

**AGREEMENT
SOFTWARE SERVICE FEES
CITY OF FRESNO, CALIFORNIA**

THIS SOFTWARE SERVICE FEE AGREEMENT ("Agreement") is made and entered into effective the 19th day of February, 2018, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and Badger Meter, Inc., a Wisconsin corporation (hereinafter referred to as "CONTRACTOR").

RECITALS

WHEREAS, CITY desires to obtain service through Badger Meter's BEACON Portal ("work ") for a hosted, on-demand, web-based service website accessible to CITY to provide metering and water usage service information, communicated through a cellular network ("Project"); and

WHEREAS, CONTRACTOR is engaged in the business of allowing access to software and related services and hereby represents that it desires to and is professionally and legally capable of performing the work called for by this Agreement; and

WHEREAS, this Agreement will be administered for CITY by its City Manager (hereinafter referred to as "Administrator") or his/her designee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Scope of Work. CONTRACTOR shall provide to the satisfaction of CITY the work described in **Exhibit A**, including all work incidental to, or necessary to perform, providing the ancillary services described in **Exhibit A**. The terms and conditions that govern the provision of the service itself are located in the BEACON AMA Managed Solution Master Agreement("BEACON Agreement"), executed between the City of Fresno and Badger Meter, Inc., on 19th day of February, 2018.

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above ("Effective Date") and shall continue in full force and effect for five years from the Effective Date, subject to any earlier termination in accordance with this Agreement. The scope of work as described in **Exhibit A** are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious completion, but in any event, all such work shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**.

3. Price and Work.
(a) For the monetary consideration as defined in Exhibit A, Contractor promises and agrees to perform or cause to be performed, in a good and workmanlike manner, under the direction and to the satisfaction of the City, all of the work as set forth in the **Exhibit A**, paid on the basis of the rates set forth in the schedule of fees and expenses contained in **Exhibit A**.

(b) Detailed statements shall be rendered monthly for work performed in the preceding month and will be payable in the normal course of CITY business. CITY shall not be obligated to reimburse any expense for which it has not received a detailed invoice with applicable copies of representative and identifiable receipts or records substantiating such expense.

4. Termination, Remedies and Force Majeure.

(a) This Agreement shall terminate without any liability of CITY to CONTRACTOR upon the earlier of: (i) CONTRACTOR'S filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against CONTRACTOR; (ii) thirty (30) days prior written notice with or without cause by CITY to CONTRACTOR; (iii) CITY'S non-appropriation of funds sufficient to meet its obligations hereunder during any CITY fiscal year of this Agreement, or insufficient funding for the Project; or (iv) expiration of this Agreement.

(b) Immediately upon any termination or expiration of this Agreement, CONTRACTOR shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to CITY any and all unearned payments and all properties and materials in the possession of CONTRACTOR that are owned by CITY. Subject to the terms of this Agreement, CONTRACTOR shall be paid compensation for work satisfactorily performed prior to the effective date of termination. CONTRACTOR shall not be paid for any work or costs incurred which reasonably could have been avoided.

(c) In the event of termination due to failure of CONTRACTOR to satisfactorily perform in accordance with the terms of this Agreement, CITY may withhold an amount that would otherwise be payable as an offset to, but not in excess of, CITY'S damages caused by such failure. In no event shall any payment by CITY pursuant to this Agreement constitute a waiver by CITY of any breach of this Agreement which may then exist on the part of CONTRACTOR, nor shall such payment impair or prejudice any remedy available to CITY with respect to the breach.

(d) Upon any breach of this Agreement by either Party the other Party may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct damages for the breach of the Agreement. If it is determined that CITY improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

(e) CONTRACTOR shall provide CITY with adequate written assurances of future performance, upon Administrator's request, in the event CONTRACTOR fails to comply with any terms or conditions of this Agreement.

(f) CONTRACTOR shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of CONTRACTOR and without its fault or negligence such as, breach of the BEACON Portal by an actor not under the control of CONTRACTOR, acts of God or the public enemy, acts of CITY in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. CONTRACTOR shall notify Administrator in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full

particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Administrator of the cessation of such occurrence.

5. Confidential Information and Ownership of Documents.

(a) Any reports, information, or other data prepared or assembled by CONTRACTOR pursuant to this Agreement shall not be made available to any individual or organization by CONTRACTOR without the prior written approval of the Administrator. During the term of this Agreement, and thereafter, CONTRACTOR shall not, without the prior written consent of CITY, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of CITY, including but not limited to business plans, marketing plans, financial information, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in CITY.

(b) Any and all writings and documents prepared or provided by CONTRACTOR pursuant to this Agreement are the property of CITY at the time of preparation and shall be turned over to CITY upon expiration or termination of the Agreement. CONTRACTOR shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

(c) If CONTRACTOR should subcontract all or any portion of the work to be performed under this Agreement, CONTRACTOR shall cause each subcontractor to also comply with the requirements of this Section 5.

(d) This Section 5 shall survive expiration or termination of this Agreement.

6. Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as CONTRACTOR represents to CITY that CONTRACTOR and its subcontractors, if any, are skilled in the industry and shall perform in accordance with the standards of said industry necessary to perform the work agreed to be done by it under this Agreement, CITY relies upon the skill of CONTRACTOR and any subcontractors to do and perform such work in a skillful manner and CONTRACTOR agrees to thus perform the work and require the same of any subcontractors. Therefore, any acceptance of such work by CITY shall not operate as a release of CONTRACTOR or any subcontractors from said professional standards.

7. Indemnification. To the furthest extent allowed by law, CONTRACTOR shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of CONTRACTOR, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

If CONTRACTOR should subcontract all or any portion of the work to be performed under this Agreement, CONTRACTOR shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

Further, subject to the limitations of liability provisions set forth in Section 12 of the BEACON Agreement, CONTRACTOR agrees to indemnify, defend and hold harmless City, and as applicable its officers, directors, members, board members, governing members, trustees, commissioners, elected and appointed officials, employees, agents, consultants and other representatives ("City Parties") from and against any and all claims filed against the City Parties by a third party based upon the allegations that the Portal, Service or Documentation (as defined in the BEACON Agreement) infringes or violates a third party's patent, exposure of identity, copyright or other intellectual property rights ("Intellectual Property Dispute").

If the Portal, Service or Documentation becomes the subject of an Intellectual Property Dispute and is enjoined, CONTRACTOR will have the right to (i) procure for City the right to continue using the Portal and Service; (ii) modify the Portal and Service to avoid allegations of infringement, provided the modification does not materially change the functionality of the Portal and Service; (iii) replace the Portal and Service with an equally suitable, functionally equivalent, non-infringing Portal and Service; or (iv) immediately terminate the BEACON Agreement and provide City with a refund of any unused pre-paid portion of the Service Fees.

CONTRACTOR assumes no liability for and City will not be entitled to receive indemnification from CONTRACTOR for any Intellectual Property Dispute which results directly or indirectly from (i) City's failure to use the Portal or Service in conformity with the Documentation; (ii) City's actions in combining the Service with any third party software, technology, hardware or data; or (iii) City's violation of access granted in Section (2) of the BEACON Agreement.

To the extent allowed by law, City agrees to defend, indemnify, and hold harmless Badger Meter as well as its parents, subsidiaries, affiliates, officers, employees, agents, licensors, Suppliers, representatives and customers and each of their respective employees, officers, directors, members and representatives (the "CONTRACTOR Parties"), against any and all Claims made against the CONTRACTOR Parties by any third party arising out of or related to: (i) City, or Authorized Users or Authorized Consumers (as defined in the BEACON Agreement), access and use of the Portal, Service, or Documentation; (ii) violation of applicable law by Customer, its Authorized Users or Authorized Consumers; (iii) the Customer Content (as defined in the BEACON Agreement) or the combination of the Customer Content with other applications, content or processes, including any claim involving alleged infringement or misappropriation of third party rights related to the Customer Content or by the use, development, design, producing, advertising or marketing of Customer Content; or (iv) a dispute between Customer and any Authorized User or Authorized Consumer.

This section shall survive termination or expiration of this Agreement.

8. Insurance.

(a) Throughout the life of this Agreement, CONTRACTOR shall pay for and maintain in full force and effect all insurance as required in **Exhibit B**, which is incorporated into and part of this Agreement, with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated in Exhibit B shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, CONTRACTOR or any of its subcontractors\sub-consultants fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONTRACTOR shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CONTRACTOR of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by CONTRACTOR shall not be deemed to release or diminish the liability of CONTRACTOR, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONTRACTOR, its principals, officers, agents, employees, persons under the supervision of CONTRACTOR, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) If CONTRACTOR should subcontract all or any portion of the work to be performed under this Agreement, CONTRACTOR shall require each subcontractor/sub-consultant to provide insurance protection, as an additional insured, to the CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with CONTRACTOR and CITY prior to the commencement of any work by the subcontractor. CONTRACTOR and any subcontractor/sub-consultant shall establish additional insured status for CITY, its officers, officials, employees, agents and volunteers by using Insurance Service Office (ISO) Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

9. Conflict of Interest and Non-Solicitation.

(a) Prior to CITY'S execution of this Agreement, CONTRACTOR shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit C**. During the term of this Agreement, CONTRACTOR shall have the obligation and duty to immediately notify CITY in writing of any change to the information provided by CONTRACTOR in such statement.

(b) CONTRACTOR represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.

(c) Neither CONTRACTOR, nor any of CONTRACTOR'S subcontractors performing any work on this Project, shall bid for, assist anyone in the preparation of a bid for, or

perform any work pursuant to, any other contract in connection with this Project unless fully disclosed to and approved by the City Manager, in advance and in writing. CONTRACTOR and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this provision, CONTRACTOR shall remain responsible for complying with Section 9(b), above.

(d) If CONTRACTOR should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, CONTRACTOR shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

10. Recycling Program. In the event CONTRACTOR maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, CONTRACTOR at its sole cost and expense shall:

- (i) Immediately establish and maintain a viable and ongoing recycling program, approved by CITY'S Solid Waste Management Division, for each office and facility. Literature describing CITY recycling programs is available from CITY'S Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.
- (ii) Immediately contact CITY'S Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.
- (iii) Cooperate with and demonstrate to the satisfaction of CITY'S Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

11. General Terms.

(a) Except as otherwise provided by law, all notices expressly required of CITY within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Administrator or his/her designee.

(b) Records of CONTRACTOR'S expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to CITY or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of CONTRACTOR pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records shall be retained and made available to CITY until such action is resolved, or until the end of said time period whichever shall later occur. If CONTRACTOR should subcontract all or any portion of the work to be performed under this Agreement, CONTRACTOR shall cause each subcontractor to also comply with the requirements of this paragraph. This Section 11(b) shall survive expiration or termination of this Agreement.

(c) Prior to execution of this Agreement by CITY, CONTRACTOR shall have provided evidence to CITY that CONTRACTOR is licensed to perform the work called for by this Agreement (or that no license is required). If CONTRACTOR should subcontract all or any portion of the work or services to be performed under this Agreement, CONTRACTOR shall require each subcontractor to provide evidence to CITY that subcontractor is licensed to perform the work called for by this Agreement (or that no license is required) before beginning work.

12. Nondiscrimination. To the extent required by controlling federal, state and local law, CONTRACTOR shall not employ discriminatory practices in the provision of work, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, CONTRACTOR agrees as follows:

(a) CONTRACTOR will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) CONTRACTOR will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. CONTRACTOR shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to CONTRACTOR'S employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(d) CONTRACTOR will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of CONTRACTOR'S commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) If CONTRACTOR should subcontract all or any portion of the work to be performed under this Agreement, CONTRACTOR shall cause each subcontractor to also comply with the requirements of this Section 12.

13. Independent Contractor.

(a) In the furnishing of the work provided for herein, CONTRACTOR is acting solely as an independent contractor. Neither CONTRACTOR, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which CONTRACTOR shall perform its work and functions. However, CITY shall retain the right to administer this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between CONTRACTOR and CITY. CONTRACTOR shall have no authority to bind CITY absent CITY'S express written consent. Except to the extent otherwise provided in this Agreement, CONTRACTOR shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, CONTRACTOR and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to CITY employees. CONTRACTOR shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, CONTRACTOR shall be solely responsible, indemnify, defend and save CITY harmless from all matters relating to employment and tax withholding for and payment of CONTRACTOR'S employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in CITY employment benefits, entitlements, programs and/or funds offered employees of CITY whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, CONTRACTOR may be providing work to others unrelated to CITY or to this Agreement.

14. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

15. Binding. Subject to Section 16, below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

16. Assignment.

(a) This Agreement is personal to CONTRACTOR and there shall be no assignment by CONTRACTOR of its rights or obligations under this Agreement without the prior written approval of the City Manager or his/her designee. Any attempted assignment by CONTRACTOR, its successors or assigns, shall be null and void unless approved in writing by the City Manager or his/her designee.

(b) CONTRACTOR hereby agrees not to assign the payment of any monies due CONTRACTOR from CITY under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). CITY retains the right to pay any and all monies due CONTRACTOR directly to CONTRACTOR.

17. Compliance With Law. In providing the work required under this Agreement, both parties shall at all times comply with all applicable laws of the United States, the State of California and CITY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

18. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

19. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

20. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

21. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

22. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

23. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

24. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

25. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

26. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

27. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

28. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both CITY and CONTRACTOR.

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IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,
a California municipal corporation

By: _____

Thomas C. Esqueda
Director
Department of Public Utilities

BADGER METER, INC,
a Wisconsin Corporation

By:  _____

Name: Kimberly K. Stoll _____

Title: VP – Sales and Marketing
(if corporation or LLC, Board
Chair, Pres. or Vice Pres.)

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By:  _____ Date 2/28/18
Amanda B. Freeman
Deputy City Attorney

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____

Deputy

Addresses:

CITY:
City of Fresno
Attention: Tommy Esqueda,
Director, DPU
2600 Fresno St. Room 4019
Fresno, CA 93721
Phone: (559) 621-8635

CONTRACTOR:
Badger Meter, Inc
Attention: Assistant General Counsel
4545 W Brown Deer Rd
Milwaukee, WI 53223
Phone: 414-355-0400

Attachments:

1. Exhibit A - Scope of Services
2. Exhibit B - Insurance Requirements
3. Exhibit C - Conflict of Interest Disclosure Form

Exhibit A

SCOPE OF SERVICES Contractor Fee Service Agreement between City of Fresno (“City”) and Badger Meter, Inc (“Contractor”)

Badger Meter, Inc., was selected by the City in 2010 to serve as the City’s Automated Meter Reading (AMR) Equipment, Software and Data Service Provider. The City has determined that there is a need to upgrade the current AMR Data Management System to maintain current functionality and expand functionality for customer access and performing high-level data analytics. The products and services to be provided by Badger Meter, Inc., can generally be described as follows:

- New Data Management Software for Hourly Meter Data. This is the Beacon Software Package
- New Customer Access Portal for Hourly Meter Data. This is the Eye-On-Water Package integrated with the Beacon Software Package
- Data Transmission Services for Hourly Meter Data. Hourly water meter data is transmitted via licensed FCC radio signal from the City’s AMR water meters to gateways, and via Cellular backhaul from gateways to cloud-based Beacon Software Package
- Data Hosting Services. The hourly water meter data that is transmitted from the gateways will be directed to cloud-based servers currently hosted by Amazon that have the Beacon Software and Eye-on-Water Software installed.
- Data Integration Services. The hourly water meter data from Beacon Software will be integrated with the City’s Sungard/HTE utility billing software to generate monthly utility bills and allow customer service representatives to respond to calls from customers regarding water usage and water billing.

The terms and conditions that govern the provision of the Portal and Service itself, as described in the first five bullets above, are located in the BEACON AMA Managed Solution Master Agreement, executed between the City of Fresno and Badger Meter, Inc., on the date set forth above.

SCHEDULE OF FEES AND EXPENSES

Fresno Beacon Pricing

2017

Monthly

Fully Deployed - proposed

			Desc	Qty	Monthly	Total	Annual	Total
Beacon Software	Beacon	Add	cost per endpoint Beacon / Hosting	130,000	\$ 0.10	\$ 13,000.00	\$ 1.20	\$ 156,000.00
subscription model	Eye on Water	Add	cost per endpoint - EyeOn Water			\$ 2,916.67	\$ -	\$ 35,000.00
	Cellular w/Beacon and EOW	Add	cost per endpoint commutation / hosting / Beacon / EyeOn Water	1,000	\$ 0.89	\$ 890.00	\$ 10.68	\$ 10,680.00
Data Collection	Collector	Current	Communication	140	\$ 25.00	\$ 3,500.00	\$ 300.00	\$ 42,000.00
Totals						\$ 20,306.67		\$ 243,680.00

2018

Monthly

Fully Deployed - proposed

			Desc	Qty	Monthly	Total	Annual	Total
Beacon Software	Beacon	Add	cost per endpoint Beacon / Hosting	132,600	\$ 0.10	\$ 13,260.00	\$ 1.20	\$ 159,120.00
subscription model	Eye on Water	Add	cost per endpoint - EyeOn Water			\$ 2,916.67	\$ -	\$ 35,000.00
	Cellular w/Beacon and EOW	Add	cost per endpoint commutation / hosting / Beacon / EyeOn Water	3,000	\$ 0.89	\$ 2,670.00	\$ 10.68	\$ 32,040.00
Data Collection	Collector	Current	Communication	142	\$ 25.00	\$ 3,550.00	\$ 300.00	\$ 42,600.00
Totals						\$ 22,396.67		\$ 268,760.00

2022

Monthly

Fully Deployed - proposed

			Desc	Qty	Monthly	Total	Annual	Total
Beacon Software	Beacon	Add	cost per endpoint Beacon / Hosting	143,000	\$ 0.10	\$ 14,300.00	\$ 1.20	\$ 171,600.00
subscription model	Eye on Water	Add	cost per endpoint - EyeOn Water			\$ 2,916.67	\$ -	\$ 35,000.00
	Cellular w/Beacon and EOW	Add	cost per endpoint commutation / hosting / Beacon / EyeOn Water	4,000	\$ 0.89	\$ 3,560.00	\$ 10.68	\$ 42,720.00
Data Collection	Collector	Current	Communication	145	\$ 25.00	\$ 3,625.00	\$ 300.00	\$ 43,500.00
Totals						\$ 24,401.67		\$ 292,820.00

Exhibit B

INSURANCE REQUIREMENTS Contractor Service Agreement between City of Fresno ("CITY") And Badger Meter, Inc ("CONTRACTOR")

Badger Meter, Inc., Services
PROJECT TITLE

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Technology Liability (Errors and Omissions) insurance appropriate to CONTRACTOR'S profession.

MINIMUM LIMITS OF INSURANCE

CONTRACTOR, or any party the CONTRACTOR subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY:**
 - (i) \$1,000,000 per occurrence for bodily injury and property damage;
 - (ii) \$1,000,000 per occurrence for personal and advertising injury;

- (iii) \$2,000,000 aggregate for products and completed operations; and,
- (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY:**

\$1,000,000 per accident for bodily injury and property damage.

3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits.

4. **EMPLOYER'S LIABILITY:**

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

5. **TECHNOLOGY PROFESSIONAL LIABILITY** insurance with limits of not less than:

- (i) \$5,000,000 per claim/occurrence; and,
- (ii) \$ 5,000,000 policy aggregate

UMBRELLA OR EXCESS INSURANCE

In the event CONTRACTOR purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

CONTRACTOR shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and CONTRACTOR shall also be responsible for payment of any self- insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. CONTRACTOR shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

2. . Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims relating to this Agreement, CONTRACTOR'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents and volunteers shall be excess of CONTRACTOR'S insurance and shall not contribute with it. CONTRACTOR shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: CONTRACTOR and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents and volunteers.

If the Technology Liability insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by CONTRACTOR.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by CONTRACTOR, CONTRACTOR must purchase "extended reporting" coverage for a minimum of five (5) years completion of the Agreement work or termination of the Agreement, whichever occurs first.
4. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required herein shall provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice by certified mail, return receipt requested, has been given to CITY. CONTRACTOR is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, CONTRACTOR shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, CONTRACTOR shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

Except for the Technology Professional Liability policy, Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

The fact that insurance is obtained by CONTRACTOR shall not be deemed to release or diminish the liability of CONTRACTOR, including, without limitation, liability under the indemnity provisions of this Agreement. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONTRACTOR, its principals, officers, agents, employees, persons under the supervision of CONTRACTOR, vendors, suppliers, invitees, Consultants, sub-Contractors, subcontractors, or anyone employed directly or indirectly by any of them.

SUBCONTRACTORS - If CONTRACTOR subcontracts any or all of the work to be performed under this Agreement, CONTRACTOR shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate side agreement with the City to provide required indemnification and insurance protection. Any required side agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no side agreement is required, CONTRACTOR shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein and CONTRACTOR shall ensure that CITY, its officers, officials, employees, agents, and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with CONTRACTOR, and CITY, prior to commencement of any work by the subcontractor.

VERIFICATION OF COVERAGE

CONTRACTOR shall furnish CITY with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon receipt of a claim related to this Agreement, at the request of CITY, CONTRACTOR shall immediately work diligently to provide the City reasonable assurance of CONTRACTOR's insurance coverage for the claim, and verification, if discovery costs will be covered by CONTRACTOR's insurance.

This requirement shall survive expiration or termination of this Agreement.

Exhibit C

DISCLOSURE OF CONFLICT OF INTEREST

Badger Meter, Inc. Services
PROJECT TITLE

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5	Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: Q4 -We are publicly traded, so we can't ascertain if our shareholders qualify

Q6 – we have supply agreements with the City

for Badger Meter's meters or endpoints that

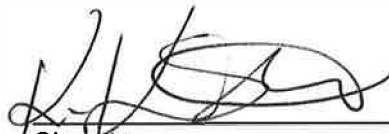
will be /are installed in the City's distribution

system. We also have long-term warranty

obligations with the city for its AMR

System.

Additional page(s) attached.



Signature

2.19.18

Date

Kimberly K. Stoll, VP – Sales and Marketing
Badger Meter, Inc.
4545 W. Brown Deer Rd.
Milwaukee, WI 53223



4505 W. Howard, Deer Park
 PO BOX 245026
 Milwaukee, Wisconsin 53224-5026
 AT 414-273-0400, 800-673-3907
 www.badgermeter.com

**CERTIFICATION
 OF SIGNATURE AUTHORITY**

I certify as follows:

By Board Resolution adopted by the Board of Directors of Badger Meter, Inc. and in full force and effect as of this date:

The following *elected company officers* are, among other things, hereby authorized to execute, amend, and cancel bids and contracts for the sale of products, distributor and representative agreements, bid bonds, surety bonds, contracts, leases and certain other legally binding documents in the ordinary course of business, in the name of Badger Meter, Inc. (or Badger Meter, Inc. DBA National Meter & Automation):

Richard A. Meeusen	Chairman, President and Chief Executive Officer
Richard E. Johnson	Senior Vice President – Finance, CFO and Treasurer
Kenneth C. Bockhorst	Senior Vice President—Chief Operating Officer
William R.A. Bergum	Vice President – General Counsel and Secretary
Kimberly K. Stoll	Vice President – Sales and Marketing

The following *appointed company officers* are hereby authorized to execute, amend, and cancel bids, bid-related contracts and documents, requests for proposals and quotes, and all other bid-related documentation in the name of Badger Meter, Inc. (or Badger Meter, Inc. DBA National Meter & Automation):

Christie L. Collins	Assistant Secretary	Sr. Project Manager – Bid & Contract Administration
Charla D. Dury	Assistant Secretary	Project Manager – Bid & Contract Administration
Frank J. Fenton	Assistant Secretary	Director – Utility Sales
Korrine L. Fleming	Assistant Secretary	Supervisor – Bid and Contract Administration
Nathaniel R. Hawley	Assistant Secretary	Director. – Distribution Operations
Rebecca L. Loomans	Assistant Secretary	Sr. Project Manager – Bid & Contract Administration



January 30, 2018

Date

BY:

William R. A. Bergum,
 Vice President - General Counsel & Secretary
 Badger Meter, Inc.



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



This BEACON AMA MANAGED SOLUTION MASTER AGREEMENT (“**Agreement**”) is entered into as of the 19th day of FEBRUARY, 2018 (the “**Effective Date**”) by and between Badger Meter, Inc. , a Wisconsin corporation with offices located at 4545 W. Brown Deer Road, Milwaukee, Wisconsin 53223 (“**Badger Meter**”), and the City of Fresno, CA, and as applicable its officers, directors, members, board members, governing members, trustees, commissioners, elected and appointed officials, employees, agents, consultants and other representatives (“**Customer**”).

(1) **SERVICE.** Badger Meter and its cellular service aggregator and data-hosting service providers (“**Suppliers**”) have developed a hosted, on-demand, web-based service website (“**Portal**”) accessible to its customers to provide metering and water usage service information, communicated through a cellular network, for its customers (“**Service**”), and documentation to assist customers in using the Portal and the Service (“**Documentation**”).

(2) **RIGHT TO ACCESS AND USE THE PORTAL AND SERVICE.** In consideration of the payment of the Service Fees as set forth in Section (5), Badger Meter grants to Customer, its employees and contractors that Customer approves as users of the Service (“**Authorized User**”) and Customer’s approved end-user water customers (“**Authorized Consumer**”) the right to remotely access and use the Service from the Portal (as currently configured) for Customer’s internal business use and for the benefit of its Authorized Consumers in accordance with this Agreement.

(3) **OWNERSHIP OF PORTAL AND SERVICE.**

(a) **Badger Meter Service.** Badger Meter owns all rights, title and interest in the Portal, Service and Documentation, including all associated intellectual property rights. Neither Customer, nor its Authorized Users or Authorized Consumers will obtain any rights, title or interest in the Portal, Service, or Documentation or any associated intellectual property rights, other than the right to access and use the Portal, Service and Documentation, subject to the terms of this Agreement.

(b) **Suggestions.** If Customer provides Badger Meter any suggested improvements (“**Suggestions**”) to the Portal, Service or Documentation, Customer agrees that Badger Meter will own all rights, title and interest in and to the Suggestions, even if Customer has designated the Suggestions as confidential. Badger Meter will be entitled to use the Suggestions without restriction. By entering into this Agreement, Customer irrevocably assigns, conveys and transfers to Badger Meter all right, title and interest in and to the Suggestions and agrees to provide Badger Meter with commercially reasonable assistance to document, perfect and maintain Badger Meter’s rights in the Suggestions.

(4) **TERM.** The term of this Agreement begins on the Effective Date and continues for a five (5) year term unless earlier terminated in accordance with Section (13) of the Agreement (the “**Term**”).



BADGER METER
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(5) FEES.

(a) Service Fees. In consideration for the right to access and use the Portal, Service and Documentation, Customer agrees to pay Badger Meter certain fees (“**Service Fees**”) to obtain enterprise-wide access to the Portal, Service and Documentation, authorizing all of its Authorized Users and Authorized Consumers to use the Portal and Service and Documentation in accordance with the terms of this Agreement, pursuant to the pricing set forth in the Software and Service Fees Agreement (“**Service Fee Agreement**”), executed between the City of Fresno and Badger Meter, Inc. on 2/19/18.

(b) Taxes and Surcharges. Customer will be responsible to pay any sales, use, value added or excise taxes or surcharges resulting from use of the Portal, Service and Documentation by Customer, its Authorized Users or Authorized Consumers, excluding taxes due on Badger Meter’s income. Customer will not be responsible for payment of taxes or surcharges resulting from its use of the cellular service included as part of the Service, as those charges are included in the Service Fees.

(c) Updated Schedule of Fees. At least ninety(90) days prior to the expiration date of the Term (“**Anniversary Date**”), Badger Meter will provide Customer with an updated Schedule of Fees for the Service for the upcoming contract term.

(6) RESTRICTIONS ON RIGHT TO USE. Customer agrees that Customer, its Authorized Users and Authorized Consumers will not use or permit or assist another to use the Portal, Service or Documentation in violation of this Agreement and will not:

(a) Sell, license, resell, sublicense, or otherwise permit any third parties other than Authorized Users or Authorized Consumers to access or use the Portal, Service, or Documentation.

(b) Remove patent, copyright, trademark or other intellectual property markings from the Portal, Service or Documentation.

(c) Modify, alter, tamper with, repair or otherwise create derivatives from the Portal, Service or Documentation.

(d) Copy, reverse engineer, disassemble or decompile the Portal, Service or Documentation or apply any other process or procedure to derive the source code from any software included in the Portal or Service.

(e) Provide Customer Content that infringes on the intellectual rights of any person or entity or use the Portal, Service or Documentation in violation of the intellectual property rights of Badger Meter, its Suppliers or any third party.



- (f) Use the Portal or Service in a manner that violates any applicable international, federal, state or local laws, rules or regulations.
- (g) Assert or authorize, assist or encourage any third party to assert against Badger Meter, its affiliates, customers, vendors, business partners, Servicers or licensors any intellectual property infringement Claim regarding the Portal, Service or Documentation.
- (h) Transmit content or messages that are illegal, fraudulent, threatening, abusive, defamatory, or obscene.
- (i) Make any unauthorized connection to Badger Meter's information technology architecture ("Network")
- (j) Communicate any unsolicited commercial, voice, SMS, or other message.
- (k) Upload or transmit any "virus," "worm," or malicious code or access, alter, or interfere with the communications of and/or information about another customer.
- (l) Take actions that could cause damage to or adversely affect Badger Meter, the Service, Portal, Suppliers, Network or the property or reputation of Badger Meter or its Suppliers.

Customer and Badger Meter agree to make good faith efforts to minimize abuse or fraudulent use of the Portal and Service, to promptly report to each other any such abuse or fraudulent use of which they become aware, and to fully cooperate in any investigation or prosecution initiated by Badger Meter, its Suppliers or Customer related to abuse or fraudulent use of the Portal and Service.

(7) CUSTOMER SUPPORT. Badger Meter will provide Customer the support services described in **Exhibit 1 - Service Level Agreement.**

(8) CUSTOMER CONTENT.

(a) Customer Content Defined. Customer, its Authorized Users and Authorized Consumers will provide Badger Meter and its Suppliers certain text, audio, video, images, Customer Data, customer billing information, personally identifiable information or other content ("**Customer Content**").

(b) Ownership. The Parties agree that the Customer Content is and shall remain the sole and exclusive property of Customer and/or its licensors or Authorized Consumers, including but not limited to any intellectual rights in the Customer Content.

(c) Use of Customer Content by Badger Meter. Customer, its Authorized Users and Authorized Consumers consent to Badger Meter and its Suppliers' right to host, access, store, copy and use the Customer Content as reasonably necessary to provide, maintain, repair and

enhance the Portal, Service and Documentation. Badger Meter may disclose certain Customer Content only to provide the Service to Customer, its Authorized Users and Authorized Consumers or to comply with the law or request of a governmental or regulatory body (including subpoenas or court orders.) Badger Meter will give Customer reasonable notice of a request from a governmental entity to allow Customer to seek a protective order or other appropriate remedy (except to the extent such notice would violate a court order or other legal requirement).

(d) Customer Responsibilities. Customer is solely responsible for the development, content, operation and maintenance of the Customer Content, including but not limited to the technical operation of the Customer Content, and ensuring that calls made to the Service from Customer's network are compatible with then-current API's for the Service. Customer is responsible to ensure that Customer, its Authorized Users and Authorized Consumers comply with the Badger Meter Terms of Use Policy, the Badger Meter Privacy Policy or any other policies referenced in this Agreement and the law. Customer will respond to any Claims related to the Customer Content and is responsible for properly handling and processing notices sent to Customer by any person claiming that the Customer Content violates such person's legal rights, including notices pursuant to the Digital Millennium Copyright Act.

(9) CONFIDENTIALITY.

(a) Confidential Information Defined. For purposes of this Agreement, Confidential Information means all nonpublic information disclosed by one party to the other that is designated as confidential or that given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential, including but not limited to: (a) nonpublic information related to Badger Meter or its affiliates, Suppliers, business partners, technology, customers, business plans, intellectual property, promotional and marketing activities, finances and other business affairs; (b) third party information Badger Meter is obligated to keep confidential; (c) the content and existence of any discussions or negotiations between the parties; (d) Badger Meter's intellectual property used in providing the Portal, Service or Documentation; (e) the Customer Content, but only to the extent that Customer Content contains proprietary information, billing information or other personally identifiable information ("**Customer Data**"); and (f) Traffic Data.

(b) Protection of Confidential Information. To the extent permitted by law, the parties agree to hold the other party's Confidential Information in strict confidence and will not copy, reproduce, give, sell, assign, license, market, transfer or otherwise dispose of the Confidential Information of the other party to any third parties or use the Confidential Information for any purposes whatsoever other than as contemplated by this Agreement. The Parties will take commercially reasonable steps to avoid disclosure, dissemination or unauthorized access to or use of the Confidential Information during the Term and for a period of five (5) years after the end of the Term, except that Confidential Information which is designated as a trade secret which shall continue to be subject to these confidentiality obligations in perpetuity. The Parties

will not issue any press release or make any other public communication with respect to this Agreement or Customer's use of the Portal or Service. Customer agrees it will not misrepresent or embellish the relationship between the Parties (including by expressing or implying that Badger Meter supports, sponsors, endorses or contributes to Customer or its business endeavors) or express or imply any relationship or affiliation between Badger Meter and Customer or any other person or entity except as expressly permitted by this Agreement.

(c) Ownership of Customer Data. All Customer Data pertaining to Customer or its Authorized Consumers is considered Confidential Information of Customer and owned by Customer. Customer grants Badger Meter and its Suppliers the right to host, access, store, copy, and use the Customer Data as is reasonably necessary to provide, maintain, repair and enhance the Portal, Service and Documentation.

(d) Traffic Information. All de-identified data generated or collected by Badger Meter through operation of the Portal and Service is referred to as the "Traffic Data." All Traffic Data shall be the Confidential Information of and owned exclusively by Badger Meter.

(e) Third Party Requests for Confidential Information. Neither party may disclose the other party's Confidential Information except to a Supplier subject to the restrictions in this Agreement or an Authorized User or Authorized Consumer except as otherwise required by law. If a party receives a request for access to the other party's Confidential Information from a third party, the receiving party agrees to inform the disclosing party in writing within three (3) business days of receipt of the request unless prohibited by law.

(f) Exclusions from Confidential Information. Confidential Information of a party shall not include information which: (i) is in or becomes part of the public domain through no fault of the receiving party; (ii) the receiving party can prove was known to it prior to its receipt from the disclosing party without reference to the Confidential Information; (iii) is independently developed by the receiving party outside of this Agreement without use of the disclosing party's Confidential Information; or (iv) is obtained by the receiving party from a third party which had no obligation of confidentiality to the disclosing party.

(10) CUSTOMER'S REPRESENTATIONS AND WARRANTIES. Customer represents and warrants to Badger Meter that Customer:

(a) Authority. Has the right and authority to enter into this Agreement and to meet its financial and legal obligations under this Agreement.

(b) Ownership. Customer, its licensors or its Authorized Consumers, own all rights, title and interest in and to the Customer Content, including but not limited to the Customer Data. Customer has all rights in the Customer Content necessary to grant the rights to Badger Meter contemplated under this Agreement.



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(c) **Compliance with Badger Meter Policies.** None of the Customer Content or the use of the Customer content, the Portal or Service by Customer, its Authorized Users or its Authorized Consumers will violate Badger Meter's Terms of Use Policy or Privacy Policy.

(d) **No Infringement.** To Customer's knowledge, none of the Customer Content infringes the Intellectual Property Rights of any third party or is the subject matter of any pending or threatened lawsuit, legal proceeding or Claim.

(e) **Compliance with the Law.** Neither Customer, the Authorized Users nor the Authorized Consumers will access or use the Portal, Service or Documentation in any manner that violates any applicable international, federal, state or local laws and/or regulations, including but not limited to all applicable data protection, intellectual property and privacy laws.

(11) REPRESENTATIONS AND WARRANTIES OF BADGER METER.

(a) **Authority.** Badger Meter represents and warrants to Customer that it has the right and authority to enter into this Agreement and to perform its obligations under this Agreement.

(b) **Service Warranty.** Badger Meter represents and warrants to Customer that the Portal and Service will be provided pursuant to Exhibit 1 - Service Level Agreement. In providing the Portal and Service, Badger Meter will maintain sufficient data storage capacity to satisfy the technical requirements and required storage capacity to host the Portal and Service, in its reasonable discretion. If Customer allows unauthorized users to access the Portal, Service or Documentation, this express limited warranty will immediately become null and void.

(c) **Remedy for Breach of the Express Limited Warranty.** If the Portal, Service or Documentation fail to meet the terms of the express limited warranty set forth in Section 11(b), Customer is required to notify Badger Meter promptly and in no event later than thirty (30) days from the date of the breach, in writing, of any alleged failure and provide information to support its warranty claim. Customer's exclusive remedy for a breach of the express limited warranty is a Service credit to be calculated in accordance with Exhibit 1 - Service Level Agreement.

(d) **DISCLAIMER OF IMPLIED WARRANTIES. EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET FORTH IN SECTION 11(b), BADGER METER MAKES NO OTHER EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES AS TO THE PORTAL, SERVICE OR DOCUMENTATION. BADGER METER EXPRESSLY DISCLAIMS ANY OTHER EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO THE PORTAL, SERVICE OR DOCUMENTATION, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, OR IMPLIED WARRANTIES ARISING FROM A COURSE OF DEALING, INDUSTRY PRACTICE OR USAGE OF TRADE.**

BADGER METER EXPRESSLY DISCLAIMS THAT THE PORTAL AND SERVICE WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, AND EXPRESSLY DISCLAIMS ANY WARRANTIES AS TO THE RELIABILITY, QUALITY, SECURITY, CONDITION, DESIGN, SUITABILITY, INTER-OPERABILITY, AVAILABILITY, COMPLETENESS OF THE PORTAL OR SERVICE OR THAT ANY CONTENT, INCLUDING THE CUSTOMER CONTENT, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED.

(e) ESSENTIAL TERMS. THE ENFORCEABILITY OF THIS SECTION (11) IS ESSENTIAL TO BADGER METER'S WILLINGNESS TO ENTER INTO THIS AGREEMENT WITH CUSTOMER.

(12) LIMITATION OF LIABILITY. DIRECT DAMAGES. IF ANY PARTY DEFAULTS IN ITS OBLIGATIONS UNDER THIS AGREEMENT, THE NON-BREACHING PARTY WILL BE ENTITLED TO RECOVER FROM THE BREACHING PARTY ONLY THE ACTUAL AND DIRECT DAMAGES THAT THE NON-BREACHING PARTY MAY INCUR AS A RESULT OF SUCH BREACH.

CAP ON DAMAGES. NEITHER PARTY'S NOR ANY OF ITS RESPECTIVE AFFILIATES, SUCCESSORS OR ASSIGNEES' AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL EXCEED THE AGGREGATE AMOUNTS THE CUSTOMER ACTUALLY PAYS BADGER METER DURING THE FIVE-YEAR TERM UNDER THIS AGREEMENT FOR THE SERVICE THAT GAVE RISE TO THE CLAIM.

LIMITS ON DAMAGES. EXCEPT FOR PAYMENT OBLIGATIONS ARISING UNDER THE INDEMNIFICATION SECTION OF THE SOFTWARE SERVICES AGREEMENT, NEITHER PARTY NOR ANY OF ITS RESPECTIVE AFFILIATES, SUPPLIERS OR LICENSORS WILL BE LIABLE TO THE OTHER PARTY, AN AUTHORIZED USER, AUTHORIZED CONSUMER OR ANY THIRD PARTY FOR ANY CLAIMS, DEMANDS, ACTIONS, LOSSES, DAMAGES, FINES, JUDGMENTS SETTLEMENTS, COSTS, EXPENSES, ATTORNEY'S FEES, AND COURT COSTS OR ANY OTHER LIABILITIES OF ANY NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE PORTAL, SERVICE, DOCUMENTATION, OR THE SUBJECT MATTER OF THIS AGREEMENT ("CLAIM").

FURTHER, NEITHER PARTY NOR ANY OF EITHER PARTY'S RESPECTIVE AFFILIATES, SUPPLIERS OR LICENSORS SHALL BE LIABLE TO THE OTHER PARTY, AN AUTHORIZED CONSUMER OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST REVENUE OR PROFITS OR DIMINUTION OF VALUE, OR OTHER ECONOMIC ADVERSITY, CLAIMS RESULTING FROM LOSS OF DATA, CUSTOMER CONTENT, CUSTOMER DATA, OR BREACH OF CONFIDENTIALITY, ARISING OUT OF, OR RELATING TO, AND/OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE, WHETHER OR NOT THE PARTY WAS ADVISED

OF THE POSSIBILITY OF SUCH DAMAGES, AND THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. ;

NEITHER BADGER METER NOR ANY OF ITS AFFILIATES, SUPPLIERS OR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT OR DAMAGES ARISING IN CONNECTION WITH: (A) CUSTOMER'S INABILITY TO USE THE PORTAL OR SERVICE, INCLUDING AS A RESULT OF ANY: (i) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR CUSTOMER'S USE OF OR ACCESS TO THE SERVICE ; OR (ii) WITHOUT LIMITING ANY OBLIGATIONS UNDER THE SERVICE LEVEL AGREEMENT, ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICE FOR ANY REASON, INCLUDING BUT NOT LIMITED TO AS A RESULT OF A POWER OUTAGE, SYSTEM FAILURE OR OTHER INTERRUPTION; (B) THE COST OF PROCUREMENT OF SUBSTITUTE SERVICES; (C) ANY INVESTMENTS, EXPENDITURES OR COMMITMENTS MADE BY CUSTOMER IN CONNECTION WITH THIS AGREEMENT OR CUSTOMER'S USE OF OR ACCESS TO THE SERVICE OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF CUSTOMER'S CONTENT OR OTHER DATA.

INDEPENDENT LIMITATIONS. THESE LIMITATIONS ARE INDEPENDENT FROM ALL OTHER PROVISIONS OF THIS AGREEMENT AND WILL APPLY NOTWITHSTANDING THAT A REMEDY FAILS OF ITS ESSENTIAL PURPOSE AND IRRESPECTIVE OF THE MANNER IN WHICH THE CLAIM IS MADE.

(13) TERMINATION.

(a) Termination for Convenience. Customer may terminate this Agreement for any reason by providing Badger Meter written notice of termination at least thirty (30) days in advance of the effective date of such termination. Badger Meter shall be entitled to receive just and equitable compensation for any services performed hereunder through the date of the termination and the liabilities associated with the cancellation of any related commitments required under this section. After receipt of a notice of termination for convenience, Badger Meter will exercise reasonable diligence to accomplish the cancellation or diversion of related services and settle all outstanding liabilities associated with the cancellation of such commitments.

(b) Termination for Cause. A party is in default under this Agreement if it materially breaches or materially fails to perform its obligations under this Agreement, which includes any failure to make payment pursuant to Section (5) ("**Event of Default**").

(c) Opportunity to Cure. Upon the occurrence of an Event of Default, the non-defaulting party shall deliver a written notice describing the Event of Default (the "**Cure Notice**"). If the receiving party has not cured the Event of Default within thirty (30) days after receipt of the Cure Notice, then the non-defaulting party shall have the right to terminate this Agreement, at

its option, by delivering to the defaulting party a written notice of termination (the “Termination Notice”).

(d) Immediate Right to Terminate. Badger Meter shall have the right to immediately terminate this Agreement: (i) in order to protect its Confidential Information, or its Intellectual Property Rights in the Portal or Service; (ii) in order to comply with applicable law (iii) if Customer makes any representation or warranty which is materially untrue as of the Effective Date or at any time during the Term; or (iv) upon an assignment for the benefit of creditors, if Customer suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to, any proceeding under any statute relating to insolvency or for the protection of creditor rights or if a party becomes insolvent or technically bankrupt.

(e) Termination. Upon delivery of the Termination Notice to Customer by Badger Meter: (i) Badger Meter may cease providing Services to Customer, its Authorized Users and Authorized Consumers; (ii) Customer, its Authorized Users and Authorized Consumers will have no further right to use the Portal, Service or Documentation, will immediately cease using the Portal, Service and Documentation, and will receive no further Service; (iii) Customer will deliver to Badger Meter any Confidential Information of Badger Meter’s in its possession or control, and (iv) Badger Meter may cease gathering data from Customer’s endpoints, within a reasonable time, up to one hundred twenty (120) days after termination. Within a reasonable time after termination, at Badger Meter’s discretion, Badger Meter will scrub the personally identifiable information from the Customer Data. Customer must immediately return, or at Badger Meter’s option, destroy all Documentation provided to Customer by Badger Meter. Customer will remain liable for any Service Fees incurred prior to termination.

(f) Post - Termination Assistance. At either the expiration of the Term without renewal, or upon a default by Customer and subsequent termination, Badger Meter will provide post-termination data retrieval assistance to Customer for an additional fee, which shall be invoiced at the rate of \$200/hour, with the number of hours required determined by the amount of data Customer wishes to extract from the Service. Any additional post-termination assistance from Badger Meter is subject to mutual agreement by the parties.

(g) Reinstatement Fee. If Customer desires to reinstate access to the Portal and Service after termination, a reinstatement fee of \$7.50 per endpoint reinstated will apply.

(14) SUSPENSION OF SERVICES.

(a) Nonpayment. Badger Meter may suspend the Service and access to the Portal and shall not be obligated to provide access to the Portal and Service to Customer, its Authorized Users or Authorized Consumers until all outstanding invoices for the Service have been paid in full, including any fees associated with suspension of the Service.

(b) Network Protection. Customer acknowledges that Badger Meter (and any of its Suppliers) may restrict, or suspend all or a portion of the Service or limit the Service as may be reasonably necessary to prevent or limit suspected fraud or any problem that materially and adversely affects the performance of the Service and/or is likely to do substantial damage to Badger Meter, Badger Meter's customers or Suppliers. Some of these actions may interrupt or prevent legitimate communications and usage. Such situations may arise: (a) if a device deployed on the Service is materially out of compliance with the technical requirements; (b) in case of actual or suspected fraudulent use; or (c) in case of disruptive or damaging operation.

(c) Notification. In the event that Badger Meter or one of its Suppliers restricts, suspends or cancels any portion of the Service or limits the operation of the Service, Badger Meter shall use reasonable efforts to (i) promptly notify Customer in advance; (ii) provide reasonable information regarding its identification of the issue that resulted in the actions taken; and (iii) reinstate Service upon resolution of the issue as soon as practicable and in any case within a reasonable timeframe.

(d) Immediate Suspension. Badger Meter may suspend Customer's or an Authorized Users or Authorized Consumers right to access or use the Service immediately upon notice to Customer if Badger Meter determines:

(i) Use of the Service poses a security risk to the Service, the Network or any third party, adversely impacts the Service, the Network or content of any other Badger Meter customer, or subjects Badger Meter or any third party to liability or fraud.

(ii) Customer or one of its Authorized Users or Authorized Customers is in breach of this Agreement or is delinquent on its payments for more than fifteen (15) days.

(iii) Badger Meter ceases to operate in the ordinary course, has an assignment for the benefit of creditors or similar disposition of its assets or becomes the subject of any bankruptcy, reorganization, liquidation dissolution or similar proceeding.

(e) Reinstatement. Badger Meter will use commercially reasonable efforts to restore Customer's rights to use and access those portions of the Service or accounts that gave rise to the suspension promptly after Customer has resolved the problem giving rise to the suspension.

(f) Effect of Suspension. If Badger Meter suspends Customer's right to access or use all or any portion of the Service or the Portal:

(i) Customer remains responsible for all Service Fees and charges incurred through the date of suspension.

(ii) Customer remains responsible for any applicable Service Fees and charges for any Services to which Customer has continued access as well as applicable fees and charges.



(iii) Customer will not be entitled to any service credits under the Service Level Agreement for any period of suspension.

(iv) Badger Meter's right to suspend the Services is in addition to Badger Meter's right to terminate this Agreement.

(15) COMPLIANCE WITH REGULATIONS; DATA PRIVACY. Each party is responsible for complying with industry standards and such applicable laws and regulations, including, but not limited to, the generally accepted practices in the information technology service management industry for providing secure data handling and management, including meeting or exceeding Information Technology Infrastructure Library (ITIL) standards for logical and physical security and all requirements regarding the protection of data in its possession or under its control. A party will not be liable for any failure of the other party to comply with this requirement.

(16) DATA SECURITY AND RECOVERY.

(a) **Data Security.** In order to protect the Customer Content and prevent unauthorized access to or use of the Customer Content, Portal or Service, Badger Meter has implemented commercially reasonable internal procedures and systems designed to protect the privacy and security according to the requirements set forth in Exhibit 2 - BEACON AMA Managed Solution Security Policy ("Security Standards"), consistent with applicable international, federal, state and local laws. The purpose of the security policy is to identify reasonably foreseeable and internal risks to security and unauthorized access to Badger Meter's Network and minimize security risks, including through risk assessment and regular testing. Badger Meter will designate one or more employees to coordinate and be accountable for the security program.

(b) **Protection of Customer Content.** Badger Meter will implement reasonable and appropriate measures for the Badger Meter Network designed to help Customer secure the Customer Content against accidental or unlawful loss, access or disclosure in accordance with Badger Meter's Security Standards. Badger Meter may modify its Security Standards from time to time but will continue to provide at least the same level of security as described in the Security Standards as of the Effective Date. The security and data privacy provisions in this Section contain Badger Meter, and its Suppliers entire obligation regarding the security, privacy and confidentiality of the Customer Content.

(c) **Data Storage.** Badger Meter will employ commercially reasonable storage (including backup, archive and redundant data storage) and commercially reasonable precautions to prevent the loss of or alteration of Customer Content, but does not guarantee against any such loss or alteration. Badger Meter will not serve as Customer's official record keeper. Customer will maintain source documents of the Confidential Information (such as billing information) hosted by Badger Meter under this Agreement.



(d) **Customer Responsibilities.** Customer is responsible for properly configuring and using the Service and taking steps to maintain appropriate security, protection and backup of the Customer Content, including but not limited to the use of encryption technology to protect Customer Content from unauthorized access and will perform routine archiving of the Customer Content. Further, Customer is responsible for regularly auditing its Authorized Users, and will enact internal procedures to remove Authorized Users from the Service if their job duties change and access is no longer appropriate, or if an Authorized User separates from Customer.

(e) **Data Transmission Risks.**

(i) Cellular Transmissions. Badger Meter cellular endpoints conform to the AES256 encryption standards or the latest AES standard in effect. Customer acknowledges that neither Badger Meter nor its Suppliers can guarantee the privacy or security of any cellular transmissions as part of the Service. Customer acknowledges that cellular transmissions are capable of being intercepted by third parties without the knowledge or permission of Badger Meter or its Suppliers. Badger Meter and its Suppliers shall not be liable to Customer, the Authorized Users, the Authorized Consumers or any third party for interception or unauthorized use of any data transmitted through the cellular network, as part of the Service.

(ii) Internet Transmissions. Customer acknowledges that security of transmissions over the Internet cannot be guaranteed. Badger Meter is not responsible for: (i) Customer's access to the Internet; (ii) interception, unauthorized use or interruptions of communications through the Internet; or (iii) changes or losses of data through the Internet, in each case other than to the extent caused solely by Badger Meter. In order to protect Customer Content, Badger Meter may suspend Customer, Customer's Authorized Users or Authorized Consumers access to or use of the Badger Meter Portal or Service via the Internet immediately, without prior notice, pending an investigation of any potential security breach.

(f) **Coverage Availability.** The Service is provided using a wireless network. Actual signal availability in the Service Area will depend on the device used to access the Service as well as coverage for the applicable wireless network provided in specific geographic regions. Coverage may be refused, interrupted or limited by environmental factors such as signal strength, buildings, weather, geography, topography, or by factors affecting the Suppliers, such as usage concentration or by facilities changes, modifications, updates, relocations, repairs, maintenance or other similar activities necessary for the proper or improved operation of the Supplier's facilities. Any such factors may result in dropped and blocked connections or slower data speeds. Neither Badger Meter nor any of its Suppliers will be responsible to Customer or any of Customer's Authorized Users or Authorized Consumers for any such lapses in or obstructions to coverage. The Service Area is subject to change from time to time. Should Badger Meter

receive notice from its Supplier that such Supplier intends to discontinue its support for the Badger Meter Service in all or part of the Service Area, Badger Meter will provide Customer with as much advance notice as practicable under the circumstances.

(g) Password Protection. Customer, its Authorized Users and Authorized Consumers will be required to select and use certain user names, passwords or codes to access and use the Service and Portal. Customer assumes sole responsibility for the selection, management and use of any codes or passwords as may be permitted or required for the access to and use of the Portal and Service by Customer, its Authorized Users and its Authorized Consumers. Customer agrees to maintain the privacy of usernames and passwords associated with the Badger Meter Portal and Service. Customer shall remain responsible for all activities that occur under Customer's password or Internet account. Customer will immediately notify Badger Meter of any unauthorized use of Customer's password or Internet account or any other breach of security, and ensure that Customer exits from Customer's Internet account at the end of each session. Badger Meter shall not be liable for any damages incurred by Customer or any third party arising from Customer's failure to comply with this Section.

(h) Third Party Access. To the extent that Customer requests that Badger Meter provide any Customer Content to Authorized Users, Authorized Consumers or third parties or any non-U.S. location, Customer represents that it has acquired any consents or provided any notices required to transfer such content or information and that such transfer does not violate any applicable international, federal, state or local laws and/or regulations.

(i) Security Breach. If Badger Meter becomes aware of a security breach or any other event that compromises the security, confidentiality or integrity of the Customer Content ("**Incident**"), Badger Meter will promptly notify Customer in writing and take appropriate actions to resolve the Incident. Badger Meter will reasonably cooperate with Customer to investigate the nature and scope of any Incident. In its initial notification to Customer, Badger Meter will provide Customer with: (i) a description of the Incident; (ii) the estimated impact of the Incident on Customer's Content; (iii) the name and contact information of the person at Badger Meter who will be primarily responsible for resolving the issues for Customer; and (iv) the investigation taken and the suggested corrective action. Badger Meter will provide commercially reasonable cooperation to Customer in investigating, assisting with notification of the Incident and taking corrective action as requested by Customer.

(j) Notification of Breach. In the event that applicable law requires notification to individuals of an Incident or if requested by Customer, Badger Meter will take additional mitigation steps for the benefit of Customer, including, but not limited to, providing reasonable assistance with drafting and sending of required notifications.

(k) Disclosure of Customer Content. Badger Meter will only use the Customer Content to provide the Service to Customer and its Authorized Users and Authorized Consumers in accordance with this Agreement or to comply with the law or any governmental or regulatory

body (including subpoenas or court orders). Badger Meter will give Customer reasonable notice of the request to allow Customer to seek a protective order or seek any other appropriate relief except to the extent required for Badger Meter to comply with a court order or other legal requirement.

(17) CHANGES.

(a) Right to Make Changes. Badger Meter may from time to time make changes, without Customer's approval, to the Terms of Use, the Privacy policies, the Portal, Service or Documentation, provided that such changes: (i) do not increase Customer's total costs of accessing and using the Portal and Service during the Term of this Agreement ; (ii) do not require Customer to make any material changes to its systems, software, equipment, policies or procedures ; (iii) do not have a material adverse impact on the functionality, interoperability, performance, reliability, security or resource efficiency of the Portal and Service ; (iv) do not materially reduce the scope of the Portal and Service; and (v) are otherwise consistent with this Agreement. Badger Meter will publicize any changes by a notice given to Customer or by a prominent announcement on the Portal. Any such changes will not take effect until thirty (30) days after posting of notice on the Portal.

(b) Emergency Changes; System Improvement. Notwithstanding the foregoing, Badger Meter and its Suppliers may make temporary changes to the Portal and Service required by an emergency or threat to the security or integrity of the Portal or Service, to respond to Claims, litigation or loss of license rights related to third party intellectual property rights or to comply with the law or requests of a government entity, as well as take actions deemed reasonably necessary to protect or optimize the Service. Some of these actions may interrupt or prevent legitimate communications and usage, including, for example, use of message filtering/blocking software to prevent SPAM or viruses, limitations on throughput, and scheduled maintenance. Badger Meter will provide notice by sending a message to the email address then associated with Customer's account and by posting it on Badger Meter's Portal. Badger Meter will provide Customer with: (i) at least thirty (30) days' advance notice of planned maintenance by Badger Meter; and (ii) as much advance notice as reasonably possible of emergency changes or maintenance by Badger Meter or its Suppliers. Any actions resulting in permanent changes shall only be made in compliance with Section (17) (a).

(18) PRIVACY POLICY. When accessing and using the Service, Customer agrees that Customer, its Authorized Users and Authorized Consumers will comply with the Badger Meter Privacy Policy located at <https://beaconama.net/privacy/privacy.html>.

(19) RIGHT TO SUBCONTRACT. Badger Meter may subcontract the performance of any of its duties or obligations under this Agreement, and will use commercially reasonable efforts to subcontract only with subcontractors that have the requisite skills to perform any subcontracted obligations in accordance with the terms of this Agreement.

(20) GENERAL.

- (c) **Binding Agreement.** This Agreement is binding upon and will inure to the benefit of the parties and their respective successors and assigns.
- (d) **Affiliates.** This Agreement covers only the employees and agents of Customer. If Customer wishes to have any entity that directly or indirectly controls, is controlled by or is in common control with Customer to access the Portal and use the Service, Customer's Affiliate must execute a separate agreement with Badger Meter.
- (e) **Assignment.** Either party may assign its rights and obligations under this Agreement with the express written consent of the other party, which consent will not be unreasonably withheld or delayed. Any purported assignment or transfer in violation of this Section will be null and void. Notwithstanding the foregoing, Badger Meter may assign its rights and obligations under this Agreement without the consent of Customer: (i) upon a sale of a majority of its outstanding capital stock to an affiliate or third party; (ii) if it sells all or substantially all of its assets; (iii) in the event of a merger; or (iv) in the event of a similar change of control.
- (f) **No Waiver.** The waiver or failure of either party to exercise any right or remedy provided under this Agreement will not be deemed a waiver of any further right or remedy. All waivers must be in writing to be effective.
- (b) **Severability.** If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect. Any invalid or unenforceable portions of this Agreement will be interpreted to effectuate the intent of the original Agreement. If such construction is not possible, the invalid or unenforceable portion of the Agreement will be severed from this Agreement, and the remainder of the Agreement will remain in full force and effect.
- (c) **Independent Contractors.** The Parties agree that they are independent contractors and that neither party nor any of their respective affiliates, is an agent of the other for any purpose or has the authority to bind the other.
- (d) **Savings Clause.** The invalidity of any provision of this Agreement shall not affect the validity and binding effect of the remaining provisions.
- (e) **No Third Party Beneficiaries.** Nothing express or implied in this Agreement shall confer any rights, remedies, obligations or liabilities whatsoever to third parties which are not signatories to this Agreement.
- (f) **Governing Law.** To the extent permitted by law, the terms of this Agreement are governed by the laws of the State of California, without reference to its conflict of laws principles. The

United Nations Convention for the International Sale of Goods does not apply to this Agreement.

(g) No Claims Against or Liability of Badger Meter Suppliers. Customer acknowledges that the Service utilizes services that are furnished to Badger Meter and one or more Suppliers pursuant to agreements between Badger Meter and its Suppliers. Neither Customer nor any Authorized Users or Authorized Consumers has a contractual relationship with Badger Meter's Suppliers and neither Customer nor its Authorized Users or Authorized Consumers is a third party beneficiary of or will have any claim against Badger Meter's Suppliers in the event any such agreement expires or is terminated. Customer further acknowledges that the **Suppliers disclaim all liability of any nature, whether legal or equitable, to Customer, its Authorized Users or Authorized Consumers, whether direct, indirect, incidental or consequential, arising out of the use of Badger Meter Portal or Service by Customer, its Authorized Users or Authorized Consumers, including any liability for personal injury or death, failure to be able to use the Service or otherwise.** Customer agrees that neither it nor any Authorized Users or Authorized Consumers shall have any Claim against the Supplier of any kind with respect thereto, whether arising out of breach of contract, warranty, negligence, and tort or otherwise.

(h) Dispute Resolution.

(i) Initial Resolution Efforts. The parties shall act in good faith and use commercially reasonable efforts to promptly resolve any claim, dispute, controversy or disagreement (each a "Dispute") between the parties or any of their respective subsidiaries, affiliates, successors and assigns under or related to this Agreement or any document executed pursuant to this Agreement or any of the transactions contemplated hereby.

(ii) Mediation. If the parties cannot resolve the Dispute within ten (10) days after initial notice of the Dispute, the Dispute shall be submitted for resolution to the Judicial Arbitration and Mediation Services ("JAMS"), or its successor ("**Mediation**" at a location mutually agreeable to the parties. Neither party shall seek, nor shall be entitled to seek, binding outside resolution of the Dispute unless and until the parties have been unable to amicably resolve the dispute as set forth in this Section, and then only in compliance with the procedures set forth in this Section.

(21) INJUNCTIVE RELIEF: Notwithstanding the provisions of Section 20, to the extent permitted by law, either Party shall have the right to pursue injunctive, declaratory or other relief by the state and federal courts sitting nearest their location and waive any objection that they would otherwise have to venue in such courts.

(22) NOTICES. All notices shall be in writing and delivered to the other party by means of: (a) personal delivery set forth below; (b) recognized overnight courier, at the following address; (c) fax with proof of delivery; or (d) via electronic mail with proof of delivery: Notices sent by email will be



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effective when sent and notices posted on Badger Meter's Portal will be effective upon posting. All notices must be provided in the English language.

If to Badger Meter:

Legal Department, Attn: Assistant General Counsel
4545 W. Brown Deer Road
Milwaukee, WI 53223

If to Customer:

City of Fresno, Attn: Thomas Esqueda
2600 Fresno Street
Fresno, CA 93721

(23) SURVIVABILITY. Any provision of this Agreement which by its nature should survive termination or expiration of this Agreement shall survive its expiration or termination.

(24) LIMITATION OF CLAIMS. No action arising under or in connection with this Agreement, regardless of the form, may be brought by Customer more than one (1) year after Customer becomes aware of or should reasonably have become aware of the occurrence of events giving rise to the Claim.

(25) FORCE MAJEURE. Neither party shall be liable to the other or any third party by reason of any failure or delay of its obligations under this Agreement where the delay or failure results from any cause beyond its reasonable control, including, but not limited to, acts of God, fires, storms, floods or other acts of nature, explosions, systemic electrical telecommunications or other utility failures, earthquakes, hurricanes, tornados, natural disasters, strikes, shortage of materials, work stoppage or other labor dispute, embargoes, riots, insurrections, acts of war or terrorism, or any action or restraint by court order or public or governmental authority ("**Force Majeure Event**"). The party subject to the Force Majeure Event agrees to use commercially reasonable efforts to minimize the impact of the Force Majeure Event on the other party.

(26) AMENDMENT. This Agreement may only be amended by a written document signed by both parties. Badger Meter will not be bound by and specifically objects to any term, condition or other provision which is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) and which is submitted by Customer in any receipt, acceptance, confirmation, agreement, purchase order, correspondence or other documentation. If the terms of this Agreement are not consistent with the terms contained in any policy, the terms contained in this Agreement will control, except that the Service Terms will control over this Agreement.

(27) POLICIES. Badger Meter reserves the right to modify the Terms of Use and Privacy policies at any time by posting a revised version on the Portal or otherwise providing notice to Customer. The



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modified terms will become effective upon posting or notice. By continuing to use the Service after the effective date of the modification to a policy, Customer agrees to be bound by the modified policies. It is Customer's responsibility to check the Badger Meter site regularly for modifications to the policies.


(28) ENTIRE AGREEMENT. This Agreement, including all applicable Exhibits and policies, constitutes the entire agreement between the parties with regard to its subject matter. This Agreement supersedes all prior or contemporaneous agreements, discussions, negotiations, undertakings, communications, representations or proposals, whether written or oral.

(29) ORIGINALS, COUNTERPARTS. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which together will be deemed to constitute one and the same document. This Agreement may be executed and delivered by facsimile signature or portable document format (.pdf) by electronic mail.

IN WITNESS WHEREOF, the authorized representatives of the parties hereby bind the parties to this BEACON AMA Managed Solution Master Agreement by signing below:

BADGER METER, INC

CITY OF FRESNO, CA



 Signature
 Kimberly K. Stoll

 Printed Name
 VP - Sales & Marketing

 Title
 2/19/18

 Date

 Signature

 Printed Name

 Title

 Date


APPROVED AS TO FORM
 CITY ATTORNEY'S OFFICE
 BY: 
 DEPUTY CITY ATTORNEY
 2/20/18

EXHIBIT 1

SERVICE LEVEL AGREEMENT

This Service Level Agreement (“SLA”) will go into effect upon completion of Endpoint Provisioning, which is the point during meter installation when the endpoint is installed and verified to provide data to the BEACON AMA Managed Solution.

1. CUSTOMER SUPPORT.

Service Levels. Within one (1) hour after a request for Customer Support Services from Customer, Badger Meter will respond to such request in accordance with the procedures set forth below. Customer may report the problem by phone, email or website provided by Badger Meter to Customer. Badger Meter will use commercially reasonable efforts to meet the response and resolution times set forth below:

Severity Level	Response Time	Resolution Time
Level 1 - Service is unavailable	one (1) hour	six (6) hours
Level 2 - certain interruptions but service is still available	twenty-four (24) hours	twenty-four (24) hours
Level 3 - minor intermittent malfunction	twenty-four (24) hours	three (3) days
Level 4 - suggestions for new features or enhancements to BEACON Portal and Service	twenty-four (24) hours	Evaluated, scheduled and prioritized for potential inclusion in upcoming releases.

2. BEACON PORTAL AND SERVICE AVAILABILITY PROMISE.

Badger Meter will use commercially reasonable efforts to fulfill the following Service Promise:

- BEACON Portal and Service Availability of 99% within each calendar month, excluding any Emergency Downtime, Scheduled Downtime, any unavailability of the Portal and Service due to any Force Majeure Event and any unavailability of the Portal and Service less than fifteen (15) minutes in duration following written notice thereof.

Definitions

“**Availability**” is the monthly uptime percentage with normal functionality of the Portal and the Service, calculated as described below.

“**Emergency Downtime**” means any unavailability of the Portal or Service due to a temporary suspension by Badger Meter to perform maintenance to address any, urgent and unexpected issue with the Portal or Service.

“**Scheduled Downtime**” means any unavailability of the Portal or Service due to scheduled maintenance. Scheduled maintenance may occur between 10:00 p.m. on Saturday to 4:00 a.m. on Sunday (Pacific Time) every week. Badger Meter shall have the right to change the scheduled maintenance times upon notice to Customer posted on the BEACON Portal.

CALCULATION of BEACON Portal and Service Availability:

Availability is measured by Badger Meter through standard monitoring software that tests the application availability at least every five (5) minutes and logs unavailability incidents (date and UTC time) for each monitored component.

Availability is calculated as the percentage of uptime in the applicable calendar month, excluding scheduled downtime:

$$\left(1 - \frac{\text{TotalUnavailabilityMinutes}}{\text{TotalMinutesofServiceMonth} - \text{TotalMinutesofApprovedDowntime}} \right)$$

Where:

“**Total Unavailability Minutes**” is the cumulative unavailability time in minutes in the applicable month where the Portal and Service are not available due to unplanned outages or from systematic errors on the part of Badger Meter,

“**Total Minutes of Service Month**” is the cumulative time in minutes in the month in question, calculated by taking the number of days in month x 24 hours/day x 60 minutes/hour, and



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“**Total Minutes of Approved Downtime**” is the cumulative time in minutes in the applicable month where the Supplier applications are not available due to scheduled downtime ; other planned scheduled outages, or approved exclusion conditions as defined in this Agreement.

In order to be included within the Total Unavailability Minutes: (a) Customer shall notify Badger Meter, in writing, via email(techsupport@badgermeter.com) of the unavailability of the Portal or the Service; (b) such unavailability shall be greater than fifteen (15) minutes in duration following Badger Meter’s receipt of such notice; and (c) Customer shall notify Badger Meter, in writing, via email within twenty-four (24) hours of such unavailability that it should be included within the Total Unavailability Minutes unless such unavailability is due to any Emergency Downtime, Scheduled Downtime, or any unavailability of the Services due to any Force Majeure Event.

Service Credits

If Badger Meter fails to meet the BEACON Portal and Service Availability Promise, the following Service Credits apply:

% of Availability in the Month	Service Credit(% of monthly recurring fees)
≥99%	0%
≥98% and <99%	5%
≥96.5% and <98%	10%
≥95.0% and <96.5%	15%
<95.0%	25%



3. MONTHLY BILLING DATA SERVICE PROMISE.

Badger Meter will use commercially reasonable efforts to fulfill the following Service Promise:

- The BEACON AMA Managed Solution will successfully provide Monthly Billing Data for at least 97.0% of provisioned accounts at the time of billing request to the BEACON AMA Managed Solution.

Definitions

“Managed Solution” is a system that consists of a network deployment using fixed network and/or cellular endpoints, where Badger Meter maintains the responsibility for managing the reading hardware and software for system operation over the Term of the Agreement.

“Provisioned Accounts” are accounts with cellular or fixed network endpoints that are discovered by the network, fully able to communicate with the network, and completely entered correctly in the BEACON AMA Managed Solution.

“Monthly Billing Data” is a valid meter reading obtained within three (3) days of the billing as performed through the BEACON AMA Managed Solution to provisioned accounts.

CALCULATION of Monthly Billing Data Service Promise for Provisioned Accounts:

Monthly Billing Data success rate is calculated by the count of accounts in the billing cycle with meter read data within three (3) days (“Count of Billing Reads”) divided by the number of active and Provisioned Accounts in the billing cycle (“Count of Total Billing Cycle”).

$$\frac{\text{Count of Billing Reads}}{\text{Count of Total Billing Cycle}}$$

Where:

“Count of Billing Reads” is the total number of accounts in the billing file with valid data that a billing quality reading is supplied for managed solution endpoints.

“Count of Total Billing Cycle” is the total number of accounts with valid data in the billing file being processed for managed solution endpoints.



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If Customer suspects that the Monthly Billing Data Service Promise has not been met for a particular Billing Cycle, (a) Customer shall notify Badger Meter, in writing, within twenty-four (24) hours of the occurrence, via email (techsupport@badgermeter.com) of the Count of Billing Reads and Count of Total Billing Cycle of managed solution endpoints; (b) the specific time and date when the billing read file was generated.

Service Credits

If Badger Meter fails to meet the Monthly Billing Data Service Promise, the following Service Credits apply:

% of Successful Billing Reads in the Applicable Billing Cycle	Service Credit (% of monthly recurring fees)
≥97.0%	0%
≥95.0% and <97.0%	5%
≥90.0% and <95.0%	10%
≤90.0%	25%

4. MISCELLANEOUS.

Exclusions

The BEACON Portal and Service Availability Promise and Monthly Billing Data Service Promise do not apply to any of the following performance issues, in addition to other exclusions herein:

- (i) Resulting from any actions or inactions of Customer, its Authorized Users or Authorized Consumers;
- (ii) Resulting from Customer or its suppliers equipment, software, or other technology and/or Customer's third party equipment, software, or other technology outside of Badger Meter's control;
- (iii) Caused by failures, including, but not limited to, internet connectivity, port availability, firewall configuration, or cellular networks at Customer's location;
- (iv) Resulting from Customer's breach of any term or condition under the Agreement;
- (v) Caused by unexpected or unintentional RF interference or signal obstruction caused by sources not present or not in use during endpoint installation;
- (vi) Caused by intentional RF interference or signal obstruction not present during endpoint installation, caused by third parties;
- (vii) Caused by Customer, an Authorized User's or an Authorized Consumer's misuse or abuse of the Portal or Service;
- (viii) During an event triggering a disaster recovery and for a twenty-four (24) hour period after the resumption of the Service following such an event to allow for the system to return to normal operating ranges;
- (ix) Arising from Badger Meter's suspension or termination of Customer's right to use the BEACON Managed Solution in accordance with the Agreement;
- (x) Arising from failure of Customer to follow Badger Meter's published installation, operation and maintenance instructions and Clarifications from Badger Meter's Preliminary Network Design;
- (xi) When outdoor temperatures either exceed or are below the endpoint operating temperature range as described in the applicable product data sheet.
- (xii) Accounts read using manual, touch read, handheld and mobile technology are not included as part of the Monthly Billing Data Service Promise, as these reading technologies are outside of Badger Meter's control.

In the event Badger Meter does not meet a Service Promise hereunder, Badger Meter will conduct a commercially reasonable root cause analysis of the Service promise failure. If Badger Meter's analysis is inconclusive, or if Badger Meter concludes that circumstances outside of Badger Meter's control caused the Service promise failure, or if Badger Meter concludes that a failure falls under any other exclusions described hereunder, Customer will not be entitled to a Service Credit. If Badger Meter's analysis is conclusive and that circumstances within Badger Meter's control caused the Service failure, Customer will be eligible to receive a Service Credit as described above.



*BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT*



EXCEPT AS EXPRESSLY PROVIDED IN THIS SLA, THE SERVICE CREDITS SPECIFIED IN THIS SLA WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BADGER METER'S FAILURE TO MEET THE SERVICE PROMISE SPECIFIED IN THIS SLA.

Badger Meter will report Service Promises and applicable Service Credits upon request and upon a commercially reasonable frequency. Following each report, upon Customer request, the parties will discuss such performance and the extent to which any Service Credits either are appropriate or should be modified due to circumstances not captured by the reporting methodology.

Upon agreement concerning the Service Credits due, such Service Credits will be applied against Badger Meter's charges in the months following the month in which the credits were incurred.

EXHIBIT 2

BEACON AMA MANAGED SOLUTION SECURITY POLICY

1. **BEACON AMA Portal and Service Information Security Program.** Badger Meter maintains an information security program (including the adoption and enforcement of internal policies and procedures) designed to (a) support the BEACON AMA Managed Solution, (b) identify reasonably foreseeable and internal risks to the BEACON Portal and Service security and unauthorized access to the Badger Meter Network, and (c) minimize security risks. The BEACON Portal and Service information security program includes the following measures:
 - 1.1 **Network Security.** The Badger Meter Network is electronically accessible to employees, and contractors necessary to provide the Portal and Service. Badger Meter maintains access controls and policies to manage what access is allowed to the Badger Meter Network from each network connection and user, including the use of firewalls or functionally equivalent technology and authentication controls. Badger Meter maintains corrective action and incident response plans to respond to potential security threats.
 - 1.2 **Physical Security.**
 - 1.2.1 **Physical Access Controls.** Physical components of the Badger Meter Network are housed in nondescript facilities (the “Facilities”). Physical barrier controls are used to prevent unauthorized entrance to the Facilities both at the perimeter and at building access points. Passage through the physical barriers at the Facilities requires either electronic access control validation (e.g., card access systems, etc.) or validation by human security personnel (e.g., contract or in-house security guard service, receptionist, etc.). Employees and contractors are assigned photo-ID badges that must be worn while the employees and contractors are at any of the Facilities. Visitors are required to sign in with designated personnel, must show appropriate identification, and are assigned a visitor ID badge that must be worn while the visitor is at any of the Facilities, and are continually escorted by authorized employees or contractors while visiting the Facilities.
 - 1.2.2 **Limited Employee and Contractor Access.** Badger Meter provides access to the Facilities to those employees and contractors who have a legitimate business need for such access privileges. When an employee or contractor no longer has a business need for access privileges, the access privileges are promptly revoked, even if the employee or contractor continues to be an employee of Badger Meter or its affiliates.
 - 1.2.3 **Physical Security Protections.** All major access points (other than main entry doors) are maintained in a secured (locked) state. Access points to the Facilities are monitored by video surveillance cameras designed to record all individuals accessing the Facilities. All physical access to the Facilities by employees and contractors is logged and routinely audited.
 - 1.2.4 **Pre-Employment Screening.** Badger Meter conducts criminal background checks, as permitted by applicable law, as part of pre-employment screening practices for

employees commensurate with the employee's position and level of access to the Facilities. Badger Meter will not permit an employee to have access to the non-public Customer Content or perform material aspects of the Service if such employee has failed to pass such background check.

2. **Continued Evaluation.** Badger Meter will conduct periodic reviews of the security of its Badger Meter Network and adequacy of its information security program as measured against industry security standards and its policies and procedures. Badger Meter will continually evaluate the security of its Badger Meter Network and associated Service to determine whether additional or different security measures are required to respond to new security risks or findings generated by the periodic reviews.
3. **Customer Responsibilities.** System security is a shared responsibility between Badger Meter and Customer. Customer shall assign a systems service administrator to be responsible for establishing access and usage policies. Customer shall develop commercially reasonable policies and procedures to insure physical security, establishing account access approvals and procedures, conduct regular reviews of access rights, and provide security awareness training for staff using the Service. The administrator shall also be responsible for policies and procedures related to Authorized Consumers access to their individual data resident on the Network.

