

MASTER PURCHASE, LICENSE AND SERVICES AGREEMENT

THIS MASTER PURCHASE, LICENSE AND SERVICES AGREEMENT is effective as of the last signature date below (“**Effective Date**”) and is between Legal Account Name, a [State] [entity type] (“**Customer**”) with principal offices located at Account Address1, Account Address2, and Landis Gyr Entity a Delaware corporation (“**Landis+Gyr**”) with principal place of business at 30000 Mill Creek Avenue, Suite 100, Alpharetta, GA 30022.

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

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

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

1. Definitions

The terms listed below are defined as follows:

- 1.1 “**Agreement**” means this Master Purchase, License and Services Agreement, including all exhibits and Statements of Work, which is by and between Customer and Landis+Gyr. In the event there are any conflicting provisions or requirements among the Agreement documents, the provision and requirements of the Agreement document shall be enforced in the following order of descending priority: (i) any amendment to this Agreement; (ii) the body of this Agreement; and (iii) any other document included as an Agreement document.
- 1.2 “**Customer Data**” means (i) any and all information related to the Customer’s customers, end user or consumers relating to electricity, natural gas and/or water consumption, load profile, billing history, or credit history that is or has been obtained or compiled by Customer in connection with supplying such services to that customer or group of customers (“**Personal Information**”) (regardless of the media in which it is contained) that may be disclosed to or accessed by Landis+Gyr at any time or to the Field Tools by Customer or its employees, agents, consultants, contractors, suppliers or customers in connection with Landis+Gyr’s performance of the Services; (ii) any and all Personal Information created, obtained, used or accessed by Landis+Gyr (or the Field Tools) in its performance of the Services, or derived from such information or materials; and (iii) all data and information of Customer, its employees or customers.
- 1.3 “**Deployed**” means Equipment, as applicable, that has been commissioned in the field and properly installed by the installation contractor, or Customer, and signed off by Customer as ready for use.
- 1.4 “**Documentation**” means any and all manuals, instructions, specifications and other documents and materials that Landis+Gyr provides or makes available to Customer in any medium and which describe the functionality, components, features or requirements of the Software, including any one or more of installation, configuration, integration, operation, use, support or maintenance thereof.
- 1.5 “**Endpoint**” means a sensory-type device, e.g., electric meter, water meter, gas meter, DA device, etc., that is equipped with an AMI communication module.

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

- 1.18 **“System”** means Equipment, Firmware, Field Tools and Software purchased hereunder and used by the Customer to monitor and manage its consumer’s usage of Customer offerings.
- 1.19 **“Third Party Products”** means, if any, goods and software that Customer purchases or sub-licenses from Landis+Gyr that are not manufactured or provided by Landis+Gyr that display the logo or copyright of another manufacturer, or that are not proprietary to Landis+Gyr.

2. Orders; Cancellations and Modifications

- 2.1 Equipment Forecasts. Within thirty (30) days after the Effective Date of this Agreement, Customer shall supply to Landis+Gyr a written forecast of total anticipated Landis+Gyr Equipment needs by month. Any changes to the Equipment forecast should also be furnished to Landis+Gyr. Failure to provide an accurate forecast, within reason, may negate the stated Landis+Gyr equipment lead times and may adversely impact delivery of product to Customer.
- 2.2 Written Orders. Customer may issue Purchase Orders to Landis+Gyr by mail, facsimile communication or electronic mail. Landis+Gyr may accept Customer’s Purchase Order by signing it, acknowledging it using facsimile or electronic mail, or by delivering the Products which Customer ordered. Customer’s Purchase Order will be accepted solely for purposes of establishing the items and quantities ordered and the desired shipment dates and shipment method. Customer’s desired shipment dates shall take into account Landis+Gyr’s current lead times at the time of the Purchase Order. Lead times will be provided to Customer by a Landis+Gyr representative and are defined as the cycle time from acknowledgement of Order to fulfillment of Order, assuming the Equipment was initially forecasted in accordance with Section 2.1. It is acknowledged by the parties that all instrument and documents issued or delivered by either party pursuant to this Agreement, including all Purchase Orders, order acceptance, order acknowledgements, invoices and other instruments (**“Order Documents”**) shall incorporate the terms and conditions of this Agreement, irrespective of whether any such Order Document expressly references this Agreement, and shall be subject to the terms and conditions contained in this Agreement. Any terms and conditions contained in an Order Document now or hereafter delivered by a party pursuant to this Agreement other than quantities, service description and other required details and shipping instructions, will not apply and each Party hereby waives and rejects all such terms and conditions.
- 2.3 Cancellation and Modifications. Customer may not cancel or modify an Equipment Order within sixteen (16) weeks prior to the scheduled delivery. Notwithstanding the foregoing, cancellation charges do not apply to Software or Services Orders.
- 2.4 Equipment and Software Intellectual Property. Landis+Gyr retains ownership of all intellectual property rights in the Equipment, Firmware and Software. Customer agrees that Customer shall not, and that Customer shall not allow any third party, to attempt to reverse engineer, de-compile, or disassemble the Equipment, Firmware or the Software or otherwise discover the trade secrets in the Firmware for any reason.

3. Shipment

- 3.1 Shipments. Landis+Gyr will ship or deliver Equipment to Customer’s warehouse or other location designated by Customer. All Equipment will be shipped to Customer DAP (Delivery At Place) in full truckload shipments in accordance with INCOTERMS 2020; additional charges may apply if actual shipment is less than a truckload to the extent applicable. Customer agrees to inspect Equipment within one (1) week of receipt and to promptly notify Landis+Gyr of any defects. Customer will be deemed to have accepted the Equipment unless Customer notifies Landis+Gyr within one week after receipt of the Equipment that the Equipment is rejected. The acceptance of any Equipment by Customer shall not preclude the subsequent removal thereof if such Equipment

shall be found to be defective after installation; in such event, the Agreement's warranty terms shall apply.

4. Prices and Taxes

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

5. Invoice and Payment

- 5.1 Invoice and Payment. Landis+Gyr will issue invoices to Customer for all amounts owed to Landis+Gyr hereunder in accordance with the Agreement. Invoices will be issued (i) for Equipment, upon shipment of the Equipment, (ii) for Services, 50% upon contract execution and the remaining 50% upon completion of the Services; and (iii) for Software license fees, in advance of delivery. Payment is due within thirty (30) days of the invoice date. Late payments will be subject to interest from the due date at the lesser of one percent (1%) per month or the maximum rate allowed by law.

6. Software

- 6.1 Firmware License. The Firmware is licensed to Customer, not sold. Customer is granted a perpetual, non-transferable, non-exclusive license to use the Firmware solely in connection with Customer's use of the Equipment for use solely with Gridstream communication network. Customer understands and agrees that it is not permitted to distribute the Firmware in any form, or to use the Firmware except as it is embedded in the Equipment.
- 6.2 License to Software. Landis+Gyr hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable, limited license to install, execute and otherwise use the Software in object code form only in the Customer service territory pursuant to the terms of this license. Landis+Gyr hereby

licenses the use of Software solely for use in conjunction with the Equipment. Customer agrees that Customer shall not, and shall not allow any third party to (i) attempt to reverse engineer, de-compile, or disassemble the Software or Firmware or otherwise discover the trade secrets in the Software or Firmware for any reason, (ii) make alterations to, or modifications of the Software or Firmware, in whole or part, or (iii) combine the Software or Firmware, or any part of it with, or incorporate it in, any other programs without express permission from Landis+Gyr. Customer agrees not to copy Software or Firmware without express written authorization from Landis+Gyr, except that Customer may copy the Software or Firmware as required for backup, archival, testing, training and/or other similar purposes. Customer must reproduce and include the copyright notices on any such copies. Customer's employees, consultants and contractors (if any) shall be deemed authorized users of the Software and Firmware provided that each such employee, consultant and/or contractor has agreed to comply with the terms hereof, and further provided that Customer remains liable for any breach of the terms of the license by such employee(s), consultant(s) or contractor(s).

- 6.3 Intellectual Property Rights. All proprietary and intellectual property rights in and to the Firmware and Software provided hereunder are owned by Landis+Gyr (or its third party licensors) and Landis+Gyr (and/or its third party licensors) retains title to the original Firmware and Software provided to Customer and any copies made from it.
- 6.4 Software Support and Maintenance Support. Upon payment of the applicable fees, Landis+Gyr will provide the Software support and maintenance services set forth in the separate Software Support and Maintenance Agreement (the “**Support Agreement**”).
- 6.5 System Security. Customer acknowledges that Software may be accessible from the Internet if configured to do so by Customer. Customer is responsible for establishing system security that will allow only authorized users to access the Software.
- 6.6 Customer Responsibilities relating to Software. Except to the extent that Customer purchases Support and/or Maintenance services, Customer is responsible for, including but not limited to: (i) performing all system administration activities, reports and APIs utilizing the functionality built into the Software (if licensed) and loading it into Customer's systems, (ii) performing any exception processing that is associated with endpoints that do not have billing data available for a particular billing cycle window; (iii) purchasing, installing and physically maintaining all software System network communications infrastructure; (iv) purchasing, installing, configuring and maintaining all IT hardware needed to operate Software (if licensed) and related applications, (v) administering all Software logins and passwords for its personnel; (vi) handling all support for its own end-use consumers, including, without limitation, any matters relating to end-use consumer billing and utility usage; (vii) performing database administration such that database tables are archived/truncated to store no more than 90 days of data on-line at all times, (viii) installing and maintaining all Third Party Products and third party services, (ix) granting secure remote access to Software to authorized Landis+Gyr personnel if Customer hosts the Software, (x) allowing Landis+Gyr to run a read-only script on Customer's Software to collect key performance metrics to help monitor and troubleshoot issues, (xi) providing help desk support to Customer's own employees as well as assessing skill deficiencies and readdressing training with Customer's own employees, (xii) reporting incidents to Landis+Gyr promptly upon Customer being aware of such incidents, (xiii) assigning appropriate priority to incidents, action items, and service requests, and (xiv) notifying Landis+Gyr prior to any scheduled downtime (performed by Customer) on any Customer systems that could impact services provided by Landis+Gyr.

7. **Services**

- 7.1 Services. Landis+Gyr will provide the Services as set forth in Exhibit A or in a separate Statement of Work. Exhibit A sets forth the description of the Services, pricing, duration and any other terms specific to the Services described therein. To the extent Customer purchases software maintenance

support, Landis+Gyr will provide the Maintenance Services set forth in the separate Maintenance Agreement. To the extent Customer purchases Software support, Landis+Gyr will provide the Support Services set forth in the separate Support Agreement.

8. Limited Warranties

- 8.1 Equipment Limited Warranty. Landis+Gyr represents and warrants that the Equipment, including Firmware will, during its applicable warranty period, (a) be new, (b) conform in all material respects with its specifications, (c) be free from all liens, claims and encumbrances and (d) not fail when Deployed in the field as a result of a material defect, provided that such Equipment is returned based upon the Return Materials Authorization (RMA) process. Units returned under warranty via an RMA to the designated Landis+Gyr facility will be repaired or replaced by Landis+Gyr and then returned to Customer as set forth in Section 8.2 below. The warranty period shall be calculated from date of shipment as follows: (i) for Tech Studio Communication Adapter, six (6) months and (ii) for all other Equipment, 18 months.

8.2 RMA Process.

- 8.2.1 Upon the occurrence of a breach of warranty, Customer shall contact Landis+Gyr's customer support and request a return materials authorization form ("**RMA**"). After an RMA is issued, Landis+Gyr will provide Customer with shipping instructions, via email, for the warranted Equipment. Customer will remove and ship to Landis+Gyr, at Customer's expense, any such defective Equipment. Landis+Gyr shall repair or replace, at Landis+Gyr's option and expense, (and as Customer's sole and exclusive remedy for breach of any equipment warranty) the defective Equipment within ninety (90) days of receipt of such returned Equipment. Landis+Gyr shall ship the repaired or replaced warranted Equipment back to Customer, at Landis+Gyr's expense. Customer will reinstall the repaired or replaced warranted Equipment, at Customer's expense.
- 8.2.2 For Equipment that is found to be not under warranty, Landis+Gyr will at Customer's direction, (i) attempt repairs, upon Customer's written request, based on Landis+Gyr current prevailing rates or (ii) ship the non-warranted Equipment back to the Customer, at Customer's expense, or (iii) dispose of the Equipment.
- 8.2.3 Any repaired or replaced Equipment shall be warranted as set forth in this Section for a period equal to the greater of (i) the balance of the applicable warranty period relating to such Equipment or (ii) six (6) months from the shipment date to Customer.
- 8.2.4 If more than three percent (3%) of Meters returned by Customer for the prior twelve (12) month period have no defect ("**Non-Defective Equipment**"), then Customer will pay twenty-five dollars (\$25.00) per Meter (subject to a CPI increase) above that three percent (3%) threshold to cover Landis+Gyr's costs of handling and testing the Non-Defective Equipment.
- 8.2.5 **ALL CLAIMS FOR BREACH OF WARRANTY MUST BE RECEIVED BY LANDIS+GYR NO LATER THAN THIRTY (30) DAYS AFTER THE EXPIRATION OF THE WARRANTY PERIOD.**

- 8.3 Software Limited Warranty and Software Remedy. Landis+Gyr warrants that all Software will materially comply with its specifications, Documentation and functional requirements for a period of thirty (30) days from delivery. As sole remedy for defective Software, Landis+Gyr will use commercially reasonable efforts to remedy the performance associated with the Software within forty-five (45) days after written notice from Customer, unless such notice period is otherwise mutually extended. The limited warranties set forth in this Section 8.3 apply only if Customer: (a)

notifies Landis+Gyr in writing of the warranty breach before the expiration of the Software Warranty Period; (b) has promptly installed all maintenance releases to the Software that Landis+Gyr previously made available to Customer at no cost; and (c) as of the date of notification, is in compliance with all terms and conditions of this Agreement (including the payment of all license fees then due and owing).

- 8.4 Services Warranty and Services Remedy. Landis+Gyr warrants that it will provide Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with the prevailing standards of its industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement. The Services warranty period shall be ninety (90) days after performing a service except in the cases of installation services when applicable which shall be twelve (12) months from the date of installation. In the event of a breach of this warranty, Landis+Gyr shall re-perform the Services in a manner consistent with this warranty and cure such breach within thirty (30) days after written notice.
- 8.5 Warranty Limitations and Exclusions. Landis+Gyr's warranty obligations with respect to the Equipment, Firmware and Software comprising the System do not apply to the extent a failure or warranty non-conformity is caused by: Customer's or a third party's software or hardware, Customer's or a third party's infrastructure or data; Customer's or a third party's misuse of the equipment or software comprising the System; installation by Customer or a third party not in compliance with training or manuals provided by Landis+Gyr; operation, maintenance or use by Customer or third parties not in compliance with applicable training, manuals or specifications provided by Landis+Gyr; Customer's or a third party's neglect, modification, accident, vandalism or other intentional damage; exposure to adverse conditions exceeding performance levels required by applicable specifications; or any other limitation or exclusion described herein; data provided by Customer.
- 8.6 DISCLAIMER. OTHER THAN THE EXPRESS WARRANTIES SET FORTH HEREIN, LANDIS+GYR MAKES NO REPRESENTATIONS OR IMPLIED WARRANTIES TO CUSTOMER WITH RESPECT TO ANY EQUIPMENT, NETWORK EQUIPMENT, FIELD TOOLS, SOFTWARE, FIRMWARE AND/OR SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INFRINGEMENT OR WARRANTIES THAT MAY BE IMPLIED BY TRADE USAGE OR CUSTOM.
- 8.7 Third Party Products. The warranties provided by Landis+Gyr do not extend to third party products that are manufactured by a third party. For avoidance of doubt, Landis+Gyr makes no representations or warranties with respect to any third party product. Landis+Gyr will use commercially reasonable efforts to assign to Customer the warranties provided by such third party.
- 8.8 Exclusive Remedies. Each party's rights and remedies set forth in this Section are exclusive and in lieu of all other rights and remedies with respect to breaches of warranties.

9. General Indemnity; Infringement Indemnity

- 9.1 General Indemnity. Each party (the "**Indemnifying Party**") will indemnify and defend the other party and its officers, directors, shareholders, agents, employees, and representatives (collectively, the "**Indemnified Party**") from all third party claims, and related liabilities, fines, interest, costs, expenses and damages (including reasonable attorneys' fees) incurred by the Indemnified Party (collectively, the "**Indemnified Losses**"), for any property damage, injury, death, loss or destruction of any kind to persons or property, to the extent the damage, injury, death, loss or destruction arises out of or is related to the gross negligence, willful misconduct or

misrepresentation on the part of the Indemnifying Party or any of its servants, representatives, agents, employees or contractors.

9.2 Infringement Indemnity by Landis+Gyr. Landis+Gyr agrees to indemnify and defend Customer and its officers, directors, shareholders, agents, employees, and representatives from and against any Indemnified Losses resulting from a third party claim alleging that any Products or any resulting use of the Products constitutes an infringement of any United States patent or copyright or misappropriation of any trademark or trade secret, or constitutes a breach of any intellectual property right of any third party (an “**Infringement Claim**”).

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

- (a) procure for Customer and its end users the right to use such Products and Services at no cost to Customer and its end users;
- (b) replace such Products with equivalent non-infringing products that perform the same or materially same function as the Products being replaced; or
- (c) modify such Products so they become non-infringing provided that such modification does not render such Products unacceptable to Customer.

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

9.4 Indemnification Procedures. The party seeking indemnification will promptly notify the Indemnifying Party in writing of any Claims for which such party seeks indemnification pursuant to this Section 9 and cooperate with the Indemnifying Party at the Indemnifying Party's sole cost and expense. The Indemnifying Party will immediately take control of the defense and investigation of such Claim and will employ counsel reasonably acceptable to the other party to handle and defend the same, at the Indemnifying Party's sole cost and expense. The Indemnifying Party will not settle any Claim on any terms or in any manner that adversely affects the rights of the other party or any Indemnitee without the other party's prior written consent, which will not be unreasonably withheld or delayed. The other party and any Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. A party's failure to perform any obligations under this Section 9.4 will not relieve the Indemnifying Party of its obligations herein except to the extent that the Indemnifying Party can demonstrate that it has been prejudiced as a result of such failure.

9.5 Exceptions and Limitations on Indemnification. Notwithstanding anything to the contrary in this Agreement, the Indemnifying Party is not obligated to indemnify or defend Indemnified Party

against any claim (whether direct or indirect) if such claim or corresponding Indemnified Losses arise out of or result from Indemnified Party's:

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

10. Term; Termination

- 10.1 Term. This Agreement shall become effective on the Effective Date and continue in full force and effect for three (3) years unless sooner terminated in accordance with the provisions hereof. Thereafter, the term shall renew on a year to year basis unless either party receives written notice from the other of the other party's intent to terminate the Agreement upon the expiration of the then current one (1) year term. Such notice shall be delivered no later than sixty (60) days prior to the expiration of the then current one (1) year term.
- 10.2 Right to Terminate. Prior to the expiration of the initial three (3) year term, either party may terminate this Agreement upon sixty (60) days prior written notice to the other party for failure of such party to fulfill any of its material obligations hereunder. In the event that the breaching party corrects the breach within the sixty (60) day period, this Agreement shall continue in full force and effect as it would have had such breach not occurred. Failure to perform due to a force majeure shall not be considered a substantial or material default under this Agreement. A party hereto may, at its option, terminate this Agreement upon an Event of Bankruptcy of the other party.
- 10.3 Effect of Termination. The expiration or termination of this Agreement, for any reason, shall not release either party from any liability to the other party, including any payment obligation that has already accrued hereunder. If Customer shall terminate this Agreement other than for reasons of a default by Landis+Gyr, Customer shall upon such expiration or termination, within 30 days, at Landis+Gyr's option and at Customer's expense, return to Landis+Gyr or destroy all materials containing Landis+Gyr's Confidential Information.
- 10.4 Survival. The provisions of Sections 1, 6 through 10, and 12 through 15 shall survive the expiration or earlier termination of this Agreement for any reason, provided that with respect to Section 13, each party's obligations under this Section 10.4, shall survive the expiration or earlier termination of this Agreement for a period of five (5) years from the date of such expiration or termination, except for Confidential Information that constitutes a trade secret under any applicable law, in which case, such obligations shall survive for as long as such Confidential Information remains a trade secret under such law.

11. Change Management Process

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

12. Governing Law; Submission to Jurisdiction

- 12.1 Governing Law; Submission to Jurisdiction.

- (a) This Agreement and all related documents, and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the State of Governing Law, without regard to Governing Law's conflict of laws principles. The Uniform Computer Information Transactions Act does not have any application to this Agreement.
 - (b) Any legal suit, action or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of Governing Law, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein will be effective service of process for any suit, action or other proceeding brought in any such court.
- 12.2 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.
- 13. **Confidentiality**
 - 13.1 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 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, shall 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 or use of 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 shall use the Confidential Information solely for the performance of this Agreement and shall 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 shall survive the termination of this Agreement and shall continue for a period of five (5) years thereafter, except for Confidential Information that constitutes a trade secret under any applicable law, in which case, such obligations shall survive for as long as such Confidential Information remains a trade secret under such law. 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.
 - 13.2 Safeguarding Confidential Information. The Receiving Party shall 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 shall 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.

- 13.3 No Rights in Confidential Information. Customer and Landis+Gyr hereby acknowledge and agree that all Confidential Information of the other party shall remain the sole and exclusive property of such other party and that the Receiving Party shall have no proprietary rights, title or interests therein except as otherwise provided in this Agreement.
- 13.4 Termination. Upon termination for any reason, or at any other time that Customer or Landis+Gyr demands, the other party shall promptly deliver and/or certify destruction of Confidential Information, as appropriate, to the requesting party all Confidential Information (copies and originals) of the requesting party as may be in the other party's possession or under its control.

14. Limits of Liability

- 14.1 EXCLUSION OF INDIRECT DAMAGES. EXCEPT WITH RESPECT TO A BREACH OF CONFIDENTIALITY OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE FOR ANY LOSSES OR DAMAGES THAT ARE INDIRECT, CONSEQUENTIAL OR PUNITIVE, INCLUDING, LOSS OF REVENUE, LOSS OF PROFITS, OR LOSS OF BUSINESS OPPORTUNITY.
- 14.2 CAP ON DIRECT DAMAGES. EXCEPT WITH RESPECT TO (A) A BREACH OF CONFIDENTIALITY OBLIGATIONS, (B) OBLIGATIONS UNDER THIS AGREEMENT RELATED TO INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT, (C) PERSONAL INJURY OR DEATH OR DAMAGE TO ANY REAL OR TANGIBLE PERSONAL PROPERTY CAUSED BY EITHER PARTY'S GROSS NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT, THE TOTAL LIABILITY OF EITHER PARTY IN RESPECT OF ALL CLAIMS IN THE AGGREGATE, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTIES, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE, UNDER THIS AGREEMENT SHALL BE LIMITED TO THE FEES PAID BY CUSTOMER TO LANDIS+GYR DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

15. General

- 15.1 Complete Agreement, Modification and Assignment. The parties agree that this Agreement and any ancillary agreements, exhibits or schedules constitutes the complete and exclusive agreement between them with respect to its subject matter and supersedes all previous understandings, negotiations, proposals, acknowledgements, and representations, whether oral or written with respect thereto. No modification of this Agreement will be effective unless it is in writing and signed by authorized representatives of Customer and Landis+Gyr. Customer may not assign this Agreement, a Purchase Order, or its rights or obligations under them without the express written consent of Landis+Gyr which shall not be unreasonably withheld. Any exhibit attached hereto is incorporated herein by this reference.
- 15.2 Notices. Notices, other than routine communications having no legal effect, shall be in writing and shall be sent by certified United States mail (return receipt requested), by guaranteed overnight delivery, by courier, or by confirmed facsimile addressed to the addresses set forth below:

For Customer: Legal Account Name
 Account Address1
 Account Address2

Attn: Legal Contact
Facsimile No:

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

Notices sent in accordance with this Section 15.2 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

- 15.3 Force Majeure. Except for payment obligations, neither party is liable for failing to fulfill its obligations due to acts of God, civil or military authority, war, riots, strikes, fire, epidemics, pandemics or outbreak of communicable disease, quarantines, or other causes beyond its reasonable control. To the extent a party is substantially delayed by force majeure from performing its obligations hereunder, such party shall give notice and details of the force majeure to the other party as soon as practicable, then the parties may extend the time for performance by written agreement. In the event it shall become impossible for Landis+Gyr or Customer to perform its respective obligations because of force majeure, then in such event the party so unable to perform may terminate this Agreement upon written notice to the other. In no event shall an event of force majeure excuse or delay the payment of any amount owed by one party to the other party under this Agreement.
- 15.4 No Third Party Beneficiaries. There are no third-party beneficiaries to this Agreement, and no party other than Landis+Gyr and Customer, or their successors, shall have any legally enforceable rights under this Agreement.
- 15.5 Headings. All headings used in this Agreement are for reference purposes only and are not part of this Agreement.
- 15.6 Waiver; Severability. No delay or omission by Customer or Landis+Gyr in enforcing its rights or remedies under this Agreement shall impair such right or remedy or be deemed to be a waiver thereof. Any waiver, in whole or in part of any provision of this Agreement will not affect or be considered to be a waiver of any other provision. No waiver of this Agreement shall be valid unless in writing and signed by the parties thereto. If any term of this Agreement is found to be unenforceable or invalid for any reason, such term shall not affect the other provisions, but such unenforceable term shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permitted the intent of Customer and Landis+Gyr set forth in this Agreement, and all other terms will remain in full force and effect.
- 15.7 Independent Contractor. Nothing in this Agreement shall be read as appointing either party as the agent or legal representative of the other party for any purpose whatsoever, nor shall either party hold itself out as such. This Agreement does not create and is not intended to create any express or implied relationship of joint ventures, partners, employer and employee, associates, or principal and agent between the parties, and both parties are acting as independent contractors and principals for their own accounts. Neither party is granted any right or responsibility for or on behalf of the other or otherwise to bind the other. In providing the Services and Products, Landis+Gyr shall have

sole responsibility for all persons employed by it in connection with the performance of such Services; and, except as provided in this Agreement, Landis+Gyr shall solely determine the methods, details, and means of performing the Services.

15.8 **EEOC and Affirmative Action.**

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

15.9 Export Regulation. The Products, including any software, documentation and any related technical data included with, or contained in, such Products, and any products utilizing any such Products, software, documentation or technical data (collectively, “**Regulated Products**”) may be subject to US export control laws and regulations, including the Export Administration Regulations and the International Traffic in Arms Regulations. The Customer shall not, and shall not permit any third parties to, directly or indirectly, export, re-export or release any Regulated Products to any jurisdiction or country to which, or any party to whom, the export, re-export or release of any Regulated Products is prohibited by applicable federal or foreign law, regulation or rule. The Customer shall be responsible for any breach of this Section 15.8 by its, and its successors’ and permitted assigns’, affiliates, employees, officers, directors, partners/members/shareholders, customers, agents, distributors, resellers or vendors. The Customer shall comply with all applicable federal or foreign laws, regulations and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting or releasing any Regulated Products.

15.10 Publicity. Notwithstanding any other provision of the Agreement, Landis+Gyr shall not, without the Customer’s prior written consent, publish any information pertaining to the Agreement, whether during the term of the Agreement or thereafter. Nor shall the Customer, without Landis+Gyr’s prior written consent, publish any information pertaining to the agreement, whether during the term of the agreement or thereafter. Consent from either party will not be unduly withheld. However, neither Party shall be required to obtain the other party’s prior written consent to any press release required by law or by the stock exchange on which it is listed or to any disclosure of information, documents or data to a Governmental Body with regulatory jurisdiction over Landis+Gyr.

15.11 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.

- 15.12 Electronic Signatures. Each party agrees that this Agreement and any other documents to be delivered in connection herewith may be electronically signed, and that this method of signature is as conclusive of our intention to be bound by this Agreement as if signed by handwritten signature.

Acknowledged and agreed by the authorized representatives of the parties.

Landis Gyr Entity

Legal Account Name

Signature :

Signature :

Printed Name :

Printed Name :

Title :

Title :

Date :

Date :

Landis Gyr Entity

Signature :

Printed Name :

Title :

Date :