

SOFTWARE SUPPORT AND MAINTENANCE AGREEMENT

This Software Support and Maintenance Agreement (this “**Agreement**”), effective as of the last signature date below (“**Effective Date**”) by and between Landis+Gyr Technology, Inc. (“**Landis+Gyr**”) and Clallam County PUD (“**Customer**”) sets forth the parties’ supplemental rights and obligations with respect to maintenance and support for the Software licensed by Customer from Landis+Gyr, under the Master Purchase, License and Services Agreement by and between Landis+Gyr and Customer dated also as of the Effective Date (the “**Master Agreement**”). Defined terms used but not defined in this Agreement have the meaning given to them in the Master Agreement or as defined below.

1. Definitions.

“**Documentation**” means any and all manuals, instructions, specifications and other documents and materials that Seller provides or makes available to Customer in any medium and which describe the functionality, components, features or requirements of the Software, including any one or more of installation, configuration, integration, operation, use, support or maintenance thereof.

“**Major Release**” means any release of Software (for example, version 6.2) where the number to the right of the decimal has been changed.

“**Minor Release**” or “Maintenance Release” means any update, upgrade, release or other adaptation or modification of the Software, including any updated Documentation, that Landis+Gyr may provide to Customer from time to time during the term, which may contain, among other things, error corrections, enhancements, improvements or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency or quality of the Software, but does not include any New Version.

“**New Version**” means any new functional module of the Software that Landis+Gyr may from time to time introduce and market as a distinct licensed product, and which Landis+Gyr may make available to Customer at an additional cost via an amendment to this Agreement.

“**Service Exception**” has the meaning set forth in Section 7.

“**Software Defect**” means a reproducible failure of the Software to perform in substantial conformity with the specifications set forth in the Documentation.

2. **Maintenance Coverage; Term.** “**Maintenance**” or “**Support and Maintenance Services**” will consist of (i) the provision of certain Software Releases set forth in Section 5 of this Agreement, and (ii) the Service Desk availability set forth in Section 3 of this Agreement for the fees set forth in Exhibit A attached hereto.

2.1 This Agreement will commence on the Effective Date and continue for term of one (1) year. Landis+Gyr will provide Customer with any changes in support and/or maintenance terms for renewal periods at least sixty (60) days prior to the expiration date.

3. Service Desk and Access.

3.1 **Service Desk Hours.** Landis+Gyr shall provide Customer with access to the Service Desk. Landis+Gyr’s current Service Desk business hours are 7:00 AM to 6:00 PM Central Time,

Monday through Friday, excluding Landis+Gyr observed holidays (available upon request) and weekends (“**Business Hours**”). In addition, emergency access to on-call personnel via Landis+Gyr’s Emergency Dispatch Service will be provided by Landis+Gyr from 6:01 PM through 6:59 AM, and 24 hours per day on weekends and holidays. Landis+Gyr shall provide advanced troubleshooting, via telephone or e-mail, as deemed necessary by qualified Landis+Gyr personnel, to resolve Customer issues.

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

- (a) Telephone direct dial-in at 888.390.5733;
- (b) Fax to 218.562.5530, or
- (c) E-mail at solutionsupport.na@landisgyr.com

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

4. **Releases.** During the warranty period and the period for which Maintenance has been purchased by Customer and as part of Maintenance, Landis+Gyr will provide to Customer all Major Releases, Minor Releases, and all critical maintenance Releases of the Software as available (plural or collectively, the “**Releases**”). All Releases shall be included in the definition of Software under the Master Agreement. Such obligation is limited to Releases which Landis+Gyr generally releases to all its customers during such time period. Customer is responsible for installation and integration of any Release, excluding a Release relating to Infringement (which Release shall be the responsibility of Landis+Gyr), unless Customer separately contracts with Landis+Gyr for hosting of the Software, or installation and integration services therefor. Landis+Gyr will not be obligated or provide Maintenance if Customer has not installed a Major Release (a Release within two versions of the then-current Major Release). For example, if Landis+Gyr releases version 6.2 of the Software (where the number to the right of the decimal indicates a Major Release), Landis+Gyr will provide Maintenance with respect to versions 6.2, 6.1 and 6.0. Landis+Gyr will not be obligated to provide Maintenance for any prior versions. For avoidance of doubt, Software upgrades do not include new modules supporting additional functions.

4.1 Customer Service Alerts. Landis+Gyr will issue Customer Service alerts when necessary. Landis+Gyr will make the most current user manuals available through a customer web portal that will be provided to Customer at no additional charge.

5. **Customer Responsibilities.** Maintenance under this Agreement does not include and will not be provided by Landis+Gyr to Customer to the extent Customer does not comply in all material respects (to the extent applicable to the particular Software) with the following responsibilities of Customer:

- (a) Ensure that the physical system environment, e.g., hardware requirements and configurations, temperature, humidity, physical security, is within Landis+Gyr’s recommended parameters as specified in the Landis+Gyr recommended environments Documentation which is provided to Customer prior to implementation.
- (b) Check system operational logs for errors and verify that non-AMI network events are excluded.
- (c) Check file system for any corruption.

- (d) Monitor disk space.
- (e) Back up the Landis+Gyr application software and configure files on a regular basis (weekly and monthly).
- (f) As applicable, maintain system users' password control and network security at all levels.
- (g) Investigate faults relating to the interconnection between the Software and the hardware of the host system.
- (h) Generate and monitor system statistics as recommended in writing by Landis+Gyr during the project kick off meeting.
- (i) Make available to Landis+Gyr a remote communication connection to the Software for Landis+Gyr to provide remote system support.
- (j) Reasonably cooperate with and assist in Landis+Gyr's verification of Software Defects.
- (k) Provide to Landis+Gyr all reasonable access to the location of the Software and the host system hardware, including access to all relevant utilities, data communications sources, and data. Access can be in the form of secure VPN, web conferencing, remote access, or other secure access methodology as agreed by the parties in writing.
- (l) When reporting a suspected Software Defect, Customer is obligated to: (A) ensure that the use of the Software is in accordance with its Documentation; (B) use commercially reasonable efforts to eliminate any third party hardware, any operating system software, and any third party application software deficiencies; (C) capture all relevant data, reasonably document the relevant operating conditions and other operating information, and supply Landis+Gyr with reasonably requested diagnostic information in English; and (D) implement mutually agreed upon remedial, corrective or work-around procedure(s) and reasonably describe any limitations imposed by such corrections or workarounds that are known to Customer.
- (m) Once Customer completes its testing and validation procedures, Customer will promptly install all Software provided by Landis+Gyr from time to time pursuant to this Agreement within a reasonable time after receipt thereof provided that such Software is at no additional cost to Customer. Customer will use reasonable efforts to notify Landis+Gyr of any such installation of Software within a reasonable period of time after installation.
- (n) Customer shall endeavor to notify Landis+Gyr of verified resolution or otherwise take action within 10 Business Days of a shipment from Landis+Gyr with respect to a suspected Software Defect.

6. Exclusions from Coverage.

- 6.1 Matters Which Cause an Exclusion of Coverage. Support services does not include and will not be provided with respect to any incident which is in part or whole caused by or the result of any of the following (each a "**Service Exception**"):
- (a) Any modification of the Software performed by any party other than (i) Landis+Gyr or (ii) a third party approved in writing by Landis+Gyr in advance which performs such modifications in accordance with the Documentation.

- (b) Any use of the Software not in compliance with their Documentation.
- (c) Any hardware, peripheral products, or software not provided by Landis+Gyr or the interoperability of those products with the Software other than those contemplated under the Agreement or the Documentation.
- (d) Any defects, errors, deficiencies, or non-compliance in any hardware or any other software used in connection with the Software, but not supplied by Landis+Gyr.
- (e) Any other event not caused by Landis+Gyr.

6.2 Matters Excluded from Coverage. Maintenance is only provided as specified in this Agreement. Any additional services are not included in Maintenance and will require other agreements between the parties. The following services are not included in Maintenance:

- (a) Design and configuration of the Software.
- (b) System administration work that should be completed by Customer's system administrator, as addressed in the applicable SOW or project kick off meeting.
- (c) On-Site support.
- (d) Delivery, license, or implementation of Software Releases other than those Releases specified herein.
- (e) Server hardware repairs and replacements.
- (f) Advanced Signaling Certification and Maintenance. Certification (ANSI/ITU compliance) and maintenance for SS7, ISDN, and future advanced signaling protocols.

6.3 Reproducible Matters. Customer will promptly notify Landis+Gyr of a Software Defect. The parties acknowledge that maintenance under Agreement (and any warranty services in this Agreement with respect to the Software) may be difficult to provide unless a Software Defect or alleged Software Defect is reproducible or verifiable by Landis+Gyr.

7. **Additional Services.** If Customer submits an incident and the cause of the problem is not a Software Defect or not otherwise caused by Landis+Gyr, but results from some other cause (including without limitation, from Customer's IP network or back-haul facilities), then such services of Landis+Gyr will constitute Additional Services and Landis+Gyr may charge, and Customer will pay to Landis+Gyr, fees and reimbursements of expenses for Landis+Gyr's services in connection with such incident at Landis+Gyr's time and materials services price list rates as agreed upon in a mutually acceptable SOW.

8. **Customer Escalation Contact Information and Flows.** If Customer believes that it is not receiving the proper responses under this Agreement, without waiving its other rights and remedies, Customer may escalate the matter. At each level of escalation, Landis+Gyr and Customer will work in good faith to resolve the issue. If after a reasonable time, considering the severity of the issue, without waiving its other rights and remedies Customer is not reasonably satisfied with the Landis+Gyr response, Customer may escalate the issue to the next level. The escalation levels and current contact information are as follows:

- Level 1 (for: PLC, MDMS, and AGA) As applicable
 Manager, Customer Experience
 Karen Brau – 218-562-3886
karen.brau@landisgyr.com
- (for: RF, DA and ALM) As applicable
 Manager, Customer Experience
 Michelle Clark – 678-427-1084
Michelle.clark@landisgyr.com
- Level 2 Director of Customer Experience
 Rebecca Lorentz – 218-562-3876 (W) or 218-838-5277 (M)
Rebecca.lorentz@landisgyr.com
- Level 3 Escalation Manager – Kamlesh Patel
 678-258-3158 (W) or 770-367-8344 (M)
Kamlesh.Patel@landisgyr.com
- Senior Software Manager – Pawan Gupta
 678-258-1544 (W) or 678-477-8302 (M)
Pawan.Gupta@landisgyr.com

9. **Limitation of Liability**

- 9.1 **No Consequential or Indirect Damages.** IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS REPRESENTATIVES BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES (EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), INCLUDING WITHOUT LIMITATION, LOSS OF BUSINESS, REVENUE OR PROFIT, ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION UPON WHICH A CLAIM FOR DAMAGES MAY BE BASED, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY. THESE LIMITATIONS WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS IN ITS ESSENTIAL PURPOSE.
- 9.2 **Maximum Liability.** IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO LANDIS+GYR PURSUANT TO THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE NON-BREACHING PARTY'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.
- 9.3 **Exceptions.** THE LIMITATIONS AND EXCLUSIONS SET FORTH IN THIS SECTION 9 SHALL NOT APPLY TO DAMAGES OR LIABILITIES ARISING FROM: PERSONAL INJURY OR DEATH OR DAMAGE TO ANY REAL OR TANGIBLE PERSONAL PROPERTY CAUSED EITHER PARTY'S NEGLIGENT ACTS OR OMISSIONS, OR WILLFUL MISCONDUCT.

10. General

10.1 Complete Agreement, Modification and Assignment. The parties agree that this Agreement and any ancillary agreements, exhibits or schedules constitutes the complete and exclusive agreement between them with respect to its subject matter and supersedes all previous understandings, negotiations, proposals, acknowledgements, and representations, whether oral or written with respect thereto. No modification of this Agreement will be effective unless it is in writing and signed by authorized representatives of Customer and Landis+Gyr. Customer may not assign this Agreement, or its rights or obligations under them without the express written consent of Landis+Gyr which shall not be unreasonably withheld. Any exhibit attached hereto is incorporated herein by this reference.

10.2 Notices. Notices, other than routine communications having no legal effect, shall be in writing and shall be sent by certified United States mail (return receipt requested), by guaranteed overnight delivery, by courier, or by confirmed facsimile addressed to the addresses set forth below:

For Customer: Clallam County PUD
 PO Box 1000
 Carlsborg, WA 98324
 Email: pudcontracts@clallampud.net

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

10.3 Force Majeure. Except for payment obligations, neither party is liable for failing to fulfill its obligations due to acts of God, civil or military authority, war, riots, strikes, fire, or other causes beyond its reasonable control. To the extent a party is substantially delayed by force majeure from performing its obligations hereunder, such party shall give notice and details of the force majeure to the other party as soon as practicable, then the parties may extend the time for performance by written agreement. In the event it shall become impossible for Landis+Gyr or Customer to perform its respective obligations because of force majeure, then in such event the party so unable to perform may terminate this Agreement upon written notice to the other. In no event shall an event of force majeure excuse or delay the payment of any amount owed by one party to the other party under this Agreement.

10.4 No Third Party Beneficiaries. There are no third-party beneficiaries to this Agreement, and no party other than Landis+Gyr and Customer shall have any legally enforceable rights under this Agreement.

10.5 Headings. All headings used in this Agreement are for reference purposes only and are not part of this Agreement.

10.6 Waiver; Severability. No delay or omission by Customer or Landis+Gyr in enforcing its rights or remedies under this Agreement shall impair such right or remedy or be deemed to be a waiver thereof. Any waiver, in whole or in part of any provision of this Agreement will not affect be considered to be a waiver of any other provision. No waiver of this Agreement shall be valid unless in writing and signed by the parties thereto. If any term of this

Agreement is found to be unenforceable or invalid for any reason, such term shall not affect the other provisions, but such unenforceable term shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permitted the intent of Customer and Landis+Gyr set forth in this Agreement, and all other terms will remain in full force and effect.

- 10.7 Independent Contractor. Nothing in this Agreement shall be read as appointing either party as the agent or legal representative of the other party for any purpose whatsoever, nor shall either party hold itself out as such. This Agreement does not create or is intended to create any express or implied relationship of joint ventures, partners, employer and employee, associates, or principal and agent between the parties, and both parties are acting as independent contractors and principals for their own accounts. Neither party is granted any right or responsibility for or on behalf of the other or otherwise to bind the other. In providing the Maintenance, Landis+Gyr shall have sole responsibility for all persons employed by it in connection with the performance of such Maintenance and, except as provided in this Agreement, Landis+Gyr shall solely determine the methods, details, and means of performing the Services.
- 10.8 No Personally Identifiable Information. Landis+Gyr software support specialists may request that Customer send Landis+Gyr the problem information, systems data or test cases, etc., or that Landis+Gyr support specialists be able to view it with Customer electronically. To accomplish this, Customer may be offered several options by the Landis+Gyr support specialist. Customer agrees that it will not send or provide Landis+Gyr access to any personally-identifiable information (“**PII**”), whether in data or any other form. Customer agrees to be fully responsible for reasonable costs and other amounts that Landis+Gyr may incur relating to any such information mistakenly provided to Landis+Gyr or the loss or disclosure of such information by Landis+Gyr, including those arising out of any third-party claims. Should Customer mistakenly provide PII to Landis+Gyr, Customer shall immediately notify Landis+Gyr in writing, and reasonably cooperate with Landis+Gyr to take any mitigating actions deemed necessary to remove such PII from the Landis+Gyr systems.
- 10.9 Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State of Georgia and shall for all purposes be construed and enforced in accordance with Georgia law without regard to its conflicts of laws principles.
- 10.10 EEOC and Affirmative Action.

Landis+Gyr is in compliance with all of the laws and Executive Orders prohibiting discrimination, including but not limited to Title VII of the Civil Rights Act of 1964 as amended, the Civil Rights Act of 1991, 42 USC 2000(e), et seq., and all applicable state and local laws against discrimination.

Landis+Gyr and subcontractor, if any, shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

10.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the Effective Date.

Acknowledged and agreed by the authorized representatives of the parties.

Clallam County PUD

Landis+Gyr Technology, Inc.

John Purvis

John Purvis (Dec 6, 2018)
Signature

Gina Garner

Gina Garner (Dec 9, 2018)
Signature

John Purvis
Printed Name

Gina Garner
Printed Name

Assistant General Mar
Title

VP, General Manager
Title

Dec 6, 2018
Date

Dec 9, 2018
Date

Exhibit A

Fees; Payment Terms

Invoice and Payment. Landis+Gyr will issue invoices to Customer for all amounts owed to Landis+Gyr hereunder. Invoices for Services shall be issued yearly in advance. Payment is due within thirty (30) days of the invoice date. Late payments will be subject to interest from the due date at the lesser of one percent (1%) per month or the maximum rate allowed by law.

| ANNUAL SOFTWARE MAINTENANCE FEES | |
|--|-------------|
| Description | Annual Fee |
| Software Support and Maintenance Fee (based on 31,920 endpoints, 20% of total Command Center license fees) | \$14,230.40 |
| Tech Studio Annual Maintenance (per license) | \$220.00 |

