

Amended and Restated

Software as a Service Agreement

This Amended and Restated Software as a Service Agreement (this “**SaaS Agreement**”), dated as of last signature date below (“**Effective Date**”), is by and between City of Needles (“**Customer**”) with offices located at 817 3rd Street, Needles, CA 92363, and **LANDIS+GYR TECHNOLOGY, INC.** with offices located at 30000 Mill Creek Avenue, Suite 100, Alpharetta, GA 30022 (“**Landis+Gyr**”).

WHEREAS, Landis+Gyr and Customer are parties to that certain Software as a Service Agreement dated October 18, 2021 (the “**Prior Agreement**”) by which Customer required third-party hosted “software as a service” (the “**SaaS Services**,”) as further described herein) with respect to certain of Customer’s information technology needs and related smart grid program;

WHEREAS, Landis+Gyr and Customer desire to amend and entirely restate the terms and conditions as currently described in the Prior Agreement, in this Amended and Restated Software as a Service Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Definitions; Schedules.** Capitalized terms used herein and not otherwise defined will have the meanings set forth in this Section.

“**Access Credentials**” means any user name, identification number, password, and/or other access keys or controls for access and use of the SaaS Services.

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

“**Aggregated Statistics**” means data and information that is derived by or through Customer’s use of the SaaS Services that is used by Landis+Gyr in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the SaaS Service.

“**Applicable Data Privacy Laws**” means all applicable local, state, national and foreign laws that apply to the processing of Personal Data processed by Landis+Gyr to render the Services for the Customer, including but not limited to, laws of the European Union and/or their member states, Switzerland and United Kingdom as they may be amended from time to time and in particular, the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation or “**GDPR**”).

“Authorized Users” means any Customer employee, consultant, contractor or agent (a) who are authorized by Customer to access and use the SaaS Services under the rights granted to Customer under this Agreement; and (b) for whom access to the SaaS Services has been purchased hereunder.

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

“Cloud Software” means cloud-based software to which Customer is provided access as part of the SaaS Service, including any updates or new versions.

“Customer Data” means, other than Aggregated Statistics, information, data, and other content, in any form or medium, relating to Customer’s end customers’ information relating to electricity, water or natural gas consumption, load profile, billing history, or credit history that is collected, downloaded or otherwise received, directly or indirectly, from Customer or an Authorized User by or through the SaaS Services or that incorporates or is derived from the Processing of such information, data or content by or through the SaaS Service.

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

“Documentation” means any online user manuals for the SaaS Services as updated from time to time, that describes the functions, operation, and use of the SaaS Services, and that Landis+Gyr makes generally available to subscribers of the SaaS Services.

“Endpoints” means each of the following types of physical sensory-type devices installed for use in the delivery of any commodity e.g. electric, water, gas, distribution automation devices:

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

For avoidance of doubt, Endpoints do not include: aggregations of data from multiple Endpoints; interfaces between the Cloud Software and other systems or applications; sub-meters or devices installed at a utility customer premises beyond the meter; or devices only used to read, retrieve, or transmit data from Endpoints.

“Error” has the meaning set forth in Schedule A.

“Error Correction” has the meaning set forth in Schedule A.

“Export Control Laws” means all applicable export and re-export control laws and regulations, including (a) the Export Administration Regulations (“**EAR**”) maintained by the U.S. Department of Commerce, (b) trade and economic sanctions maintained by the U.S Treasury Department’s

Office of Foreign Assets Control, and (c) the International Traffic in Arms Regulations (“**ITAR**”) maintained by the U.S. Department of State.

“**Fees**” has the meaning set forth in Section 6.2 Fees.

“**Harmful Code**” means any software, hardware, or other technology, device, or means, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system, or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data processed thereby; or (b) prevent Customer or any Authorized User from accessing or using the Services or Landis+Gyr Systems as intended by this Agreement. Harmful Code does not include any Landis+Gyr Disabling Device.

“**High Risk Activities**” means activities where the use or failure of the Services would reasonably be expected to result in death, serious personal injury or severe environmental or property damage (such as the creation or operation of weaponry).

“**Improvements**” means enhancements, extensions, modifications and new releases to the SaaS Services (other than Error Corrections) that Landis+Gyr elects to incorporate into the SaaS Service, and for which Landis+Gyr does not charge an additional fee.

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

“**Interfaces**” means Landis+Gyr’s file transfer communications interfaces and data feeds mechanisms between the Landis+Gyr Systems and the Customer’s Systems which are developed, operated, owned and maintained by Landis+Gyr pursuant to this Agreement including, as applicable, any configuration and customization required to meet the requirements of this Agreement, but excluding ownership of any customization that constitutes a component or derivative of Customer’s Systems.

“**Landis+Gyr Disabling Device**” means any software, hardware, or other technology, device, or means (including any back door, time bomb, time out, drop dead device, software routine, or other disabling device) used by Landis+Gyr or its designee to disable Customer’s or any Authorized User’s access to or use of the Services automatically with the passage of time or under the positive control of Landis+Gyr or its designee.

“**Landis+Gyr Materials**” means all devices, documents, data, know-how, methods, processes, software and other inventions, works, technologies and materials, including any and all Cloud Software, Documentation, computer hardware, programs, reports and specifications, client software and deliverables provided or made available to Customer in connection with Landis+Gyr’s performance of the Services, in each case developed or acquired by Landis+Gyr independently of this Agreement. For the avoidance of doubt, Landis+Gyr Materials include

Aggregated Statistics and any information, data, or other content derived from Landis+Gyr's monitoring of Customer's access to or use of the Services, but do not include Customer Data.

"Landis+Gyr Personnel" means all employees and agents of Landis+Gyr, all subcontractors and all employees and agents of any subcontractor, involved in the performance of Services.

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

"Other Services" means all technical and non-technical services performed or delivered by Landis+Gyr under this SaaS Agreement, including without limitation, implementation services and other professional services and training services further defined in Section 2.1, but excluding the SaaS Services and the Support Services. All Other Services will be provided on a non-'work for hire' basis.

"Permitted Uses" means any use of the Services by Customer or any Authorized User for the benefit of Customer in or for Customer's internal business operations in accordance with the Documentation.

"Person" means an individual and any entity, including, but not limited to, any corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust or association.

"Personal Data" or **"PII"** means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

"Representatives" means a party's employees, officers, directors, consultants, legal advisors and, with respect to Landis+Gyr, Landis+Gyr's subcontractors, and, with respect to Customer, solely those of Customer's independent contractors or service providers that are Authorized Users.

"Security Incident" is an event that may indicate that an organization's systems, networks, or data have been compromised or that measures put in place to protect them have failed. With respect to the information technology space, an event is anything that has significance for system hardware or software and an incident is an event that disrupts normal operations. Items included, but not limited to: malware infection, distributed denial of service attacks, unauthorized access, insider breaches, destructive attacks, unauthorized privilege escalation, loss or theft of equipment.

"Security Breach/Data Breach" per NIST Special Publication (SP) 800-53. Definition: A data breach refers to any confirmed incident in which sensitive, confidential, or otherwise protected data has been accessed or disclosed in an unauthorized fashion. If a security incident results in unauthorized access to data, it can typically be classified as a security breach.

"Services" means the SaaS Services, the Support Services and the Other Services.

"Support Services" means the maintenance and support services for the SaaS Services as further defined in Schedule A.

“**Supported Release**” means versions of Cloud Software currently supported by Landis+Gyr. Landis+Gyr will support, at a minimum, the current generally available release in addition to the two (2) prior generally available releases of Cloud Software.

“**Suspend**” or “**Suspension**” means disabling or limiting access to or use of the SaaS Services or components of the SaaS Services.

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

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

“**Upgrade**” means upgrading the Cloud Software to the most current generally available version.

2. Services and Service Orders.

2.1 Description of Services. Throughout the Term, Landis+Gyr will in accordance with all terms and conditions set forth in this Agreement and each applicable Service Order, provide to Customer and its Authorized Users the following services:

- a) Access, in accordance with Section 2.2 of this Agreement, to the software-as-a service online web-based offering described in a Service Order and subject to the terms of this Agreement updated with Error Corrections, Improvements or modifications to the content, functionality and user interface from time to time at Landis+Gyr’s discretion (the “**SaaS Services**”), which upon their execution, will be attached as a part of this Agreement.
- b) service maintenance and the Support Services as set forth in the applicable Service Order and the Service Level Agreement described in Schedule A; and
- c) such other services as may be specified in the applicable Service Order.

2.2 SaaS Services Access License Grant. Subject to and conditioned on Customer’s and its Authorized Users’ compliance with the terms and conditions of this Agreement, during the Term, Landis+Gyr hereby grants to Customer and its Authorized Users a non-exclusive, worldwide, terminable license to access and use the SaaS Service, including in operation with other software, hardware, systems, networks and services for Customer’s business purposes. Landis+Gyr will provide the following services: infrastructure and infrastructure monitoring, technical support, backup and recovery, access training, and Cloud Software upgrades for Customer’s productive use of such services.

2.3 Landis+Gyr will provide the SaaS Services for 24 hours a day, 7 days a week in accordance with the Service Level Agreement in Schedule A except for Scheduled Downtime, service downtime or degradation caused by a Force Majeure Event, including Customer's or any Authorized User's use of Third Party Materials, misuse of the Services, or use of the Services other than in compliance with the express terms of this Agreement and the Documentation.

2.4 Service and Systems Control. Except as otherwise expressly provided in this Agreement, as between the parties:

- 2.4.1 Landis+Gyr has and will retain sole control over the operation, provision, maintenance, and management of the Landis+Gyr Materials; and

- 2.4.2 Customer has and will retain sole control over the operation, maintenance, and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the Landis+Gyr Materials by any Person by or through the Customer Systems or any other means controlled by Customer or any Authorized User, including any: (i) information, instructions, or materials provided by any of them to the Services or Landis+Gyr; (ii) results obtained from any use of the Services or Landis+Gyr Materials; and (iii) conclusions, decisions, or actions based on such use. By granting Authorized Users access to the SaaS Service, Customer acknowledges and agrees that Customer's Authorized Users shall have access to Customer Data and that Landis+Gyr shall not be responsible or liable for any misuse of the SaaS Services or Customer Data by any such Authorized Users. For avoidance of doubt, the Services do not include managed services and Customer agrees that it will be responsible for monitoring its access to the platform and will promptly notify Landis+Gyr of any issues.
- 2.5 Documentation. Landis+Gyr represents and warrants that (i) the Documentation for the Cloud Software will accurately and completely describe the functions and features of the Cloud Software, including all subsequent revisions thereto and (ii) the Documentation will be understandable by a typical end user having commensurate skill with using and maintaining metering and monitoring systems technology and will provide Authorized Users with sufficient instruction such that an Authorized User will have a foundation to become self-reliant with respect to access and use of the Services. Customer will have the right to make any number of additional copies of the Documentation for internal business purposes at no additional charge.
- 2.6 Service Orders. Service Orders will be effective only when signed by Customer and Landis+Gyr. The initial Service Orders are attached hereto. Any modifications or changes to the Services under any executed Service Order will be effective only if and when memorialized in a mutually agreed written change order ("**Change Order**") signed by both Parties. Where a Change Order may result in an adjustment to Fees, Landis+Gyr will provide a written estimate of such adjustment to Customer within a commercially reasonable period of time of Landis+Gyr's receipt of a Change Order. Upon approval of the written estimate to complete the Change Order, the parties will each ratify the Change Order indicating any adjustments to the Fees, or delivery schedule.
- 2.7 Other Services Comprising of Professional Services. During the Term of this Agreement, Landis+Gyr may also perform certain Other Services comprising of implementation, consulting, training and/or support services as specified in mutually agreed upon written Statement of Work ("**SOW**"). Each SOW will contain a reference identifying it as a SOW under this Agreement and will contain the following information, as applicable: a description of scope of the Other Services; the Fees (including any Reimbursable Expenses), and any modifications to the ownership of Intellectual Property provisions of this SaaS Agreement.
- 2.8 No Software Delivery Obligation. Landis+Gyr has no software delivery obligation and will not ship copies of any of the Cloud Software used to provide the Services to Customer as a part of the Services or as part of any Deliverable under a SOW. Upon the end of the Service Order, Customer's right to access or use the Cloud Software specified in the Service Order and the Services will terminate.
- 2.9 Use of Subcontractors. Landis+Gyr may from time to time in Landis+Gyr's discretion engage third parties to perform Services (each, a "**Subcontractor**").

- 2.10 Designation of Responsible Contacts. Customer will provide Landis+Gyr with current appropriate contact information such that Landis+Gyr may communicate maintenance notifications, outages, support items and other communications under this Agreement to Customer on an ongoing basis.
- 2.11 Aggregated Statistics. Landis+Gyr may compile Aggregated Statistics based on Customer Data input into the SaaS Service. Customer agrees that Landis+Gyr may use Aggregated Statistics to the extent and in the manner permitted under applicable Law, provided that such Aggregated Statistics do not identify Customer or Customer's Confidential Information.

3. Customer Obligations

- 3.1 Customer Systems and Cooperation. Customer, at all times during the Term to the extent applicable for the specific Service Order, will: (a) set up, maintain and operate in good repair and in accordance with the Documentation all Customer Systems on or through which the SaaS Services are accessed or used (including taking all necessary and current security industry standards into consideration and implementation to notify and mitigate any security vulnerabilities that could be introduced into the Landis+Gyr Systems); and (b) provide all cooperation and assistance as Landis+Gyr may reasonably request to enable Landis+Gyr to exercise its rights and perform its obligations under and in connection with this Agreement. To the extent it becomes necessary for Landis+Gyr to have access to Customer Systems in order to perform the Services in accordance with the Availability Requirements as set forth in the Service Level Agreement, Customer will provide Landis+Gyr with such access. Unless otherwise stated in a Service Order, Customer agrees that it will not send or provide Landis+Gyr access to any Personal Data, whether in data or any other form. Should Customer mistakenly provide Personal Data to Landis+Gyr (including, but not limited to, Personal Data where Customer has no legal ground to share with Landis+Gyr or to process otherwise), Customer will immediately notify Landis+Gyr in writing in accordance with the notice provisions herein, and reasonably cooperate with Landis+Gyr to take any mitigating actions deemed necessary to remove such PII from the Landis+Gyr Systems.
- 3.2 Effect of Delay. Neither party is responsible or liable for the portion of any delay or failure of performance caused in whole or in part by the other party's delay in performing, or failure to perform, any of Customer's obligations under this Agreement.
- 3.3 Privacy. Customer is responsible for any consents and notices required to permit (a) Customer's use and receipt of the Services and (b) Landis+Gyr's accessing, storing and processing of data provided by Customer (including Customer Data, if applicable) under the Agreement. Customer shall comply with all applicable local, state, national and foreign laws in connection with its use of the SaaS Services, including those laws related to data privacy and the transmission of technical or personal data. Customer acknowledges that Landis+Gyr exercise no control over the content of the information transmitted by Customer through the SaaS Services.
- 3.4 Suspension. If Landis+Gyr becomes aware that Customer's use of the SaaS Services violates the Permitted Uses, Landis+Gyr will notify Customer and request that Customer correct the violation. If Customer fails to correct the violation within 24 hours of Landis+Gyr's request, then Landis+Gyr may Suspend all or part of Customer's use of the Services by use of a Landis+Gyr Disabling Device until the violation is corrected. Notwithstanding the preceding related to violations of the Permitted Uses, Landis+Gyr may immediately Suspend all or part of Customer's use of the Services by use of a Landis+Gyr Disabling Device if (a) Landis+Gyr reasonably believes Customer's use of the SaaS Services could adversely impact the SaaS Service, other customers' or their end users' use of the SaaS Service, or the Landis+Gyr network or servers used to provide the SaaS Service; (b) there is suspected unauthorized third-party access to the SaaS Service; (c) Landis+Gyr reasonably believes that immediate Suspension is required to comply with any applicable Law; or (d) Customer

is in breach of Section 4.2 (Use Restrictions) or specific terms for the relevant Service Order. Landis+Gyr will lift any such Suspension when the circumstances giving rise to the Suspension have been resolved. At Customer's request, Landis+Gyr will, unless prohibited by applicable Law, notify Customer of the basis for the Suspension as soon as is reasonably possible.

4. Authorization Limitations and Restrictions.

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

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

4.2 Use Restrictions. Customer will not and will not knowingly permit any other Person to access or use the SaaS Services or Landis+Gyr Materials except as expressly permitted by this Agreement and/or any Service Order and, in the case of Third-Party Materials, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer will not, except as this Agreement or any Service Order expressly permits:

- (a) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make the SaaS Services or Landis+Gyr Materials available to any third party that is not an Authorized User;
- (b) copy, modify or create derivative works or improvements of the SaaS Services or Landis+Gyr Materials;
- (c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the SaaS Services or Landis+Gyr Materials, in whole or in part;
- (d) bypass or breach any security device or protection used by the SaaS Services or Landis+Gyr Materials or access or use the SaaS Services or Landis+Gyr Materials other than by an Authorized User through the use of his or her own then valid Access Credentials;

- (e) use or authorize the use of the SaaS Services or Documentation in any manner or for any purpose that is unlawful under applicable Law.
- (f) remove, delete, alter or obscure any trademarks, Documentation, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any SaaS Services or Landis+Gyr Materials, including any copy thereof;
- (g) access or use the SaaS Services or Landis+Gyr Materials in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party, or that violates any applicable Law;
- (h) access or use the SaaS Services or Landis+Gyr Materials for purposes of competitive analysis of the SaaS Services or Landis+Gyr Materials, the development, provision or use of a competing software service or product or any other purpose that is to Landis+Gyr's detriment or commercial disadvantage;
- (i) engage in cryptocurrency mining without Landis+Gyr's prior written approvals;
- (j) to transmit, store or process health information subject to the United States HIPAA regulations;
- (k) access or use of the Services for High Risk Activities; or
- (l) otherwise access or use the SaaS Services or Landis+Gyr Materials beyond the scope of the authorization provided in this Agreement or in any applicable Service Order.

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

5. Term and Termination

5.1 Term. This Agreement commences on the Effective Date and continues until all Service Orders/SOW have expired or have been terminated. Except in the case of termination for breach by Landis+Gyr, within thirty (30) days of the date of termination, Customer must pay all amounts remaining unpaid for Services provided prior to the effective date of termination, plus related taxes and expenses.

5.2 Term of Service Orders/SOWs. The term of each Service/SOW will be as specified in the applicable Service Order/SOW. Except as otherwise specified in a Service Order, SaaS Services will automatically renew for additional one (1) year periods, unless either party gives the other notice of non-renewal at least ninety (90) days before the end of the relevant subscription term.

5.3 Termination.

- (a) Landis+Gyr may terminate this Agreement, effective on written notice to Customer, if the SaaS Services is being used by Customer in violation of applicable Law.
- (b) Either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured sixty (60) days after the non-breaching party provides the breaching party with written notice of such breach; and

- (c) Either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party enters into liquidation (apart from a solvent liquidation for the purposes of amalgamation or reconstruction) or is dissolved or declared bankrupt or has a receiver, administrator or administrative receiver appointed over all or part of its assets or enters into an arrangement with its creditors or takes or suffers any similar action.
- 5.4 Effect of Termination or Expiration. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement, all rights, licenses, consents, and authorizations granted by either party to the other hereunder will immediately terminate.
- 5.5 Survival. The terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the performance thereof by either party hereunder will so survive the completion of the performance, cancellation or termination of this Agreement, including without limitation, Confidentiality, Infringement, Limited Warranties and Limitations of Liability.
- 6. Fees and Expenses**
- 6.1 Invoices. Invoices will be issued monthly in arrears for (i) the monthly SaaS Services Fees upon Cloud Software installation (ii) for time and materials in a Statement of Work and (iii) Reimbursable Expenses based on expenses incurred in the previous month. Fees for fixed bid SOW's will be invoiced upon completion of the milestone as set forth in the applicable SOW. If Customer validly disputes any invoiced amount it will pay the undisputed amounts and provide written notice of the basis of that dispute to Landis+Gyr within thirty (30) days following delivery of that invoice. The parties will work diligently, promptly and in good faith to resolve any such disputes.
- 6.2 Fees. Customer agrees to pay for all services ordered as set forth in the applicable Service Order or SOW (the "**Fees**"). All Fees are due within thirty (30) days from the date of invoice.
- 6.3 Late Payment. If Customer fails to make any payment when due then, in addition to all other remedies that may be available:
- 6.3.1 Landis+Gyr may charge interest on the past due amount at the rate of one percent (1%) per month, calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law; and
- 6.3.2 Customer will reimburse Landis+Gyr for all reasonable costs incurred by Landis+Gyr in collecting any late payments or interest, including reasonable attorneys' fees, court costs, and collection agency fees.
- 6.4 Fee Increases. Landis+Gyr's Fees are fixed for the duration described in the applicable Service Order. Thereafter, the Fees are subject to an adjustment in accordance with the Service Order.
- 6.5 Reimbursable Expenses. If a Service Order and/or SOW permits reimbursement of expenses by Customer ("**Reimbursable Expenses**"), Landis+Gyr will be reimbursed for those reasonable expenses, at cost. In addition, if there are any system communication fees that are incurred by Landis+Gyr (i.e. long-distance charges), Landis+Gyr will invoice Customer monthly for the communications fees, which Customer agrees to pay.
- 6.6 Taxes. Customer is exclusively responsible for the collection and remittance of all sales and use, value added, duties, tariffs or other similar charges or taxes on the Services, other than taxes based upon Landis+Gyr's income. All amounts set forth in an applicable Service Order/SOW are

exclusive of taxes and taxes are not included in the Fees. Applicable taxes payable by Customer will be separately itemized on invoices sent to Customer.

7. Intellectual Property Rights

- 7.1 Services and Landis+Gyr Materials. Subject to the limited rights granted hereunder, all rights, title, and interest in and to the Landis+Gyr Materials, including all Intellectual Property Rights therein, are and will remain with Landis+Gyr and, with respect to Third-Party Materials, the applicable third-party providers own all right, title, and interest, including all Intellectual Property Rights, in and to the Third-Party Materials. In addition to the foregoing, Customer acknowledges that Landis+Gyr will have the right to utilize data capture and analysis tools, and other similar tools, to extract, compile and analyze the Aggregated Statistics.
- 7.2 Ownership of Customer Data. As between Customer and Landis+Gyr and its Subcontractors, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject only to the limited license granted in Section 7.3. Customer will have sole responsibility for the accuracy, integrity and reliability of Customer Data. Customer acknowledges that Landis+Gyr exercises no control whatsoever over any Customer Data managed by Authorized Users while accessing the Service and that Customer is solely responsible for the Customer content.
- 7.3 Consent to Use Customer Data. During the Term of this Agreement, Customer hereby irrevocably grants all such rights and permissions in or relating to Customer Data as are necessary or useful to Landis+Gyr, its Subcontractors and the Landis+Gyr Personnel to enforce this Agreement and exercise Landis+Gyr's, its Subcontractors' and the Landis+Gyr Personnel's rights and perform Landis+Gyr's, its Subcontractors' and the Landis+Gyr Personnel's obligations hereunder as well as to use and display Customer Data incorporated within the Aggregated Statistics.
- 7.4 Feedback. At its option, Customer may provide feedback and suggestions about Services to Landis+Gyr ("**Feedback**"). If Customer provides Feedback, then Landis+Gyr and its Affiliates may use the Feedback without restriction and obligation to Customer.

8. Confidentiality

- 8.1 Confidential Information. From time to time during the Term of this Agreement, either Party (as the "**Disclosing Party**") may disclose or make available to the other Party (as the "**Receiving Party**") non-public, proprietary, confidential information about its business affairs, products, services, confidential intellectual property, trade secrets, third party confidential information, source code and other sensitive or proprietary information in oral, written, electronic or other intangible form marked or indicated as "**Confidential**" or "**Proprietary**" at the time of disclosure (collectively, "**Confidential Information**"). Confidential Information, however, will not include: (a) Information which is already generally available to the public; (b) Information which hereafter becomes generally available to the public, except as a result of the direct or indirect action of the Receiving Party in breach of this Agreement; (c) Information known to the Receiving Party or its Representatives on a non-confidential basis prior to receipt by the disclosing party; (d) Information that is independently developed without access to the Disclosing Party's Confidential Information; and (e) Information disclosed under legal compulsion; provided, however, that prior to a disclosure pursuant to an order or applicable law, the Receiving Party, to the extent permitted by law, promptly provides the other party written notice of such proposed disclosure and reasonably cooperates with the other party in its attempts to limit or prevent such disclosure. The Receiving Party will use the Confidential Information solely for the performance of this Agreement and will not disclose or permit access to Confidential Information other than to its Affiliates and its or their employees,

officers, directors, attorneys, accountants and financial advisors (including insurers) (collectively, “**Representatives**”) who: (a) need to know such Confidential Information for the performance of this Agreement; (b) know of the existence and terms of this Agreement and (c) are bound by confidentiality obligations no less protective of the Confidential Information than the terms contained herein. These non-disclosure obligations will survive the termination of this Agreement and will continue for a period of five (5) years thereafter. Information need not be marked “Confidential” to be considered Confidential Information. “Confidential Information” includes any Confidential Information disclosed prior to the effective date of this Agreement. Any subcontractor retained pursuant to Section 2.6 will adhere to this Section 8 as it regards to Confidential Information that comes into its possession.

- 8.2 Protection of Confidential Information. The Receiving Party will safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its most sensitive information and no less than a reasonable degree of care. The Receiving Party will promptly notify Disclosing Party of any unauthorized use or disclosure of Confidential Information and take all reasonable steps to cooperate with Disclosing Party to prevent further use or disclosure. The Receiving Party will be responsible for any breach of this Agreement caused by its Representatives. Neither party will disclose the terms of this Agreement or any Service Order to any third party other than to its Affiliates, legal counsel and accountants without the other party’s prior written consent, provided that a party that makes any such disclosure to its affiliate, legal counsel or accountants will remain responsible for such affiliate’s, legal counsel’s or accountant’s compliance with this Section 8.2.
- 8.3 No Rights in Confidential Information. Customer and Landis+Gyr hereby acknowledge and agree that all Confidential Information of the other party will remain the sole and exclusive property of such other party and that the receiving party will have no proprietary rights, title or interests therein except as otherwise provided in this Agreement.

9. Personal Data Privacy

- 9.1 Personal Data Privacy. Customer acknowledges that Landis+Gyr may, where Customer acts as a data controller and Landis+Gyr as data processor in relation to any Personal Data under this Agreement, processes Personal Data in accordance with Landis+Gyr Cloud Data Processing available at <https://www.landisgyr.com/landisgyr-data-processing-terms/>.

10. Security Requirements; Audits

- 10.1 Security Requirements. Landis+Gyr will employ security measures in accordance with Landis+Gyr’s security requirements available at <https://www.landisgyr.com/securityterms>. The process described therein will be used when there are Security Incidents or critical vulnerabilities discovered that impacts or potentially impacts Landis+Gyr or Customer.
- 10.2 Audits.
- 10.2.1 Landis+Gyr shall provide to Customer, on at least an annual basis, Landis+Gyr’s review of the controls placed in operation and a test of operating effectiveness, as defined by Statement of Standards for Attestation Engagement No. 18, Reporting on Controls at Service Organizations (“**SSAE-18**”), or any standards amending or replacing SSAE 18 for covered Services defined by Landis+Gyr for or on behalf of Customer and issue SOC 1 (Type II) report and SOC 2 (Type II) reports thereon (collectively, “**SOC Reports**”).

- 10.2.2 Landis+Gyr shall provide to Customer Landis+Gyr ISO Certifications for Information Security Management Systems standards (ISO/IEC 27001).
- 10.2.3 Reports and certification audits shall be performed by Landis+Gyr's external auditors. Landis+Gyr shall address and rectify any deficiencies found in any SOC Report review.

11. Disaster Recovery

- 11.1 Disaster Recovery. Landis+Gyr will maintain reasonably prudent business resumption and disaster recovery plans and procedures. Upon request, Customer will have the right to review a summary of Landis+Gyr's then current plan. Landis+Gyr will test the operation and effectiveness of the plan at least annually. Upon request, Landis+Gyr will provide Customer with an annual summary audit report for disaster recovery effectiveness. If such tests reveal material deficiencies in the plan Landis+Gyr will respond with steps that will be taken to mitigate recovery deficiencies within a reasonable time frame. Landis+Gyr reserves the right to make the changes as required to the Disaster Recovery plan.

12. Mutual Indemnification

- 12.1 Indemnification by Landis+Gyr. Subject to this Agreement, Landis+Gyr shall defend and indemnify Customer against any loss or damage (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings ("**Claims**") made or brought against Customer by a third party alleging that the use of the base SaaS Services as contemplated hereunder infringes a United States patent or copyright of a third party and pay all damages finally awarded by a court of competent jurisdiction attributable to such claim, or agreed to in a settlement by Landis+Gyr; provided, that Customer (a) promptly gives written notice of the Claim to Landis+Gyr; (b) gives Landis+Gyr sole control of the defense and settlement of the Claim; and (c) provides to Landis+Gyr all available information, assistance and authority to defend; and (d) not have compromised or settled such proceeding without Landis+Gyr's prior written consent. Should the SaaS Services become, or in Landis+Gyr's opinion be likely to become, the subject of a claim for which indemnity is provided hereunder, Landis+Gyr will in its sole discretion either: (a) obtain for Customer the right to use the SaaS Services; or (b) replace or modify the SaaS Services so that it becomes non-infringing.
- 12.2 Indemnification by Customer. Subject to this Agreement, Customer shall defend and indemnify Landis+Gyr against any loss or damage (including reasonable attorneys' fees) incurred in connection with Claims made or brought against Landis+Gyr by a third party alleging that the Customer Data, the intellectual property rights of, or has otherwise harmed, a third party or breaches of the policy governing the acceptable use of the systems and the use restrictions listed in Section 4.2; provided, that Landis+Gyr (a) promptly gives written notice of the Claim to Customer; (b) gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle or defend any Claim unless it unconditionally releases Landis+Gyr of all liability); and (c) provides to Customer, at Customer's cost, all reasonable assistance.
- 12.3 Exceptions from Indemnification. Landis+Gyr will have no liability for any infringement or claim which results from: (a) use of the SaaS Services in combination with any non-Landis+Gyr-provided or -recommended hardware, software, or data if such infringement or claim would not have occurred but for such combination; (b) Landis+Gyr's development of any Customer-specific changes or modifications to the SaaS Services or Other Services at Customer's request or instruction; or (c) use of the SaaS Services in a manner prohibited under this Agreement, in a manner for which the Cloud Software was not designed, or in a manner not in accordance with the

Documentation if such infringement or claim would not have occurred but for such use. This Section states Landis+Gyr's entire liability, and Customer's sole remedy, with respect to any claim of infringement.

13. Limitations of Liability

- 13.1 EXCLUSION OF DAMAGES. EXCEPT AS OTHERWISE PROVIDED IN SECTION 13.3, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, PUNITIVE DAMAGES, OR DAMAGES FOR LOSS OF PROFITS/REPUTATIONAL HARM, REVENUE, DATA OR USE INCURRED BY THE OTHER PARTY OR ANY THIRD PARTY WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 13.2 CAP ON MONETARY LIABILITY. IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED ONE (1) TIMES TOTAL AMOUNTS ACTUALLY PAID TO LANDIS+GYR UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
- 13.3 Exceptions. The exclusions and limitations in Section 13.1 and Section 13.2 do not apply to:
- 13.3.1 Losses arising out of or relating to a party's failure to comply with its obligations under Section 7 (Intellectual Property Rights) or Section 8 (Confidentiality); or
- 13.3.2 Losses arising out of or relating to a party's gross negligence or more culpable conduct, including any willful misconduct or intentional wrongful acts.

14. Warranties; Disclaimer

- 14.1 Mutual warranty. Each party warrants that it has the status, authority and capacity to enter into this Agreement.
- 14.2 Landis+Gyr Warranty. Landis+Gyr warrants that (i) it will provide the Services in a professional workmanlike manner consistent with general industry standards reasonably applicable to the provision thereof; (ii) that the SaaS Services will perform materially in accordance with the Documentation, and be available in accordance with the SaaS Services Availability Target, and (iii) it owns or otherwise has sufficient rights to the SaaS Services to grant the rights and licenses granted herein.
- 14.3 Additional Customer Warranty. Customer represents, warrants and covenants to Landis+Gyr that:
- (a) Customer owns or otherwise has and will have the necessary rights, legal grounds and consents in and relating to the Customer Data so that, as received by Landis+Gyr and processed in accordance with this Agreement, Customer does not and will not infringe,

misappropriate or otherwise violate any Intellectual Property Rights, or any Applicable Data Privacy Laws or other rights of any third party or violate any applicable Law; and

- (b) prior to Customer's delivery to Landis+Gyr of any Customer Data that is outside of the Landis+Gyr Systems, Customer will implement and maintain current industry state-of-the-art IT security and anti-virus measures to detect, prevent and remove Harmful Code, and to prevent the spread of Harmful Code between the Parties when accessing and/or exchanging data or software through the Interfaces or any other network connectivity.

14.4 **DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, LANDIS+GYR MAKES NO REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. LANDIS+GYR HEREBY SPECIFICALLY DISCLAIMS ALL IMPLIED REPRESENTATIONS WARRANTIES, OR CONDITIONS INCLUDING ANY REPRESENTATION, WARRANTY OR CONDITION OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. LANDIS+GYR DOES NOT WARRANT THAT THE OPERATION OF THE SAAS SERVICES OR CLOUD SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT THEY WILL BE SUITABLE FOR OR MEET THE REQUIREMENTS OF CUSTOMER.

15. **General Provisions.**

- 15.1 **Force Majeure Events.** Neither party will be liable in damages or have the right to terminate this Agreement for any reasonable delay or default in performing under this Agreement if such delay or default is caused by conditions beyond the party's reasonable control, including without limitation acts of God, natural disasters, pandemics, war or other hostilities, labor disputes, civil disturbances, governmental acts, orders or regulations or failures or fluctuations in electrical power, heat, lights, air conditioning or telecommunications equipment (each of the foregoing, a "**Force Majeure Event**"), provided that the non-performing party is without fault in causing such condition. Subject to the party so delaying promptly notifying the other party in writing of the reason for the delay and the likely duration of the delay, the performance of the delaying party's obligations, to the extent affected by the delay, will be temporarily suspended during the reasonable period of time that the cause persists, provided that if performance is not resumed within thirty (30) days after that notice, the non-delaying party may by notice in writing immediately terminate this Agreement.
- 15.2 **Export.** Each party shall comply with all Export Control Laws, executive orders or regulations applicable to its performance under this Agreement.
- 15.3 **Independent Contractor.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement will be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party will have authority to contract for or bind the other party in any manner whatsoever.
- 15.4 **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder, other than routine communications having no legal effect, will be in writing and addressed to the parties as follows (or as otherwise specified by a party in a notice given in accordance with this Section):

If to Landis+Gyr:

Landis+Gyr Technology, Inc.
30000 Mill Creek Avenue, Suite 100
Alpharetta, GA 30022
Attn: Legal Department
Email: legalcontractteam@landisgyr.com

If to Customer:

City of Needles
817 3rd Street
Needles, CA 92363
Attn: Rainie Torrance
Email: EMAIL ADDRESS

Notices sent in accordance with this Section 15.4 will be deemed effectively given: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile with confirmation of transmission), if sent during normal business hours of the recipient, and on the next business day, if sent after normal business hours of the recipient; or (d) on the fifth (5th) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

- 15.5 Headings. The headings in this Agreement are for reference only and will not affect the interpretation of this Agreement.
- 15.6 Entire Agreement. This Agreement (including all Service Orders and other Schedules and Exhibits) contains the entire agreement of the parties and supersedes all previous oral and written communications by the parties, concerning the subject matter of this Agreement. This Agreement may be amended solely in a writing signed by both parties. Standard or printed terms contained in any purchase order or sales confirmation are deemed rejected and shall be void unless specifically accepted in writing by the party against whom their enforcement is sought; mere commencement of work or payment against such forms shall not be deemed acceptance of the terms.
- 15.7 Assignment. Neither party will assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement without the other party's prior written consent, which consent will not unreasonably be withheld or delayed. Any purported assignment, delegation or transfer in violation of this Section 15.7 is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.
- 15.8 No Third-party Beneficiaries. This Agreement is an agreement between the parties, and confers no rights upon either party's employees, agents, contractors, partners of customer or up any other person or entity.
- 15.9 Waiver. No waiver shall be effective unless it is in writing and signed by the waiving party. The waiver by either party of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach.
- 15.10 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable, that term shall be reformed to achieve as nearly as possible the same effect as the original term, and the remainder of this Agreement shall remain in full force.

- 15.11 **Governing Law; Submission to Jurisdiction.** This Agreement shall be governed by the laws of the State of California, without regard to California's conflict of laws principles and each party irrevocably submits to the exclusive jurisdiction and venue of the federal and state courts located in San Bernardino County. The Uniform Computer Information Transactions Act does not have any application to this Agreement. The parties expressly exclude the United Nations Convention on Contracts for the International Sale of Goods from application to this Agreement.
- 15.12 **Waiver of Jury Trial.** Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.
- 15.13 **Equitable Relief.** The Parties will be entitled to seek injunctive or other equitable relief whenever the facts or circumstances would permit a party to seek equitable relief in a court of competent jurisdiction.
- 15.14 **Attorneys' Fees.** In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees, expert witness fees and out-of-pocket and court costs from the non-prevailing party.
- 15.15 **Limitations on Actions.** No actions, regardless of form, arising from the transactions under this Agreement, may be brought by either party more than two (2) years after the cause of action has accrued.
- 15.16 **Schedules and Exhibits.** All Schedules that are referenced herein and attached hereto, or are signed by both parties on or after the Effective Date, are hereby incorporated by reference. The following Schedules and Exhibits are attached hereto and incorporated herein:

Schedule A Service Level Agreement and Support Services

Schedule B Service Order; Pricing

Landis+Gyr may update the terms set forth in Schedules A and B provided the updates do not (a) result in a material degradation of the overall security of the SaaS Service; (b) expand the scope of or remove any restrictions on Landis+Gyr's Processing of Customer Data as described in the Landis+Gyr Cloud Data Processing and Security Terms, or (c) have a material adverse impact on Customer's rights in this Agreement. Such updates may be sent via a customer information letter (CIL).

- 15.17 Landis+Gyr is and shall remain in compliance with all of the laws and Executive Orders prohibiting discrimination, including but not limited to Title VII of the Civil Rights Act of 1964 as amended, the Civil Rights Act of 1991, 42 USC 2000(e), et seq., and all applicable state and local laws against discrimination.
- 15.17.1 Landis+Gyr and Subcontractor, if any, shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, sex, gender, sexual orientation, LGBTQ+ status, gender identity, gender expression, pregnancy, marital

status, religion, creed, national origin, ancestry, age, mental or physical disability, genetic information, medical condition, military or veteran status, or any other class or status protected by law.

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

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

Landis+Gyr Technology, Inc.

City of Needles

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

Landis+Gyr Technology, Inc.

Signature

Printed Name

Title

Date

SCHEDULE A
SERVICE LEVEL AGREEMENT
AND
SUPPORT SERVICES

All capitalized terms that are not defined in this Schedule will have the respective meanings given to such terms in the SaaS Agreement.

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

“Error” means any reproducible material error or defect in the SaaS Services that causes it not to conform in material respects to the Documentation.

“Error Corrections” means modifications that correct Errors.

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

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

“Support Period” means the Service Order Term as set forth in the applicable Service Order.
2. Availability Requirement. Subject to the terms and conditions of the SaaS Agreement and this Schedule, Landis+Gyr will use commercially reasonable efforts to make the SaaS Services Available, as measured over the course of each calendar month during the Support Period and any additional periods during which Landis+Gyr does or is required to perform any SaaS Services(each such calendar month, a **“Service Period”**), at least 99.5% of the time, excluding only the time the SaaS Services are not Available solely as a result of one or more Exceptions (**“Availability Requirement”**). **“Available”** means the SaaS Services are available and operable for normal access and use by Customer and its Authorized Users over the Internet in material conformity with the Documentation.
- 2.1 Exceptions. No period of SaaS Service degradation or inoperability will be included in calculating Availability Requirement to the extent that such downtime or degradation is due to any of the following (**“Exceptions”**):
 - (a) Customer's use of the SaaS Services not in accordance with Permitted Uses;
 - (b) failures of Customer's or its Authorized Users' Internet connectivity;
 - (c) internet or other network traffic problems other than problems arising in or from networks actually or required to be provided or controlled by Landis+Gyr or its Subcontractor;
 - (d) Customer's or any of its Authorized Users' failure to meet any minimum hardware or software requirements set forth in the Documentation;
 - (e) Force Majeure Event;

- (f) Failure, interruption, outage or other problem with any software, hardware, system, network, facility or other matter not supplied by Landis+Gyr pursuant to the SaaS Agreement or this Schedule.
- (g) Scheduled Downtime;
- (h) Suspension or termination of the SaaS Services pursuant to Section 3.4 of the SaaS Agreement; or
- (i) Time down required to install an emergency patch for a security vulnerability or similar emergency.

3. Support and Maintenance Services. Landis+Gyr will provide Landis+Gyr's standard maintenance and support services for the SaaS Services (collectively, "**Support Services**") during the support hours throughout the Support Period in accordance with the terms and conditions of this Schedule and the SaaS Agreement. The Support Services are included in the Services, and Landis+Gyr will not assess any additional fees, costs or charges for such Support Services.

3.1 Support Service Responsibilities. Landis+Gyr will:

- (a) respond to Support Requests in accordance with the Service Levels;
- (b) provide responsive telephone or email support as set forth in Section 3.6.
- (c) Provide online access to technical support bulletins and other user support information and forums, to the full extent Landis+Gyr makes such resources available to its other customers.

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

- (a) proactively monitoring on a twenty-four (24) hour by seven (7) day basis all SaaS Service, infrastructure and other components of SaaS Service security;
- (b) if such monitoring identifies, or Landis+Gyr otherwise becomes aware of, any circumstance that is reasonably likely to threaten the Availability of the SaaS Service, taking all necessary and reasonable remedial measures to eliminate such threat and ensure Availability;
- (c) if Landis+Gyr receives knowledge that the SaaS Service or any SaaS Service function or component is not Available (including by notice from Customer pursuant to the procedures set forth herein or in the applicable Service Order):
 - i. Landis+Gyr will confirm the outage by a direct check of the associated facility or facilities;
 - ii. if Landis+Gyr's facility check in accordance with clause (i) above confirms a SaaS Service outage in whole or in part: (A) notifying Customer pursuant to the procedures set forth herein or in the applicable Service Order that an outage has occurred, providing such details as may be available, including a Landis+Gyr trouble ticket number, if appropriate, and time of outage; and (B) working all problems causing and

caused by the outage until they are resolved as Critical Service Errors in accordance with the Support Request Classification set forth in the Service Level Table.

- iii. Landis+Gyr will continuously maintain the SaaS Services to optimize Availability that meets or exceeds the Availability Requirement. Such maintenance services will include providing to Customer and its Authorized Users:
 - a. such updates, bug fixes, enhancements, new releases, new versions and other improvements to the SaaS Service, that Landis+Gyr provides at no additional charge to Landis+Gyr's other similarly situated customers. Specific upgrades are set forth in the applicable Service Order; and
 - b. all such services and repairs as are required to maintain the SaaS Services or are ancillary, necessary or otherwise related to Customer's or its Authorized Users' access to or use of the SaaS Service, so that the SaaS Services operate properly in accordance with this Agreement and the Documentation.

3.3 Scheduled Downtime. Landis+Gyr will use commercially reasonable efforts to: (a) schedule downtime for routine maintenance of the Services outside of the hours of 7:00 AM – 7:00 PM Central Standard Time, Monday – Friday and (b) notify Customer at least 48 hours (via email) prior notice of all scheduled outages of the Services (“**Scheduled Downtime**”).

3.4 Service Levels.

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

Description of Incident	Supported	Initial Response	Subsequent Response	Target Restoration	Escalation
<p>Severity 1 (Critical)</p> <ul style="list-style-type: none"> • Production system is completely down or unavailable. • Business critical applications or service severely impacted for which there is no reasonable work-around • an error with no reasonable work-around that results in a complete disruption of daily work • during a project or upgrade, a non-production environment issue that severely impacts system use and jeopardizes the ability to meet project schedule. <p>Severity Level 1 issues must be reported by phone.</p>	Non-stop 24/7/365	Within 60 minutes	every 2 hours	24 hours	<p>Supervisor: Immediately Manager: 30 minutes Director: 1 hour VP: at Director's discretion</p> <p>Customer may escalate at any time it feels unacceptable progress is being made.</p>

Description of Incident	Supported	Initial Response	Subsequent Response	Target Restoration	Escalation
<p>Severity 2 (High)</p> <ul style="list-style-type: none"> production system is functioning/available but significantly impacted with limited capabilities, or is unstable with major periodic interruptions significant degradation in performance major system feature/function failure for which there is no reasonable work-around during a project or upgrade, a non-production environment issue that meets the above definitions where resolution is needed to meet business objectives and the ability to meet project schedule. 	<p>As needed</p> <p>24/7/365</p>	Within 4 hours	1 calendar day	7 calendar days	<p>Supervisor: 1 hour Manager: 2 hours Director: at Manager's discretion VP: at Director's discretion</p> <p>Customer may escalate at any time it feels unacceptable progress is being made.</p>
<p>Severity 3 (Medium)</p> <ul style="list-style-type: none"> production system is still functioning but capabilities are moderately impacted, or the system is unstable with minor periodic interruptions or a minor loss of product functionality there is a low to medium impact to business functions but it is manageable using a reasonable work-around. 	During business hours	1 Business Day	3 Business Days	15 Business days	<p>If unable to be resolved, Severity 3 issues will be escalated to appropriate levels of leadership at the utilities request</p> <p>Customer may escalate at any time it feels unacceptable progress is being made.</p>

Description of Incident	Supported	Initial Response	Subsequent Response	Target Restoration	Escalation
Severity 4 (Low) <ul style="list-style-type: none"> general usage question, request for information, reporting of a documentation error, or recommendation for a future product enhancement or modification. There is low-to-no impact on the business or the performance or functionality of the system. 	During business hours	3 Business Days	5 Business Days	As decided jointly between the business and utility	If unable to be resolved, Severity 4 issues will be escalated to appropriate levels of leadership at the utilities request. Customer may escalate at any time it feels unacceptable progress is being made.

In order for Landis+Gyr to meet Target Response Times outlined above, Landis+Gyr customers should make contact via telephone to report Severity 1 (Critical) or Severity 2 (High issues). Any resolution of such Cases may take the form of a written response, supplementary documentation, work-around, coding change, product patch, or other correctional aids, which Landis+Gyr will provide to Customer. Landis+Gyr will respond to and investigate any suspected Incident in the Cloud Software within the time provided above. Resolution of such Incidents may take the form of a written response, supplementary documentation, work-around, coding change, product patch, or other correctional aids, which Landis+Gyr will provide to Customer.

Should business requirements call for a more customized level of support, Landis+Gyr also offers Premium Support packages, which include dedicated technical support, client management and executive dashboard views to open technical views and more. Premium Support includes discounted rates for additional Smart Grid service offerings as well. Pricing for Premium Support is based on an agreed scope of work based on the options selected and can be quoted upon request.

3.5 Support Requests and Customer Obligations.

- (a) Support Requests. Customer may request Support Services by way of a Support Request. Customer will classify its requests for Error corrections in accordance with the severity levels classifications and definitions of the Service Level Table set forth in Section 3.4 (“**Support Request**”). Customer will notify Landis+Gyr of each Support Request by e-mail, telephone or such other means as the parties may agree to in writing. Customer will include in each Support Request a description of the reported Error and the time Customer first observed the Error. Customer agrees that Landis+Gyr may transfer Customer Data to any of Landis+Gyr’s Affiliates subsidiaries or group entities for customer support purposes even when such entities may be located outside the United States or Canada.
- (b) Customer Obligations. Customer will, by and through its employee or consultants provide Landis+Gyr with:
 - i. prompt notice of any Errors; and
 - ii. each of the following to the extent reasonably necessary to assist Landis+Gyr to reproduce operating conditions similar to those present when Customer detected the relevant Error and to respond to the relevant Support Request:
 - a. direct access to the Customer Systems and the Customer’s files and personnel;
 - b. output and other data documents and information, each of which is deemed Customer’s Confidential Information as defined in the SaaS Agreement; and
 - c. such other reasonable cooperation and assistance as Landis+Gyr may request.

3.6 Service Desk Contact Information. Landis+Gyr will provide Customer with access to the Service Desk. Landis+Gyr’s current Service Desk business hours are 7:00 AM to 6:00 PM Central Time, Monday through Friday, excluding Landis+Gyr observed holidays (available upon request) and weekends (“**Business Hours**”). In addition, emergency access to on-call personnel via Landis+Gyr’s Emergency Dispatch Service will be provided by Landis+Gyr from 6:01 PM through 6:59 AM, and 24 hours per day on weekends and holidays. Landis+Gyr will provide advanced

troubleshooting, via telephone or e-mail, as deemed necessary by qualified Landis+Gyr Personnel, to resolve Customer issues.

3.7 Submission Method. Customer can contact the Service Desk through:

- i. Telephone direct dial-in at 888.390.5733;
- ii. Customer support portal, or
- iii. E-mail at support.na@landisgyr.com

All contact information is subject to change and update by delivery of notice and by posting on the Landis+Gyr Website at www.landisgyr.com.

4. Backup and Recovery. Landis+Gyr conducts regular daily backups of Customer Data and performs or cause to be performed other periodic backups (snapshots, differential backups, etc.). Landis+Gyr utilizes a multi-layered backup strategy, backing up data to an active system which can be used for rollbacks and immediate data recovery. Active backups will be retained for up to one (1) week old and then will be overwritten as they are replaced with newer backups. Data is further backed up to an archival system for long term offline storage. Both active and archival backup systems are replicated to the secondary, offsite data center for Business Continuity and Disaster Recovery purposes. Active backups follow the normal retention period of lasting for one (1) week while archive backups are retained for no less than one (1) year. These do not replace the need for Customer to maintain regular backups of data and file extracts performed by the Customer. Customer access to backup data outside of a Disaster Recovery event may be subject to additional fees.

5. Business Continuity and Disaster Recovery Protection. Landis+Gyr will maintain an ongoing Business Continuity (“BC”) program (that includes Risk Assessment) and Disaster Recovery (“DR”) program for the SaaS Services and implement such plan in the event of unplanned interruption of the SaaS Service.

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

SCHEDULE B
RESTATED
SERVICE ORDER NO. 1 AND PRICING

This Restated Service Order No. 1 (this “Service Order”) is part of and incorporated into the Amended and Restated SaaS Agreement. All capitalized terms that are not defined in this Schedule will have the respective meanings given to them in the SaaS Agreement. In the event of any conflict between the body of the SaaS Agreement and this Service Order B, the terms of this Service Order will govern.

SCOPE OF SERVICE. Landis+Gyr will provide Customer with access to Services on the terms and conditions set forth in the SaaS Agreement. Landis+Gyr will provide Services that will enable Customer to access the Cloud Software.

1. **Service(s) Description**

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

- ☒ Command Center Production Environment (or its successor)
- ☐ Advanced Security
- ☐ Command Center Disaster Recovery Environment (or its successor)
- ☐ Command Center Test/Dev Environment (or its successor)

2. **Service Term**

The initial term for this Service Order begins on the Effective Date and ends sixty (60) months thereafter (the “**Initial Service Order Term**”).

Upon expiration of the Initial Service Order Term, this Schedule B will automatically renew for successive three (3) year periods (each a “**Renewal Term**” and together with the Initial Service Order Term, the “**Service Order Term**”), unless a party provides the other party with written notice of its intent not to renew this Service Order at least ninety (90) days prior to the expiration of the then current term.

3. **Service Fee**

- 3.1 The SaaS Services Fees, payable by Customer to Landis+Gyr, for the duration provided are shown in the table(s) below (the “**Initial Service Fees**”):

Command Center Pricing Table RF MESH

Command Center Pricing up to 5,000 Endpoints	Monthly Fee Year 1	Year 2	Year 3	Year 4	Year 5
0-5,000	\$1,195.00	\$1,425.00	\$1,655.00	\$1,655.00	\$1,655.00

For endpoints over 5,000 monthly SaaS Services Fees will be invoiced as shown below:

Tier	Price / Month
5,000-10,000	\$2,205.00
10,000 – 25,000	\$3,705.00
25,000 – 50,000	\$5,955.00

Should Customer's Endpoint population exceed 100,000 Endpoints, the parties will define an applicable SaaS Services Fee.

- 3.2 A one-time Advanced Security set up fee of four thousand dollars (\$4,000.00) applies.

4. **Price Increases**

Following year 3 of the Initial Service Fee duration, Landis+Gyr is entitled to increase its Fees annually, with the policy to follow the amount of increase in the Consumer Price Index – All Urban Consumers of the Bureau of Labor Statistics of the U.S. Department of Labor for U.S. for All Items with Base Years 1982-1984=100. Those increases will be measured applying the twelve (12) month period ending in the month for which the most recent index results are available as of that anniversary of the Effective Date. In addition to this, Landis+Gyr is entitled to increase Fees once a year with an additional percentage on top of it with a maximum of 5%. Not raising fees is not a waiver of Landis+Gyr's right to do so.

If Customer does not agree with this additional percentage, Customer has the possibility to object in writing within 30 days of receiving notice of this additional increase in Fees. Should Customer object timely, the Parties will discuss solutions.

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

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

- 5.1 **Project Coordination.** To the extent applicable, Landis+Gyr will provide a project coordinator to provide direction to Customer relating to Services such as during an Upgrade deployment. Customer to provide primary point of contact to work with the project coordinator.

- 5.2 Installation and Configuration. Installing the Cloud Software in the cloud setup with standard configurations. Custom configurations are available for an additional fee as detailed in an applicable SOW.
- 5.3 Upgrades; End of Support. Landis+Gyr and Customer will mutually agree on an Upgrade schedule for Cloud Software. Services include at least one (1) Cloud Software Upgrade per calendar year. Customer agrees to remain on a Supported Release of Cloud Software. Cloud Software DOES NOT INCLUDE any application or tools software running on local Customer computers or other Customer equipment. Customer acknowledges that new features may be added to the SaaS Services based on market demand and technological innovation. Accordingly, as Landis+Gyr develops enhanced versions of the SaaS Service, Landis+Gyr may cease to maintain and support older versions of the Cloud Software (“EOS). Landis+Gyr will use commercially reasonable efforts to provide Support Services with respect to older version of the Cloud Software that may accompany the SaaS Service. Landis+Gyr shall have no obligation to support Cloud Software outside of Landis+Gyr’s stated EOS policy for the applicable Cloud Software. Such EOS policies shall be made available to Customer either in the accompanying Documentation or upon request and are subject to update from time to time in Landis+Gyr’s reasonable discretion with no less than a twelve (12) month EOS notification period.
- 5.4 Integration(s). Landis+Gyr will provide integrations to third party systems for an additional fee as detailed in the applicable SOW.
- 5.5 Data Availability. Landis+Gyr will make available on a live basis at least 45 days of Customer Data. Data older than 45 days will be archived and available to Customer upon request (additional fees may apply). Archive data will be retained for a minimum of one (1) year unless otherwise mutually agreed upon.
- 5.6 Process Pass Through Fees. Landis+Gyr will process and invoice Customer for any mutually agreed upon pass through fees as applicable such as communication fees.
6. **Customer Responsibilities:**
- 6.1 Conduct Network Gateway Field Maintenance. Customer will perform field maintenance work on the Meters/modules and Network Gateways. This includes, but is not limited to, updating the Network Gateway, and Field Tools software to the latest version.
- 6.2 Interface Billing data to Customer Billing System. Customer is responsible for executing the Billing Extract file utilizing the functionality built into the Cloud Software and loading it into Customer’s billing system. Customer is also responsible for any exception processing that is associated with endpoints that do not have billing data available for a particular billing cycle window.
- 6.3 Provide Network Gateway Communication. Customer is responsible for purchasing and physically maintaining all Network Gateway communications infrastructure as applicable.
- 6.4 Administer Login and Passwords. Customer is responsible for assigning security officer(s), administering all Software logins and passwords, to provide Customer-selected configurations and to maintain access rights for the Customer’s employees.
- 6.5 Support Utility Consumer. Customer is responsible for handling all support for Customer’s own end-use consumers. Landis+Gyr will not provide any support regarding billing inquiries or any other matter for end-use consumers.

- 6.6 Install and Upgrade Endpoint Programmer Software. Customer is responsible to load and maintain Endpoint Programmer Software on desired hardware at Customer's location including Tech Studio and other field tools.
- 6.7 Loading Files. Customer is responsible for loading MMF (Meter Manufacture Files), IIF (Interchange File Format) and CIF (Customer Information Files) files to Cloud Software.
- 6.8 Application Administration. Customer is responsible to provide Customer-selected configurations and maintain access rights.
- 6.9 Application Operations. Customer is responsible to provide daily business operations of the Cloud Software monitoring jobs; reporting; coordination of issues, etc.
- 6.10 IT coordination. Customer is responsible to coordinate management of interfaces to connected Customer Systems.
- 6.11 Upgrades. Customer is responsible to validate upgrades to Cloud Software.
- 6.12 No Collection or Storage of PII. The Services under this Service Order does not collect nor store Personal Data (also referred to as PII). Customer agrees that it will not send or provide Landis+Gyr access to any PII, whether in data or any other form. Customer agrees to be fully responsible for reasonable costs and other amounts that Landis+Gyr may incur relating to any such information mistakenly provided to Landis+Gyr or the loss or disclosure of such information by Landis+Gyr, including those arising out of any third-party claims. Should Customer mistakenly provide PII to Landis+Gyr, Customer will immediately notify Landis+Gyr in writing in accordance with the notice provisions herein, and reasonably cooperate with Landis+Gyr to take any mitigating actions deemed necessary to remove such PII from the Landis+Gyr Systems. Should Customer wish to utilize PII, it will enter into a separate Service Order for Landis+Gyr's Meter Data Management System Cloud Software.