



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



This BEACON AMA MANAGED SOLUTION MASTER AGREEMENT (“**Agreement**”) is entered into as of the 3rd day of December, 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 Greeley, 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 or evaluators 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, provided the Suggestions shall not include any Customer Content. 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 at Badger Meter’s expense.



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



(4) **TERM.** The term of this Agreement begins on the Effective Date and continues for a ten (10) year term unless earlier terminated in accordance with Section (16) of the Agreement (the “**Term**”).

(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 **Exhibit 1 - Fees**.

(b) **Taxes.** Customer will be responsible to pay any sales, use, value added or excise taxes 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 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 knowingly 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; provided the foregoing shall not limit Customer’s or its Authorized Users’ ability to use the Customer Data outside of the Service and Portal in any way Customer sees fit at its sole discretion.

(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.



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



- (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) Intentionally 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 2 - Service Level Agreement**.



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



(8) CUSTOMER DATA.

(a) Customer Data Defined. Customer will provide Badger Meter and its Suppliers certain customer billing information that contains personally identifiable information and other content (“Customer Data”).

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

(c) Use of Customer Data 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 Data as reasonably necessary to provide, maintain, repair and enhance the Portal, Service and Documentation for Customer. Any other use of the Customer Data is strictly prohibited. Badger Meter may disclose certain Customer Data 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 advanced 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) and reasonably cooperate with Customer’s efforts to do so.

(d) Customer Responsibilities. Customer is solely responsible for the development, content, operation and maintenance of the Customer Data outside of the Portal and Service, including but not limited to the technical operation of the Customer Data, and ensuring that calls made to the Service from Customer’s network are compatible with then-current API’s for the Service as provided by Badger Meter to Customer. 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.

(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 as specifically identified in writing to



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



Customer as “Confidential”; (b) third party information Badger Meter is obligated to keep confidential as specifically identified in writing to Customer as “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 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. Badger Meter agrees to de-identify Customer Data in accordance with the Termination Section of this Agreement. 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) 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.**” For purposes of this agreement, “de-identified” shall mean all information that constitutes personally identifiable information or can otherwise be used to determine the identity of a user, including without limitation, entity or individuals’ names, mailing addresses, service addresses, phone numbers, email addresses, IP address, and latitudinal / longitudinal data that has been permanently removed or modified so it in no way can be traced back to the original individual or entity. All Traffic Data shall be the Confidential Information of and owned exclusively by Badger Meter, provided all collection and use thereof shall comply with Badger Meter’s then-current Privacy Policy.

(d) 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



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



receiving party agrees to inform the disclosing party in writing within three (3) business days of receipt of the request unless prohibited by law.

(e) 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 or other breach of confidentiality obligations; (ii) the receiving party can prove was known to it prior to its receipt from the disclosing party without reference to the Confidential Information as demonstrated by contemporaneous documentation; (iii) is independently developed by the receiving party outside of this Agreement without use of the disclosing party's Confidential Information as demonstrated by contemporaneous documentation; or (iv) is obtained by the receiving party from a third party which had no obligation of confidentiality to the disclosing party or third 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. To best of Customer's knowledge, its licensors or its Authorized Consumers, own all rights, title and interest in and to the Customer Data. Customer has all rights in the Customer Data necessary to grant the rights to Badger Meter contemplated under this Agreement.

(c) Compliance with Badger Meter Policies. None of the Customer Data or the use of the Customer Data, 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 Data is the subject matter of any pending or threatened lawsuit, legal proceeding or Claim of intellectual property infringement asserted against Customer.

(e) Compliance with the Law. Neither Customer, the Authorized Users nor the Authorized Consumers will knowingly 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.



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



(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) **Ownership.** Badger Meter owns all rights, title and interest in and to the Portal, Service and Documentation. Badger Meter has all rights in the Portal, Service and Documentation necessary to grant the rights to Customer contemplated under this Agreement.
- (c) **Compliance with this Agreement.** Badger Meter warrants it will comply with (i) this Agreement, and (ii) its Terms of Use and Privacy Policy that apply to the Service and/or Portal (as each may be updated from time to time).
- (d) **No Infringement.** To Badger Meter's knowledge, none of the Portal, Service or Documentation 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) **Express Limited Portal, Service and Documentation Warranty.** Badger Meter represents and warrants to Customer that the Portal and Service will provide the functionality set forth in the Documentation and will be provided pursuant to **Exhibit 2 - 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.
- (f) **Remedy for Breach of the Express Limited Portal, Service and Documentation Warranty.** If the Portal, Service or Documentation fail to meet the terms of the express limited warranty set forth in Section 11(e), Customer will use reasonable efforts to notify Badger Meter as described in **Exhibit 2 - Service Level Agreement**. Customer's exclusive remedy for a breach of the express limited Portal, Service and Documentation warranty is a Service credit to be calculated in accordance with **Exhibit 2 - Service Level Agreement**.
- (g) **DISCLAIMER OF IMPLIED WARRANTIES. EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH IN SECTION 11, 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
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



WITH THE EXCEPTION OF SERVICE LEVELS SET FORTH IN EXHIBIT 2-SERVICE LEVEL AGREEMENT, 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.

(h) ESSENTIAL TERMS. THE ENFORCEABILITY OF THIS SECTION (11) IS ESSENTIAL TO BADGER METER'S WILLINGNESS TO ENTER INTO THIS AGREEMENT WITH CUSTOMER. THIS SECTION 11 SHALL IN NO WAY LIMIT BADGER METER'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 15, SUBJECT TO SECTION 12.

(12) LIMITATION OF LIABILITY

(a) 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.

(b) CAP ON DAMAGES. NEITHER PARTY'S NOR ANY OF ITS RESPECTIVE AFFILIATES AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL EXCEED THE LESSER OF (A) THE AMOUNTS THE CUSTOMER ACTUALLY PAYS BADGER METER UNDER THIS AGREEMENT FOR THE SERVICE THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS PRECEDING THE CLAIM, OR (B) US \$250,000. NOTHING IN THIS SECTION 12 WILL LIMIT CUSTOMER'S OBLIGATION TO PAY BADGER METER FOR USE OF THE SERVICES PURSUANT TO SECTION 5.

(c) LIMITS ON DAMAGES. EXCEPT FOR DAMAGES ARISING UNDER SECTION 12(a), AND SECTIONS (13) AND (14) (INDEMNIFICATION), 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").



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



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 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 CUSTOMER, AUTHORIZED USERS, 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 IN VIOLATION OF THIS AGREEMENT; OR (ii) WITHOUT LIMITING ANY OBLIGATIONS UNDER THE SERVICE LEVEL AGREEMENT IN EXHIBIT 2, 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.

(d) 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) CUSTOMER'S INDEMNIFICATION OBLIGATIONS.

(a) Generally. To the extent permitted by law and subject to annual appropriation of funds and to the limitations of liability provisions set forth in Section (12) of this Agreement, Customer agrees to defend, indemnify, and hold harmless Badger Meter as well as its parents, subsidiaries, affiliates, officers, employees, agents, licensors, Suppliers, and BEACON customers



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



(i.e., other municipal water suppliers) and each of their respective employees, officers, directors, members and representatives but excluding the end-users of other BEACON customers (the “**Badger Meter Parties**”), against any and all Claims made against the Badger Meter Parties by any third party arising out of or related to: (i) Customers, Authorized Users or Authorized Consumers access and use of the Portal, Service, or Documentation in breach of this Agreement; (ii) violation of applicable law by Customer, its Authorized Users or Authorized Consumers; (iii) the Customer Data as provided by Customer, its Authorized Users or Authorized Consumers to Badger Meter or (iv) a dispute between Customer and any Authorized User or Authorized Consumer; provided the foregoing shall not apply to any Claim related to or arising from the acts or omissions of one or more Badger Meter Parties. **NO WAIVER OF GOVERNMENTAL IMMUNITY:** No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections and limitations or the Colorado Governmental Immunity Act, C.R.S. §24-10-101 et seq., Colorado law as now or hereafter amended, which shall govern City’s obligations hereunder in the event of conflict with any other applicable law, and the City hereby expressly reserves the same.

(b) Procedure for Indemnification. Upon receipt of a Claim, Badger Meter will provide prompt written notice to Customer of the Claim for which the Badger Meter Parties seek indemnification. Badger Meter’s failure to promptly notify Customer will only affect Customer’s obligation to indemnify the Badger Meter Parties to the extent such failure causes actual prejudice to Customer’s ability to defend the Claim. The notice must include a description of the Claim with reasonable detail of the facts giving rise to the Claim. Upon receipt of notice of a Claim, Customer shall be obligated to assume and control the defense of such Claim at its own expense. The Badger Meter Parties may retain their own counsel to cooperate in defending the Claim, at their own expense. The Badger Meter Parties agree to cooperate with Customer in defending the Claim and in making available to Customer all witnesses, records, materials and information in their possession or control to assist in the defense of the Claim, as is reasonably requested by Customer. Customer may not settle or compromise any Claim or consent to the entry of any judgment unless Badger Meter provides prior written consent and the Badger Meter Parties are given an unconditional written release from Customer with respect to the Claim. In the event Customer fails to defend, indemnify, and hold the Badger Meter Parties harmless, after notice of a request for indemnification, the Badger Meter Parties shall be entitled to assume the defense and seek reimbursement from Customer for all losses with regard to the Claim and all attorneys’ fees and litigation costs expended by the Badger Meter Parties in defending the Claim.

(c) Third Party Subpoenas: If Badger Meter is obligated to respond to a third party subpoena or other compulsory legal order or process related to a Claim covered by this Section 13, Customer will reimburse Badger Meter for reasonable attorney’s fees as well as its employees or subcontractors time and materials spent responding to the third party subpoena or other compulsory legal order or process, at Badger Meter’s then current hourly rate.



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



(14) BADGER METER'S INDEMNIFICATION OBLIGATIONS.

(a) Generally. Subject to the limitations of liability provisions set forth in Section (12) of this Agreement, Badger Meter agrees to indemnify, defend and hold harmless Customer, and as applicable its officers, directors, members, board members, governing members, trustees, commissioners, elected and appointed officials, employees, agents, consultants and other representatives, Authorized Users, and Authorized Consumers ("**Customer Parties**") from and against any and all Claims made against the Customer Parties by a third party arising out of or related to: (i) allegations that the Portal, Service or Documentation infringes or violates a third party's patent, copyright, trademark, trade secret, or other intellectual property or privacy rights ("**Intellectual Property Dispute**"); (ii) breach of this Agreement or the gross negligence or willful misconduct of any of the Badger Meter Parties, including breach of any warranty set forth herein; or (iii) violation of applicable law by a Badger Meter Party.

(b) Mitigation. If the Portal, Service or Documentation becomes the subject of an Intellectual Property Dispute and is enjoined, Badger Meter will have the right to (i) procure for Customer 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) terminate this Agreement with reasonable advance notice to Customer and provide Customer with a refund of any unused pre-paid portion of the Service Fees.

(c) Exclusions. Badger Meter assumes no liability for and Customer will not be entitled to receive indemnification from Badger Meter for any Intellectual Property Dispute which directly results solely from (i) Customer's failure to use the Portal or Service in conformity with the Documentation; (ii) Customer's actions in combining the Service with any third party software, technology, hardware or data unless such combination is reasonably necessary to use the Service or Portal in accordance with the Documentation; or (iii) Customer's violation of access granted in Section (2).

(d) Procedure for Indemnification. Upon receipt of a Claim, Customer will provide prompt written notice to Badger Meter of the Claim for which the Customer Parties seek indemnification. Customer's failure to promptly notify Badger Meter will only affect Badger Meter's obligation to indemnify the Customer Parties to the extent such failure causes actual prejudice to Badger Meter's ability to defend the Claim. The notice must include a description of the Claim with reasonable detail of the facts giving rise to the Claim. Upon receipt of notice of an Claim, Badger Meter shall be obligated to assume and control the defense of such Claim at its own expense. Customer may retain its own counsel to cooperate in defending the Claim, at its



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



own expense. Customer agrees to cooperate with Badger Meter in defending the Claim and in making available to Badger Meter all witnesses, records, materials and information in Customer's possession or control to assist in the defense of the Claim as is reasonably requested by Badger Meter. Badger Meter may not settle or compromise any Claim or consent to the entry of any judgment unless Customer provides prior written consent and the Customer is given an unconditional written release from Badger Meter with respect to the Claim. In the event Badger Meter fails to defend, indemnify, and hold the Customer Parties harmless, after notice of a request for indemnification, Customer shall be entitled to assume the defense and seek reimbursement from Badger Meter for all losses with regard to the Claim and all attorneys' fees and litigation costs expended by Customer in defending the Claim.

(e) Third Party Subpoenas: If Customer is obligated to respond to a third party subpoena or other compulsory legal order or process relate to a Claim covered by this Section 14, Badger Meter will reimburse Customer for reasonable attorney's fees as well as its employees or subcontractors time and materials spent responding to the third party subpoena or other compulsory legal order or process, at Badger Meter's then current hourly rate.

(15) TERMINATION.

(a) Termination for Convenience. Customer may terminate this Agreement for any reason by providing Badger Meter written notice of termination at least sixty (60) days in advance of the effective date of such termination. Badger Meter shall be entitled to receive compensation (per the terms of this Agreement) for any services performed hereunder through the date of the termination. 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**").



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



(d) Immediate Right to Terminate. Either Party shall have the right to immediately terminate this Agreement: (i) in order to protect its Confidential Information, or for Badger Meter to protect its Intellectual Property Rights in the Portal or Service; (ii) in order to comply with applicable law (iii) if the other Party 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 the Other Party 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 termination of this Agreement: (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) each party will deliver to the other party any Confidential Information in its possession or control, and (iv) Badger Meter will cease gathering data from Customer's endpoints within thirty (30) days after termination. Within a reasonable time after termination, not to exceed thirty (30) calendar days, Badger Meter will de-identify 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 undisputed 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 beyond the Customer Data 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.

(16) 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.



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



(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 field installation by Customer of a device on the Service is materially out of compliance with the technical requirements for installation provided by Badger Meter to Customer; (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 for the reasons set forth in (b), 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 Customer 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 the reason for the suspension has been resolved..

(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:



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



- (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.

(17) COMPLIANCE WITH REGULATIONS; DATA PRIVACY. Badger Meter shall comply with the requirements set forth in **Exhibit 4 - Information Protection Procedures**, which is incorporated herein by reference. In addition to, and without limiting Badger Meter's obligation to comply with Exhibit 4, 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 of personally identifiable information, including meeting or exceeding then-current 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 the requirements of this Section 17.

(18) DATA SECURITY AND RECOVERY. In addition to, and without limiting Badger Meter's obligation to comply with **Exhibit 4 - Information Protection Procedures**, which is incorporated herein by reference, the following terms shall apply:

- (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 and shall maintain during the Term commercially reasonable internal procedures and systems designed to protect the privacy and security according to the requirements set forth in **Exhibit 3 - BEACON AMA Managed Solution Security Policy** ("**Security Standards**"), consistent with applicable international, federal, state and local laws and apply the Security Standards to any aspect of Badger Meter's Network that handles Customer Content. The Security Standards shall be updated by Badger Meter, without Customer's express written consent, during the Term to meet generally accepted practices in the information technology service management industry for providing secure data handling and management of personally identifiable information and comply with applicable international, federal, state and local laws. Badger Meter shall implement the Security Standards to identify reasonably foreseeable and internal risks to security and unauthorized access to Badger Meter's Network and minimize security risks,



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



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 to secure the Customer Data 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, Section 17, and Section 9 contain Badger Meter, and its Suppliers entire obligation regarding the security, privacy and confidentiality of the Customer Data

(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, unauthorized disclosure, or alteration of Customer Data, 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 Data, including but not limited to the use of encryption technology to protect Customer Data from unauthorized access and will perform routine archiving of the Customer Data. 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.



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



(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 a prompt 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. Badger Meter will evaluate coverage in the Service Area and confirm sufficient coverage is possible to use the Service prior to the Effective Date. 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 provided such lapse or obstruction was outside of the control of Badger Meter. 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-protected Internet account used to access the Service or Portal. Customer will promptly notify Badger Meter of any unauthorized use of Customer's password or Service/Portal account or any other breach of security of which Customer becomes aware, and ensure that Customer exits from Customer's Service/Portal account at the end of each session.



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



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 investigate and 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 Data. Badger Meter will only use the Customer Data 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 advance 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.

(19) 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 or impose a



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



materially different payment structure; (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 providing 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 (20) (a).

(20) 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>.

(21) 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. Badger Meter will ensure its web service provider houses and mirrors Customer Data in the United States of America only.

(22) GENERAL.

(a) Binding Agreement. This Agreement is binding upon and will inure to the benefit of the parties and their respective successors and permitted assigns.



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



- (b) 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.
- (c) 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 as a whole upon reasonable advanced notice, but 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.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) Savings Clause.** The invalidity of any provision of this Agreement shall not affect the validity and binding effect of the remaining provisions.
- (h) 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.
- (i) Governing Law.** To the extent permitted by law, the terms of this Agreement are governed by the laws of the State of Colorado, without reference to its conflict of laws principles. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



(j) 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. Badger Meter assumes sole liability for any breach of this Agreement caused by 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.

(k) 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**") in Greeley, Colorado. If the mediator is unable to amicably resolve the Dispute, then the mediator will refer the matter to a JAMS arbitrator to resolve the Dispute. 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. Except for Disputes relating to issues of (i) proprietary rights, including, but not limited to, intellectual property and confidentiality, any Dispute not resolved by amicable resolution as set forth in this Section shall be governed exclusively and finally by arbitration described below. All Disputes set forth in (i) shall be governed by Colorado law and be brought in the state and federal courts for Weld County, Colorado.



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



(iii) Arbitration. Either party may initiate arbitration with respect to a Dispute by submitting a written demand at any time following Mediation.

- Arbitration shall be administered by JAMS, or its successor, pursuant to the Comprehensive Arbitration Rules and Procedures and shall be located in Greeley, Colorado.
- Either party may commence arbitration by notifying the other in writing that arbitration is desired and setting forth the topics to be arbitrated. Within thirty (30) days of mailing a notice of arbitration, the party receiving the notice may specify additional topics of arbitration in writing to the other party. Within forty-five (45) days of the mailing of the notice of arbitration, the parties will confirm and attempt to identify an arbitrator associated with JAMS to resolve the Dispute. If the parties cannot agree, JAMS will appoint an arbitrator who is a lawyer familiar with software as a service and information technology support services agreements.
- Except to the extent, if any, that law applicable to the dispute requires that arbitrators retain authority to award punitive damages, the arbitrators shall not have such authority.
- Each party will bear its own costs of the arbitration. The resulting award may be confirmed and reduced to judgment in any court of competent jurisdiction. With respect to any such post-arbitral judicial proceedings, the parties consent to the exercise of personal jurisdiction over them by the state and federal courts for Weld County, Colorado and waive any objection that they would otherwise have to venue in such courts.
- The duty to arbitrate does not preclude either party from pursuing interlocutory or provisional relief pending arbitration in any court of competent jurisdiction if such relief is necessary in order to preserve the practical ability of the arbitrator to make an effective award or to avoid a genuine and substantial risk of injury that cannot be adequately remedied by an eventual arbitral award. Neither the pursuit of nor the failure to provide any such interlocutory or provisional remedy in court, however, shall relieve either party of the duty to pursue ultimate resolution of the dispute through arbitration as provided for herein.
- The arbitration shall be governed by and construed and interpreted in accordance with the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq.



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



(23) INJUNCTIVE RELIEF: Notwithstanding the provisions of Section 23, to the extent permitted by law, either party shall have the right to pursue injunctive relief by the state and federal courts for Weld County, Colorado and waive any objection that they would otherwise have to venue in such courts.

(24) NOTICES. All notices shall be in writing and delivered to the other party by means of: (a) personal delivery set forth below; (b) courier, at the following address (signature required upon delivery); (c) recognized overnight courier, at the following address (signature required upon delivery); (d) fax with confirmation by receiving party of delivery; or (e) via electronic mail with confirmation by receiving party of delivery: 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 Greeley
1001 11th Avenue, 2nd Floor
Greeley, CO 80631
Attention: Water & Sewer Department
Email: bob.neal@greeleygov.com
Facsimile: 970-350-9805

With a copy to:

City of Greeley
1100 10th Street, Suite 401
Greeley, CO 80631
Attention: Office of the City Attorney
Email: cityattorney@greeleygov.com
Facsimile: 970-350-9763

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

(26) LIMITATION OF CLAIMS. No action arising under or in connection with this Agreement, regardless of the form, may be brought by Customer more than five (5) year after Customer becomes



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



aware of or should reasonably have become aware of the occurrence of events giving rise to the Claim.

(27) 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.

(28) 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. The terms of this Agreement shall control over (i) the BEACON General Agreement that the Customer will click-through on first use of the Portal, and (ii) the Terms of Use, only where the terms conflict, as they may be updated from time to time.

(29) 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 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.

(30) 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.

(31) 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.



**BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT**



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

DocuSigned by:

Signature
8ABF1246D591454...

Kimberly K. Stoll
Printed Name

VP- Sales and Marketing
Title
11/30/2018
Date

City of Greeley, Colorado:

APPROVED AS TO SUBSTANCE:

DocuSigned by:
By:
D93D100AE64B4E6...

Name: Roy Otto

Title: City Manager

Date: 12/3/2018

APPROVED AS TO LEGAL FORM:

DocuSigned by:
By:
1E817506B21B4AA...

Name: Douglas Marek

Title: City Attorney

Date: 12/2/2018

APPROVED AS TO AVAILABILITY OF FUNDS:

DocuSigned by:
By:
86B6A7B0F45A40C...

Name: Victoria Runkle

Title: Director of Finance

Date: 12/3/2018



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



EXHIBIT 1

FEES

1. **Service Fees.** Customer agrees to pay the following Service Fees, as consideration for the right of it, its Authorized Users, and Authorized Consumers to access and use the Portal, Service and Documentation during the Term, as well as applicable Taxes.
2. **Invoicing.** Badger Meter shall issue invoices to Customer for Service on a monthly basis. Payment is due within thirty (30) days of the date of the invoice.
3. **Interest and Costs.** Customer agrees that it will be responsible to pay Badger Meter for any collection expenses incurred by Badger Meter related to undisputed fees, including interest at the highest interest rate permitted by law, and reasonable attorneys' fees and court costs incurred by Badger Meter in collection efforts in which Badger Meter is the prevailing party.

Monthly Endpoint Subscription Fee

Hourly Data, Once Daily Call-in: \$0.89/endpoint/month

At the beginning of each new contract period, Badger Meter reserves the right to increase the fees related to the Service or Portal, including any subscription fee price, provided the increase for such period is no greater than the increase in the Consumer Price Index (CPI) as reported by the U.S. Department of Labor or 2.5%, whichever is lower. The effective date of the previous Term shall be used to determine the base index.

Monthly billing typically begins after endpoint provisioning or six months after shipment, whichever occurs first.



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



EXHIBIT 2

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 Service in accordance with the Documentation and this Agreement.

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. For purposes of this Exhibit, “unavailable” shall mean that Customer, Authorized Users, and Authorized Consumers cannot access the Service or Portal. 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 or Portal is unavailable	one (1) hour	six (6) hours
Level 2 - certain interruptions but Service or Portal is still available	twenty-four (24) hours	twenty-four (24) hours
Level 3 - minor intermittent malfunction in Service or Portal	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.



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



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:

$$\left(1 - \frac{\text{Total Unavailability Minutes}}{\text{Total Minutes of Service Month} - \text{Total Minutes of Approved Downtime}} \right)$$

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,



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



“**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

“**Total Minutes of Approved Downtime**” is the cumulative time in minutes in the applicable month where the Service or Portal 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 before or 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%



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



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 98.5% 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 contain account information completely entered correctly in the BEACON AMA Managed Solution.

“Monthly Billing Data” is a valid meter reading obtained within three (3) days of the time of the billing request 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”**).

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

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.



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



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)
≥98.5%	0%
≥96.5% and <98.5%	5%
≥91.5% and <96.5%	10%
≤91.5%	25%



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



4. MISCELLANEOUS.

Exclusions

The BEACON Portal and Service Availability Promise and Monthly Billing Data Service Promise do not apply if caused by 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 (cellular and fixed network readings are included).

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 concludes in good faith that a failure falls under any exclusions described hereunder and provides Customer with evidence supporting its findings, Customer will not be entitled to a Service Credit.



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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 mutually agreed upon 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.



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



EXHIBIT 3

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



*BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT*



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 applicable laws, 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.** 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 ensure physical security, establishing account access approvals and procedures, conduct periodic 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



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



EXHIBIT 4

INFORMATION PROTECTION PROCEDURES

- A. Definitions. For purposes of this **Exhibit 4**, the following defined terms shall apply:
- i. “**Security Breach**” means the unauthorized acquisition of unencrypted computerized data that compromises the security, confidentiality, or integrity of Personal Information.
 - ii. “**Biometric Data**” means unique biometric data generated from measurements or analysis of human body characteristics for the purpose of authenticating the individual when he or she accesses an online account.
 - iii. “**Encrypted**” means rendered unusable, unreadable, or indecipherable to an unauthorized person through a security technology or methodology generally accepted in the field of information security.
 - iv. “**Financial Transaction Device**” means any instrument or device whether known as a credit card, banking card, debit card, electronic fund transfer card, or guaranteed check card, or account number representing a financial account or affecting the financial interest, standing, or obligation of or to the account holder, that can be used to obtain cash, goods, property, or services or to make financial payments.
 - v. “**Personal Identifying Information**” means a social security number; a personal identification number; a password; a pass code; an official state or government-issued drivers’ license or identification card number; a government passport number; Biometric Data; an employer, student, or military identification number; or a Financial Transaction Device.
 - vi. “**Personal Information**” means a Colorado resident’s: (a) first name or first initial and last name in combination with any one or more of the following data elements that relate to the resident, when the data elements are not encrypted, redacted, or secured by any other method rendering the name or element unreadable or unusable: social security number; driver’s license number or identification card number; student, military, or passport identification number; medical information; health insurance identification number; or Biometric Data; (b) username or e-mail address, in combination with a password or security questions and answers, that would permit access to an online account; and (c) account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to that account. Personal Information does not include publicly available information that is lawfully made



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



available to the general public from federal, state, or local government records or widely distributed media.

B. To the extent required by law, Vendor hereby agrees to provide notice to and cooperate with the City in the event of a Security Breach that compromises computerized data, including notifying the City of any Security Breach in the most expedient time and without unreasonable delay following discovery of a Security Breach, if misuse of Personal Information about a Colorado resident occurred or is likely to occur. Cooperation includes sharing with the City information relevant to the Security Breach; except that such cooperation does not require the disclosure of confidential business information or trade secrets.

C. The breach of Encrypted or otherwise secured Personal Information must be disclosed in accordance with this Exhibit if the confidential process, encryption key, or other means to decipher the secured information was also acquired in the Security Breach or was reasonably believed to have been acquired.

D. Notification by Vendor to City in accordance with Subsection (B) hereof will include:

- i. The date, estimated date, or estimated date range of the Security Breach;
- ii. A description of the Personal Information that was acquired or reasonably believed to have been acquired as part of the Security Breach; and
- iii. Any other information relevant to the Security Breach.

E. Vendor shall implement and maintain reasonable security procedures and practices that are:

- i. Appropriate to the nature of the Personal Identifying Information disclosed to the Vendor; and
- ii. Reasonably designed to help protect the Personal Identifying Information from unauthorized access, use, modification, disclosure, or destruction.