recurring		\$27,000.00
Service Recurring		\$5,500.00
Services One Time Fee		\$8,000.00
Order Total		\$40,500.00

Renewals		
Year 2 Renewal		\$33,475.00
Year 3 Renewal		\$34,455.00
Year 4 Renewal		\$35,575.00
Year 5 Renewal		\$36,565.00

Comments

This legally binding Order Form is governed by the Agreement (attached hereto) made between WaterSmart Software, Inc. ("WaterSmart") and Mission Springs Water District ("Utility") which are hereby incorporated into this Order Form by reference. A Mission Springs Water District signature below constitutes acceptance of the terms of that Agreement. In the



1321 Upland Dr.
 Suite 8389
 Houston, TX 77043
 United States

event of a conflict between the Agreement and this Order Form, the Order Form shall control.

Optional Products

Utility has the option to add the following products by 05/31/2021 as follows:
 Customer Welcome Letters at \$.90 per customer
 Print Leak Alerts at \$1350 per bundle of 1500
 Bill PDF Integration via API for InfoSend - \$2,000 recurring fee subject to yearly 3% increase

Signatures

Mission Springs Water District, CA

Name: _____
 Title: _____
 Date: _____
 Signature: _____

Name: _____
 Title: _____
 Date: _____
 Signature: _____

Program At a Glance

Program Overview

Program Length 60 months
 Total Meters 13,500

Meter Data

AMR / Manual Read Yes
 AMI Yes

Electronic Bill Presentment & Payments

Bill Display Bill Amount Due and History
 Paperless Billing No
 Payment Website Integration Embedded Payment Pages

Customer Letter

Customer Letter No

Dashboard and Portal

Utility Analytics Profiles for all accounts
 Dashboard
 Customer Portal Access for all accounts

Alerts and Notifications

Print Leak Alerts No

Water Reports

Water Reports No

Additional Services

On-site Training No
 Premium Integration 1. WSS embedded integration to Paymentus
 Description
 Special Circumstances Integrations discussed with Missions Springs:
 CIS are csv flat files
 InfoSend is sent in csv and rec'd in pdf . Included optional pricing if API is desired