

AGREEMENT
for
METER DEPLOYMENT SERVICES
between
Indian River County
and
National Metering Services, Inc.

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This Agreement for Meter Deployment Services (this “Agreement”), dated as of _____, 2019 (the “Effective Date”), is made and entered into by and between National Metering Services, Inc. (“National”), and Indian River County (“IRC”), each of National Metering Service, Inc. and Indian River County sometimes referred to individually as a “Party” and together as the “Parties”.

ARTICLE 1. BACKGROUND AND BUSINESS OBJECTIVES

1.01 Background.

- (1) Through the competitive Request for Proposal (RFP) process, IRC has selected National to provide the planning, design, deployment, implementation, and acceptance testing of the AMR System within Indian River County’s service territory and MDM Portal (collectively, the “AMR Solution”) services.

1.02 Business Objectives. IRC and National acknowledge that the specific business objectives of this Agreement are:

- (1) for National to provide services in connection with the deployment and installation of AMR meters in accordance with an IRC-approved deployment plan and schedule;
- (2) for National to manage the supply chain for AMR meter deployment from coordination of meter vendor shipments through installation;
- (3) for National to manage logistics and all equipment associated with AMR meter deployment;
- (4) for National to manage its personnel in accordance with applicable safety rules;
- (5) for National to provide all information and performance reporting requirements; and
- (6) for National to coordinate all customer contact processes and activities.

ARTICLE 2. DEFINITIONS AND INTERPRETATION

2.01 Definitions. Unless otherwise defined in this Agreement, capitalized terms used in this Agreement shall have the meanings set forth in Exhibit 5.

2.02 Other Terms. Unless otherwise defined in this Agreement, those terms, acronyms and phrases utilized in the metrology, communications and/or utilities industries or other pertinent business context shall be interpreted in accordance with their generally understood meaning in such industry or business context.

2.03 Construction. The provisions of Article 1 are intended to be a general introduction to

this Agreement and are not intended to expand the scope of the obligations of IRC or National under this Agreement or to alter the plain meaning of the terms and conditions of the Agreement. However, to the extent the terms and conditions of this Agreement do not address a particular circumstance or are otherwise unclear or ambiguous, such terms and conditions are to be interpreted and construed so as to give full effect to the provisions in Article 1.

2.04 References. Unless otherwise specified, in this Agreement and the Exhibits and Appendices to this Agreement:

- (1) shall be incorporated into and deemed part of this Agreement and all references to this Agreement shall include the Exhibits hereto attached to this Agreement;
- (2) a reference to a person shall include its permitted successors and permitted assigns;
- (3) accounting terms shall have the meanings assigned to them by generally accepted accounting principles, consistently applied;
- (4) references to and use of the words “include,” “includes” and “including” or the phrase “e.g.” shall not be limiting;
- (5) the words “hereof,” “herein” and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision, unless otherwise indicated;
- (6) references to any Law shall mean references to such Law in changed or supplemented form, or to a newly adopted Law replacing a previous Law;
- (7) references to and use of the word “days” shall mean calendar days, unless otherwise specified;
- (8) references to and use of the word “hours” shall mean hours as determined on a 24x7 basis and not business hours, unless otherwise specified;
- (9) references to an Exhibit or Appendix shall mean such Exhibit or Appendix as amended, modified, supplemented or replaced from time to time, with any changes thereto subject to the Change Control Procedures or written amendment; and
- (10) references to National include National Agents, Equipment providers, Software providers and service providers, where such entities are performing services or providing Equipment necessary for the performance of the deployment services.

2.05 Headings and Cross-References. The Article and Section headings and the table of contents used in the Agreement are for reference and convenience only and shall not enter into the interpretation of the Agreement. Any reference in the Agreement to a particular Article or Section number or Exhibit or Appendix shall mean that the reference is to the specified Article, Section, Exhibit or Appendix to the Agreement, except to the extent that the cross-reference expressly refers to another document.

ARTICLE 3. TERM

3.01 Term. The term of this Agreement shall commence on the Effective Date and shall continue until 3 months after completion of the deployment test of final installed meters (the “Agreement Expiration Date”), or such earlier date upon which this Agreement may be terminated pursuant to Article 26.

ARTICLE 4. SERVICES

4.01 General. Commencing as of the Effective Date and continuing throughout the Term, National shall provide the services, functions and Documents, and perform the responsibilities described in this Agreement, as they may be supplemented, enhanced, modified or replaced, including the services, functions, Documents and responsibilities described in Exhibit 1 (collectively, the “Services”).

4.02 Implied Services. If any services, functions, deliverables or responsibilities not specifically described in this Agreement are required for the proper performance of the Services, such services, functions, responsibilities or deliverables shall be deemed to be implied by and included within the scope of the Services to the same extent and in the same manner as if expressly described in this Agreement.

4.03 National Responsibility. National shall be responsible for (1) providing the Services in accordance with this Agreement even if, by agreement of the Parties, such Services are actually performed by persons other than National Personnel acting under the management and direction of National, and (2) providing the facilities, personnel, Equipment, Software, materials, technical knowledge, training, expertise and other recourses necessary for the proper performance of the Services. National shall not be responsible for providing the AMR meter, except as specifically set forth in this Agreement.

4.04 Non-Exclusivity; Right to In-source and Re-source the Services. This Agreement does not give National any exclusive rights with respect to the provision of any services, including the Services. At any time during the Term, IRC shall have the right to perform itself (“In- source”), or retain third parties to perform (“Re-source”), any of the Services. To the extent IRC In-sources or Re-sources any of the Services, National shall cooperate with IRC and any applicable Third-Party Providers.

4.05 Out-of-Scope Services. IRC may from time to time during the Term request that National perform an Out-of-Scope Service. Any Out-of-Scope Service, including IRC’s request for and approval of a National’s proposal and deliverables for such Out-of-Scope Service, shall be processed in accordance with the Change Control Procedures.

ARTICLE 5. METER DEPLOYMENT PLAN

5.01 General.

- (1) National shall provide the Services and Documents for the deployment and installation of AMR Meters (the “Deployment”) in accordance with the deployment and installation plan (the “Deployment Plan”) as described in Section 5.02.
- (2) IRC shall perform the IRC Responsibilities in accordance with the Deployment Plan.

5.02 Contents of Deployment Plan. The Deployment Plan shall, as a minimum, include the following information:

- (1) a detailed description of the strategy, approach and activities that National will undertake to deploy, install and test the AMR Meters, including specifics as to (a) mapping and scheduling; (b) route saturation, route acceptance, route commissioning and AMR Meter commissioning; (c) accommodating IRC constraints (e.g., labor constraints, operations schedules and plans, scheduled meter readings (blackout periods) and planned outages); (d) identifying AMR Meter inventories required to support deployment/installation schedules and coordinating with IRC personnel on purchases; (e) warehousing of AMR Meters (including quarantine procedures), transporting IRC accepted AMR Meters to warehouse, and returning Rejected Meters to AMR Meter supplier(s) for replacement; allocation of warehouse by service territory administrative regions (including details regarding start-up, duration of operation, close-out and relocation of cross-docks); (f) transportation of AMR Meters and fleet management; (g) work order management (e.g., National’s methodology to manage individual customer installations from a scheduling, completion and close out perspective); (h) transfer or hand-off of responsibility for AMR Meters from the manufacturer/vendor to National; (i) meter asset tracking (e.g., inventory control procedures) of AMR Meters, including use of barcodes ; (j) quality assurance and quality control procedures to ensure that employees are adequately trained to follow procedures, and perform accurate and quality installations; (k) removal and disposal of Replaced Meters, including temporary storage and transfer of such Replaced Meters to disposal sites; (l) procedures for the handoff of non-accessible meters to IRC (m) performance of On-Site Repairs and removal and re-installation, or installation, of lock rings; (n) National’s proposed management and administration of the Deployment, including National’s organization structure, National’s procedures for interfacing/interaction with IRC’s AMR field deployment organization, National’s procedures for ensuring coordination, maintaining up-to-date operating plans,

- solving real-time problems and otherwise tracking and managing National's performance, National's problem definition and escalation processes;
- (2) a detailed description of the responsibilities to be performed by National in order for National to properly complete the Deployment, including (a) National's process for identifying, procuring and maintaining all necessary Consents (i.e., legal and regulatory permits and approvals) for the Deployment; and (b) National's proposed approach to cooperating with Third-Party Providers (e.g., meter suppliers, communications suppliers), including exchanging information;
 - (3) a detailed description of (a) the technology, Equipment, Tools, office space, warehouses and other physical facilities, vehicles, methodologies, procedures, personnel and organization that National will use to perform the Services; and (b) National's procedures with respect to the loss of or damage to Equipment or Tools;
 - (4) a detailed description of the approach and activities that National will undertake in respect of human resources and labor requirements necessary to perform the Services, including (a) training personnel to install AMR Meters in accordance with then current manufacturer's requirements; (b) training, auditing and enforcing compliance of National personnel with respect to National and IRC safety practices, policies and procedures relating to the Services; (c) hiring and managing personnel, including administering pre-employment background checks and random drug testing; (d) licensing and certification of National Personnel as required to perform the Services;
 - (5) a detailed description of the approach and activities that National will undertake in respect of data management and security, including (a) data security (e.g., secure transmission and storage, data encryption); (b) data transfer (e.g., transfer of data from field to FTP Server); (c) data storage (e.g., secure storage, provision of FTP Server, provision of handheld devices); (d) data access by IRC (e.g., provision of secure, web-based, real-time information on progress and performance of Services such as customer information and location, and AMR Meter GPS coordinates); and (e) data management and reporting (e.g., field data management processes used to track, record, and capture field installation and billing data, including information upload and download methods/schedules, and proposed National reporting contents and schedules);
 - (6) a detailed description of the approach and activities that National will undertake in respect of National contact with IRC customers, including (a) ensuring minimal service disruption; (b) scheduling customer appointments in connection with overall schedule for deployment and installation of AMR Meters, and communicating same to IRC (c) ensuring a quality customer experience in relation to the Services; (d) managing customer claims filed with IRC and (e) providing a call center and related services;
 - (7) a detailed description of the IRC Responsibilities that IRC is required to complete in connection with the Deployment;

- (8) a detailed description of the potential risks associated with the Deployment and the risk management, mitigation and control strategies that will be used by National to eliminate or minimize such risks;
- (9) a detailed description of the process National will use to resolve or settle third-party claims;
- (10) any other information or planning necessary to ensure that the Deployment takes place on schedule and without disruption to IRC's business.

5.03 Preparation and Completion of Deployment Schedule.

- (1) National shall be responsible for preparing and maintaining the Deployment Schedule. The current draft of the Deployment Schedule as of the Effective Date is attached as Exhibit 1, Section 8. Within 30 days of the Effective Date, National shall revise and finalize the Deployment Schedule, and provide it to IRC for IRC's review and comment. All revisions proposed by National after the Effective Date shall be for the purpose of adding additional detail and shall be consistent with the terms and conditions in this Contract. IRC shall provide its comments in writing within 15 days after receiving the Deployment Schedule. Thereafter, National shall cooperate and work closely with IRC in finalizing the Deployment Plan, including incorporating IRC's reasonable comments, and working with IRC to resolve any matter with respect to which the Parties are not in agreement. If IRC does not approve the final Deployment Schedule, it shall state in writing its reasons for such disapproval, and the Parties shall work together to resolve the disputed matters in accordance with Article 25. To the extent that any disapproval is based upon what IRC in good faith believes to be inconsistencies between the National-proposed changes and the terms and conditions in this Contract, such disapproval shall conclusively be deemed reasonable and IRC shall not be acting in bad faith if it declines to agree to such changes or to compromise its position.
- (2) Any subsequent changes to the Deployment Schedule shall be made in accordance with the Change Control Procedures set forth in Section 17.03.
- (3) At least once each quarter beginning in the first full calendar quarter after the final Deployment Plan is approved, National shall submit a revised Deployment Schedule reflecting all changes made in accordance with the Change Control Procedures and any other agreed-upon change.

5.04 National's Performance. National shall perform the Deployment in accordance with the Deployment Plan and in such a manner so as to not disrupt IRC's business operations (except to the extent that National has provided IRC with reasonable advance written notice of such disruption and IRC has agreed in writing that such disruption is acceptable). National shall provide all cooperation and assistance reasonably required and requested by IRC in connection with IRC's evaluation of the Services.

ARTICLE 6. BOARD APPROVALS AND CONSENTS

6.01 Board Approvals. IRC shall use commercially reasonable efforts to obtain and maintain the Board Approvals. Upon IRC's request, National will cooperate with and assist IRC in obtaining and maintaining any such Board Approvals.

6.02 Consents. National shall use commercially reasonable efforts to obtain and maintain all Consents, with IRC's cooperation.

ARTICLE 7. COMPLIANCE WITH LAW AND REGULATIONS

7.01 Compliance with Law. National shall comply with all applicable federal, state, local or other Laws applicable to National and/or its performance of the Services, and shall obtain all applicable permits and licenses required of National in connection with its obligations under this Agreement. Without limiting the generality of the foregoing, National shall (1) comply with the applicable employment practice requirements of Executive Order 11246 of September 24, 1965, and applicable regulations promulgated thereunder, and (2) be solely responsible for being aware of and initiating, maintaining and supervising compliance with all safety Laws, precautions, and programs in connection with the performance of the Services. Prior to performing any Services, National shall ensure that National Personnel and National Agents are fully informed of all safety, health, and security Laws pertaining to the Services they are to perform.

7.02 Changes in Law and Regulations.

- (1) National shall promptly identify and notify IRC of any changes in Law that may relate to IRC's use of the Services or National's delivery of the Services. National and IRC shall work together to identify the impact of such changes on how IRC uses, and National delivers, the Services. National shall be responsible for any fines and penalties arising from any noncompliance with any Law, except that IRC shall be responsible for any fines and penalties arising from any noncompliance by IRC with any Law relating to IRC's use of the Services, to the extent such noncompliance was not caused by National.
- (2) National shall perform the Services regardless of changes in Law, unless such changes in Law would make it unlawful to continue to perform the Services or a portion thereof. If such changes in Law impact how National or IRC performs its obligations under this Agreement, National shall develop and, upon IRC's approval, implement a suitable workaround until such time as National or IRC, as applicable, can perform its obligations under this Agreement without such workaround; provided, however, that if such workaround results in an increase in the Charges or IRC's costs, then (a) IRC may, upon notice to National, terminate this Agreement, in whole or in part, as of the termination date specified in the notice, without cost or penalty and without the payment of any

termination charges, or (b) IRC may request that such workaround be implemented, and the Parties shall negotiate and implement an equitable adjustment to the applicable Charges.

- (3) Any Changes in the Services required for the Services to comply with a change in any Law shall be the subject of a Change Order.

ARTICLE 8. COMPLIANCE WITH INDIAN RIVER COUNTY POLICIES AND PROCEDURES

8.01 Installation, Testing and Product Standards. National shall comply with the installation, testing and quality standards as described in Exhibit 1.

8.02 Safety and Security Procedures. National shall comply with the safety and security procedures of IRC and its customers.

8.03 Computing System Access and Security Review Obligations.

- (1) If IRC determines in its sole discretion that, in order for National to perform the Services, National may require access to IRC's communications and computing systems, which include computers, servers, applications, files, electronic mail, electronic equipment, wireless devices, data resources, and IRC-sponsored connections to the Internet communications network (collectively, "Computing Systems"), then IRC shall grant National access to such Computing Systems, provided that such access shall be subject to the conditions herein provided. IRC authorizes National to access the Computing Systems only for the purpose of National performing the Services in accordance with the terms of the Agreement. In the event National was previously granted access, or is granted access, to IRC's Computing Systems, National represents, warrants and covenants that (a) if applicable, it has accessed such Computing Systems only as required to perform the Services and in compliance with the requirements set forth in this Section, and (b) it shall only access such Computing Systems as required to perform the Services in accordance with the terms of the Agreement.
- (2) National shall promptly identify in writing to IRC those National Personnel who will, in order to perform the Services, require access to such Computing Systems, and IRC shall, issue appropriate computer and/or e-mail accounts, passwords and access authorizations to National and such National Personnel. When any National Personnel with Computing Systems access is reassigned to non-IRC work or is no longer employed by National or National Agents (as applicable), National shall immediately notify the IRC Project Manager by email that such personnel will no longer be performing any of the Services and IRC may immediately delete Computing System access for such employee or agent.

National shall confirm such verbal notification in writing to the IRC Project Manager, or designee, within 24 hours of the verbal notification. Upon delivery of written notice to the IRC Project Manager, National shall immediately deliver all IRC-owned Computing Systems equipment that may have been issued or loaned to such re- assigned or terminated National Personnel.

- (3) National shall comply, and shall cause National Personnel who access the Computing Systems to comply, with all IRC policies and procedures in regard to such access. National shall ensure that the Computing Systems, any user accounts, passwords or any other access authorizations, and all IRC information and data contained in the Computing Systems, remain secure during National access and that the Computing Systems and all information and data retrieved during such access remain confidential, secure and protected from disclosure to unauthorized parties.
- (4) National shall be responsible for any breach of this Section by National Personnel, or by any other person who obtained access to the Computing Systems from National in violation of this Section, and National shall notify IRC immediately in the event National has reason to know or suspect that a breach of this Section may have occurred. In the event IRC determines that any National Personnel may have breached this Section, IRC may immediately revoke or terminate National's or National Agents' access to IRC Computing Systems; provided, however, that such revocation or termination shall not relieve National of its obligations to perform the Services in accordance with the terms of the Agreement. Notwithstanding the foregoing right to revoke or terminate National's access to IRC's Computing Systems, IRC may exercise any other legal or equitable right to terminate the Agreement and may exercise any other remedy that may be available to it at Law or in equity or under the Agreement.
- (5) National shall execute, and shall cause the National Personnel and National Agents' personnel to execute, any documents IRC may deem reasonably necessary to ensure compliance with this Section.
- (6) National represents, warrants and covenants to IRC that it and National Agents have each taken, and will continue to take, all commercially reasonable steps necessary, including the implementation of security industry best practices, to maintain the confidentiality, integrity and availability of its own computing systems. IRC or its authorized representative shall have the right at any time to examine National's and National Agents' records and reports relating to their respective security policies, practices and procedures, including any internal, external or regulatory audit reports or reviews relating to the security of National's or National Agents' computing systems, and their compliance therewith, and National represents and warrants that it has the authority to grant IRC or its authorized representatives such access to National Agents' records and reports.

8.04 Workforce Requirements and Fitness for Duty. National Personnel shall comply

with the requirements set forth in this Section. Failure to comply with these requirements may result in the withholding of payment of invoices until such requirements are satisfied and/or IRC's cancellation of the Contract without any penalty or notice. In addition, National shall be liable for any additional expenses related to special processing, investigations and badging, which result from non-compliance with these requirements.

- (1) During the provision of the Services, National shall immediately notify IRC whenever National becomes aware of evidence that any National Personnel, who has, or will have, any involvement in the provision of the Services, has been convicted of a felony or any crime of fraudulent nature.
- (2) IRC supports a diverse work force and prohibits unlawful employment discrimination and harassment of every kind, including sexual harassment, in accordance with state and federal Laws. Whenever present on IRC property or facilities, National shall require National Personnel, and National Agents to comply with all applicable federal and state statutes, acts, regulations, codes and standards prohibiting conduct that might reasonably be construed as violating state or federal equal opportunity Laws, including conduct such as making sexually suggestive jokes or remarks, touching, assaulting, making gestures of a sexual or suggestive nature, and impeding or blocking any IRC employee's or IRC Agents' movement.
- (3) National shall require that the National Personnel and the personnel of National Agents: (a) shall report for work in a manner fit to do their job; (b) shall not be under the influence of or in possession of any alcoholic beverages or of any controlled substance (except a controlled substance as prescribed by a physician for such person so long as the performance or safety of the Services is not affected thereby); and (c) shall not have been convicted of a felony, any crime of a fraudulent nature, or any criminal offense that may have a discernible adverse impact on IRC. Searches by IRC authorized representatives may be made of lockers, storage areas, vehicles, persons or personal effects on IRC-owned or leased property at various times without prior announcement. Such facility inspections may be conducted using detection dog teams to search work areas and other common areas in order to detect evidence of unlawful drug use or any prohibited items, including pyrotechnics, explosives, firearms, weapons, or facsimiles thereof, alcohol and illegal drugs ("Prohibited Items"). Prohibited Items must not be brought onto or kept on IRC property. National shall advise National Personnel of the requirements set forth in this Section before National Personnel enter a Service Location or access a jobsite, and National shall immediately remove from such Service Location or jobsite any person determined to be in violation of this Section. National shall impose the requirements set forth in this Section on National Agents. IRC may cancel any portion of the Services if National violates this Section.

ARTICLE 9. SERVICE LEVELS AND QUALITY ASSURANCE

9.01 Service Levels. National shall perform the Services in accordance with the Service Levels set forth in Exhibit 1 and Exhibit 2. With respect to those components of the Services for which a Service Level is not defined, the performance of such Services by National shall be at a level at least equal to the service levels satisfied by well-managed operations performing services similar to the Services.

9.02 Failure to Perform.

- (1) In the event of a Service Level Default, National shall immediately (a) investigate, assemble and preserve pertinent information with respect to, and report on the causes of, the problem, including performing a root cause analysis of the problem; (b) advise IRC, as and to the extent requested by IRC, of the status of remedial efforts being undertaken with respect to such problem; (c) minimize the impact of and correct the problem and begin meeting the Service Level; and (d) take appropriate preventive measures so that the problem does not recur.
- (2) National recognizes that a Service Level Default may have a material adverse impact on the business and operations of IRC. Accordingly, in the event that the Services fail to meet an applicable Service Level for reasons other than those that are excused pursuant to Section 9.03, then in addition to any other remedies available to IRC under this Agreement, at Law or in equity, IRC may elect to recover for such Service Level Default the respective Corrective Action as set forth in Exhibit 2.

9.03 Excused Performance. To the extent that any Service Level Default is directly attributable to: (1) a Force Majeure Event; (2) a breach of this Agreement by IRC that prevents National from meeting the applicable Service Level; or (3) acts or omissions of IRC or a Third-Party Provider not under National's direction or control, then such Service Level shall be excused, and no Corrective Action shall accrue with respect to such Service Level Default, provided that (a) National was unable to alert IRC of the consequences of such acts or omissions or IRC disregarded any such alert by National as to the consequences of such acts or omissions, and (b) National was unable to take reasonable steps to avert such consequences.

9.04 Measurement and Monitoring Tools. As of the Effective Date, National shall implement the measurement and monitoring tools and procedures required to measure and report (as contemplated by Section 9.05) National's performance of the Services against the applicable Service Levels. Such measurement and monitoring tools and procedures shall (1) permit reporting at a level of detail sufficient to verify compliance with the Service Levels and (2) be subject to audit by IRC or its designee. Upon request, National shall provide IRC and its designees with information concerning access to such measurement and monitoring tools and procedures for inspection and verification purposes.

9.05 Service Level Reporting. No later than the fifth day of each month during the Term and Termination Assistance Period, National shall provide IRC with a monthly performance report describing, as measured pursuant to Section 9.04, National's performance of the Services in the preceding month, which report shall be made available to IRC in an online, electronic form (the "Monthly Service Level Report"). The Monthly Service Level Report shall: (1) assess the degree to which National has attained or failed to attain the Service Levels; (2) explain any Service Level Defaults and include a plan for corrective action where appropriate; (3) identify any problems or issues that are being caused by the acts or omissions of any third-party providers known to National and the steps being taken to resolve any such problems or issues; and (4) include such documentation and other information as IRC may reasonably request to verify compliance with the Service Levels.

9.06 Quality Assurance. National, as part of its total quality management process and without limiting any other National obligations set forth in this Agreement, shall provide continuous quality assurance and quality improvement through (1) the identification and application of proven techniques, tools, processes and methodologies being used elsewhere within its operations (i.e., "best practices"), and (2) the implementation of programs, practices and measures designed to improve the Service Levels. Such procedures shall include checkpoint reviews, testing, acceptance, and other procedures for IRC to confirm the quality of National's performance. National shall utilize project management tools and methodologies, including productivity aids and project management systems, as appropriate in performing the Services.

ARTICLE 10. CUSTOMER SATISFACTION

10.01 Customer Satisfaction. IRC may, from time to time during the Term, request National to participate in customer satisfaction surveys, in respect of any aspect of the Services. The timing, content, scope and method of the survey shall be determined by IRC. National shall use its best efforts to promptly correct deficiencies identified by such customer satisfaction surveys that are attributable to National, including National's performance of the Services.

ARTICLE 11. INDIAN RIVER COUNTY RESPONSIBILITIES

11.01 IRC Responsibilities.

- (1) IRC shall appoint an individual (the "IRC Project Manager") who from the Effective Date shall serve as the primary IRC representative under this Agreement. IRC shall notify National upon appointment of the IRC Project Manager. The IRC Project Manager shall (a) have overall responsibility for managing and coordinating the performance of IRC's obligations under this Agreement, and (b) be authorized to act for and on behalf of IRC with respect to

all matters relating to this Agreement. Notwithstanding the foregoing, the IRC Project Manager may, upon notice to National, delegate such of his or her responsibilities to other IRC employees or representatives, as the IRC Project Manager deems appropriate. Only the IRC Project Manager, or personnel expressly designated as the IRC Project Manager's delegates shall be authorized to make commitments on the part of IRC that commit IRC resources. IRC reserves the right to change the IRC Project Manager at any time during the Term and Termination Assistance Period.

- (2) In connection with the provision of the Services, IRC shall (a) cooperate with National, including by making available management decisions, information, approvals and acceptances as reasonably requested by National, and (b) perform the responsibilities (the "Indian River County Responsibilities").
- (3) IRC's failure to perform its responsibilities set forth in this Agreement shall not be deemed to be grounds for termination by National. National's nonperformance of its obligations under this Agreement shall be excused if and to the extent (a) such nonperformance by National results from IRC's failure to perform any responsibilities of IRC that are set forth in this Agreement; and (b) National provides IRC with reasonable notice of such nonperformance and uses commercially reasonable efforts to perform notwithstanding IRC's failure to perform.

ARTICLE 12. SERVICE LOCATIONS AND FACILITIES

12.01 Service Locations. The Services shall be from the Designated National Service Locations. National and National Agents may not provide or market services to a third-party from a Designated National Service Location without IRC's consent.

12.02 National Safety and Security Procedures. National shall maintain and enforce at the Designated National Service Locations safety and security procedures that are at least equal to the highest of (1) industry standards for locations similar to the Designated National Service Locations; (2) the procedure in effect at locations of other National customers; and (3) any higher standard otherwise agreed upon by the Parties.

12.03 National Data Connections. National shall be responsible for providing any data connection between any of the Designated National Service Locations and IRC-designated points of access to the IRC data network, and for secure firewalls to be located at Designated National Service Locations (the "National Data Connection") that are necessary to provide the Services from a Designated National Service Location. National shall use the National Data Connection to the IRC data network only for the purpose of delivering the Services. National shall be responsible for managing and maintaining the National Data Connection, and for managing and maintaining the firewalls at its end of the National Data Connection and all of its networks and Equipment on its side of the firewall.

12.04 Data Connection Security. National shall cause all National Data Connections to comply with IRC's data and network security policies as such policies are provided by IRC to National from time to time during the Term and Termination Assistance Period.

ARTICLE 13. NATIONAL PERSONNEL

13.01 National Project Coordinator. National shall appoint an individual (the "National Project Coordinator") who shall be the primary National representative under this Agreement. The National Project Coordinator or their designee shall be available to IRC at all times when Services are being performed and shall make reasonable efforts to be reachable by cell phone or other means at all other times. The National Project Coordinator shall (1) have overall responsibility for managing and coordinating the performance of National's obligations under this Agreement, (2) serve as the single point of accountability for National for the Services, and (3) be authorized to act for and on behalf of National with respect to all matters relating to this Agreement. The National Project Coordinator shall be a Key National Position.

13.02 Key National Positions.

- (1) In addition to the position of National Project Coordinator, IRC may designate a National position as "Key National Position". National shall cause each of the National Personnel filling the Key National Positions to devote substantially full time and effort to the provision of the Services for at least 12 months from the date that such National Personnel are assigned to fill each Key National Position, unless (a) a different period is specified in Exhibit 1, or (b) an individual voluntarily resigns, is dismissed by National for cause, or dies or is unable to work due to illness or disability.
- (2) The National Personnel designated as of the Effective Date to fill the Key National Positions are listed in Exhibit 1. IRC may from time to time change the positions designated as Key National Positions under this Agreement, provided that without National's consent, the number of Key National Positions shall not exceed the number then currently specified in Exhibit 1.
- (3) Before assigning an individual to a Key National Position, whether as an initial assignment or a subsequent assignment, National shall notify IRC of the proposed assignment, introduce the individual to appropriate IRC representatives, provide such representatives upon request with the opportunity to interview the individual, and provide IRC with a résumé and other information about the individual reasonably requested by IRC (except to the extent prohibited by Law). If IRC in good faith objects to the proposed assignment, the Parties shall attempt to resolve IRC's concerns to the reasonable satisfaction of IRC. If the Parties have not been able to resolve IRC's concerns within five business days, National shall (a) not assign the individual to that position, and (b) propose to IRC the assignment of another individual of suitable ability and qualifications. Individuals filling Key National Positions may not be transferred or

re-assigned until a suitable replacement has been approved by IRC, and no such transfer shall occur at a time or in a manner that would have an adverse impact on delivery of the Services.

13.03 Qualifications, Retention and Replacement of National Personnel.

- (1) National shall assign an adequate number of National Personnel to perform the Services. National Personnel shall be properly educated, trained and qualified with respect to the Services they are to perform. National acknowledges and agrees that it shall be the responsibility of National to provide adequate levels of training and education so that the National Personnel remain current as to recent developments in meter deployment and installation practices, methods, techniques, tools and processes and any other industry and technology developments that are necessary for such National Personnel to properly perform the Services. IRC shall not be required to pay to train or educate any National Personnel.
- (2) National shall provide IRC with a list of all National Personnel dedicated full-time to providing the Services (a) at the end of every calendar month until completion of Services in Exhibit 1, and (b) upon the occurrence of any change in such National Personnel.
- (3) All National Personnel shall (a) report for work in a manner fit to do their job, (b) not be under the influence of or in possession of any alcoholic beverages or of any controlled substance (except as prescribed by a physician so long as the performance or safety of the work is not affected thereby) and (c) not have been convicted of any serious criminal offense which may have a discernible adverse impact on IRC.
- (4) National will be solely responsible for compliance with immigration and visa Laws and requirements in respect of the National Personnel. National represents and warrants that all non-United States citizens who are assigned by National or National Agents to perform the Services within the United States (a) will hold appropriate and valid visas or other work authorizations, and (b) will not be provided by National with any technology or information in violation of any Laws applicable to National in the provision of the Services.
- (5) National agree that it is in their best interests to keep the attrition rate of National Personnel to a reasonably low level. National shall use commercially reasonable efforts to keep such attrition rate to a reasonably low level. Notwithstanding transfer, attrition or other turnover of National Personnel, National remains obligated to perform the Services without degradation and in accordance with the terms of this Agreement.
- (6) In the event that IRC determines in good faith that the continued assignment to IRC's account of any of the National Personnel is not in the best interests of IRC, then IRC shall give National written notice to that effect and National shall replace that person with another person of suitable ability and qualifications.

13.04 Subcontractors. Prior to subcontracting any of the Services, National shall notify IRC of the proposed subcontract and shall obtain IRC's written approval of such subcontract. Prior to amending, modifying or otherwise supplementing any subcontract relating to the Services, National shall notify IRC of the proposed amendment, modification or supplement and shall obtain IRC's written approval thereof.

- (1) No subcontracting arrangement shall release National from its responsibility for its obligations under this Agreement. National shall be responsible for the work and activities of each of its subcontractors, including compliance with the terms of this Agreement. National shall be responsible for all payments to its subcontractors.
- (2) National shall promptly pay for all services, materials, equipment and labor used by National in providing the Services and shall indemnify IRC from, and defend IRC against, any liabilities or expenses (including reasonable attorneys' fees and expenses) connected with National's failure to promptly pay for such services, materials, equipment or labor and shall keep the IRC premises free of all liens.

13.05 Conduct of National Personnel. While in performance of Services, National and National Agents shall (1) comply with the requests, standard rules and regulations of IRC and IRC customers regarding safety and health, personal and professional conduct (including the wearing of a particular uniform, identification badge or personal protective equipment and adhering to facility regulations and general safety practices or procedures), including those IRC policies and procedures, and (2) otherwise conduct themselves in a businesslike manner. National shall cause the National Personnel to maintain and enforce the confidentiality provisions of this Agreement. If IRC determines that a particular member of the National Personnel is not conducting himself or herself in accordance with this Section, IRC may notify National of such conduct. Upon receipt of such notice, and provided that immediate removal of the applicable person would not be required under Section 8.03(4), National shall promptly investigate the matter and take appropriate action which may include (a) removing the applicable person from the IRC account and providing IRC with prompt notice of such removal and replacing the applicable person with a similarly qualified individual or (b) taking other appropriate disciplinary action to prevent a recurrence. In the event of a violation of Section 8.03 by a particular member of the National Personnel, National shall promptly remove the individual as set forth in (a) in the preceding sentence. In the event of repeat violations of this Section by a particular member of the National Personnel, National shall promptly remove the individual from the IRC account as set forth in (a) above; provided, however, that any disagreement between IRC and National in respect of any such repeat violations shall be resolved in accordance with Article 25.

ARTICLE 14. INTENTIONALLY LEFT BLANK

ARTICLE 15. CONTROL AND MANAGEMENT

15.01 Reports and Meetings.

- (1) National shall provide to IRC those reports described in Exhibit 1 at the frequencies set forth therein.
- (2) National shall participate in the meetings described in Exhibit 1 and any other meetings reasonably requested by IRC in connection with this Agreement. National shall prepare and circulate an agenda sufficiently in advance of each meeting to give participants an opportunity to prepare for the meeting. National shall incorporate into such agenda items that IRC desires to discuss. National shall prepare and circulate minutes promptly after each meeting.

ARTICLE 16. INTELLECTUAL PROPERTY RIGHTS

16.01 National Software.

- (1) National shall be responsible in all respects for the National Software, Tools and methodologies it uses in connection with providing the Services. Upon IRC's request, National shall provide IRC with a list of all National Software, Tools and methodologies being used in connection with the Services as of the date of such request. As of the Effective Date, the National Software, Tools and methodologies that will be used by National to provide the Services are listed in Exhibit 1.
- (2) To the extent IRC (or any Third-Party Provider) requires the use of any National Software, Tools or Methodologies in order to work with National in the Deployment or receive the benefit of the Services, National hereby grants to IRC a non-exclusive, worldwide, fully paid up, royalty free license to Use (and to allow third parties to Use solely for the benefit of IRC to support and operate IRC's business) the National Software, Tools and Methodologies for use in connection with the Services during the Contract Term.

16.02 IRC Software. As between IRC and National, all right, title and interest in and to the IRC Software shall remain the exclusive property of IRC. IRC hereby grants to National, solely as required to provide the Services, a non-exclusive, non-transferable, limited right to have access to and (1) use the IRC Proprietary Software, (2) use, to the extent permissible under the applicable third-party agreements, the IRC Third-Party Software and (3) use, to the extent permissible under the applicable third-party agreements, any Related Documentation in IRC's possession on or after the Effective Date. National may sublicense, to the extent permissible under the applicable third-party agreements, to National Agents the right to have access to and use the IRC Software solely to provide those Services that such National Agents are responsible for providing and as may otherwise be agreed to by the Parties.

16.03 Export. The Parties acknowledge that certain Documents, Software, Equipment and technical data to be provided hereunder and certain transactions hereunder may be subject to export controls under the Laws of the United States and other countries. Neither Party shall export or re- export any such items or any direct product thereof or undertake any transaction in violation of any such Laws. To the extent within National's control, National shall be responsible for, and shall coordinate and oversee, compliance with such export Laws in respect of such items exported or imported under this Agreement.

16.04 Bankruptcy Code. Any license granted by National under this Agreement shall be a license of "intellectual property rights" as defined in Section 365(n) of title XI, U.S. Bankruptcy Code, and any such license shall be governed by such Section of the Bankruptcy Code in the event that National seeks or is involuntarily placed under the protection of the Bankruptcy Code.

ARTICLE 17. APPROVAL OF DOCUMENTS

17.01 Submission and Approval of Documents.

- (1) Upon delivery by National to IRC of any Documents, IRC shall review such Documents to determine if it conforms to IRC's requirements for such Documents, including those requirements set forth in Exhibit 1.
- (2) If IRC reasonably determines that such Documents do not conform to the applicable Documents Requirements, IRC shall so notify National in writing setting forth in reasonable detail (to the extent possible) any errors or deficiencies. National shall correct or rework such Documents so that it conforms to the applicable Documents Requirements, within 10 days (or such other time period as agreed upon by the Parties) of National's receipt of notice of non-acceptance. Such correction shall be performed by National at no additional charge to IRC.
- (3) Upon redelivery of such Documents to IRC, IRC shall review such Documents and advise National within five days whether it conforms to its Documents Requirements; provided, however, that after the earlier of (a) two attempts by National to correct such Documents, and (b) 21 days after the initial delivery of such Documents, such Documents shall be deemed to not conform to the applicable Documents Requirements and Section 17.02 shall apply.
- (4) If IRC determines that a Documents conforms to its Documents Requirements, IRC shall, in a timely manner, notify National in writing of IRC's acceptance of such Documents.

17.02 Non-conforming Documents. If Documents do not conform to the Documents Requirements, pursuant to Section 17.01(3), then IRC shall be entitled, at its option, to accept

the non-conforming Documents subject to such reduction in the applicable Charges payable under Exhibit 2, as determined (a) by agreement of the Parties, or (b) pursuant to the dispute resolution procedures set forth in Article 25 if the Parties cannot agree to the amount of reduction within 30 days after IRC requests a reduction.

17.03 Change Control Procedures.

- (1) No Change shall be implemented without IRC's approval, except as may be necessary on a temporary basis to maintain the continuity of the Services.
- (2) IRC shall describe all Changes, whether proposed by IRC or National, in a Change Order and submit the proposed Change Order to National for approval. (National shall propose any Change in a request to the IRC Project Manager and IRC may, at its sole discretion, elect to prepare a proposed Change Order in respect of such Change.) National shall promptly review any proposed Change Order. Within two working days after National receives a proposed Change Order from IRC, National shall notify IRC of any objections to such proposed Change Order and National shall work with IRC to promptly resolve those objections. If any proposed Change Order would result in an increase in the cost to National of providing the Services or in a change to the schedule upon which any Services are to be provided, the Parties shall negotiate an equitable adjustment to the Charges, the schedule, or both, as appropriate. National's delivery to IRC of a Change Order (as approved by IRC) signed by National, or National's implementation of the Changes in such order, constitutes National's agreement to such order and all Changes therein. All Change Orders issued by IRC and accepted by National as described herein shall amend where applicable the terms of this Agreement. Change Orders resulting in an increase in cost or a substantial change in the expectations set forth in this agreement may require Board Approval and will not be deemed accepted until such approval is obtained.
- (3) With respect to all Changes, National shall (a) other than those Changes made on a temporary basis to maintain the continuity of the Services, schedule Changes so as not to unreasonably interrupt IRC's business operations, (b) prepare and deliver to IRC each month a rolling schedule for ongoing and planned Changes for the next three month period and (c) monitor the status of Changes against the applicable schedule.
- (4) With respect to any Change made on a temporary basis to maintain the continuity of the Services, National shall document and provide to IRC notification (which may be given orally provided that any oral notice must be confirmed in writing to IRC within three business days) of the Change no later than the next business day after the Change is made.

ARTICLE 18. PROTECTION OF INDIAN RIVER COUNTY DATA

18.01 Ownership of IRC Data. All IRC Data is and shall remain the property of IRC and shall be deemed Confidential Information of IRC. National shall not possess or assert any lien or other right against or to the IRC Data. Without IRC's approval (in its sole discretion), the IRC Data shall not be (1) used by National or National Agents other than in connection with providing the Services, (2) disclosed, sold, assigned, leased or otherwise provided to third parties by National or National Agents unless required by law or (3) commercially exploited by or on behalf of National or National Agents. National hereby irrevocably assigns, transfers and conveys, and shall cause National Agents to assign, transfer and convey, to IRC without further consideration all of its and their right, title and interest in and to the IRC Data. Upon request by IRC, National shall execute and deliver, and shall cause National Agents to execute and deliver, any financing statements or other documents that may be necessary or desirable under any federal, state, or local Law to preserve, or enable IRC to enforce, its rights hereunder with respect to the IRC Data.

18.02 Data Security. National shall establish and maintain safeguards against the destruction, loss or alteration of the IRC Data in the possession or control of National (the "Data Safeguards") that shall be no less rigorous than those (1) required by applicable Federal, state, local or other Laws, (2) IRC data security policies in effect as of the Effective Date, (3) National's data security policies in effect as of the Effective Date at each Designated National Service Location. National shall revise and maintain the Data Safeguards at IRC's request. In the event National intends to implement a change to the Data Safeguards (including pursuant to IRC's request), National shall notify IRC and, upon IRC's approval, implement such change.

18.03 Privacy Requirements. National shall perform its obligations under this Agreement with respect to all IRC Personally Identifiable Information ("PII") in compliance with all applicable Laws relating to the collection, dissemination, transfer and use of data, and the privacy and security of confidential, personal, sensitive or other protected data (collectively, "Privacy Laws") as applicable to National's use of, access to and custody of IRC PII. Without limiting the generality of the foregoing, certain Privacy Laws may require National to cause National Personnel with access to applicable IRC PII to execute confidentiality and non-disclosure agreements. National shall reasonably cooperate with IRC in connection with IRC's efforts to comply with applicable Privacy Laws. Nothing in this Agreement shall be deemed to prevent any Party from taking the steps it reasonably deems necessary to comply with any Privacy Laws applicable to it in connection with this Agreement. The Parties acknowledge that IRC alone shall determine the purposes for which any IRC PII shall be processed in the performance, provision or receipt of the Services. IRC shall not provide National with access to IRC PII unless it is reasonably necessary for National to have access to such IRC PII in connection with performing the Services.

18.04 Notification of Breach. In the event National or National Agents discovers or is notified of a breach or potential breach of security relating to the IRC Data, National shall immediately (1) notify the IRC Project Manager of such breach or potential breach and (2) if the applicable IRC Data was in the possession of National or National Agents at the time of such breach or

potential breach, National shall (a) investigate and cure the breach or potential breach and (b) provide IRC with assurance satisfactory to IRC that such breach or potential breach will not recur.

18.05 Correction of Errors. At National's expense, National shall promptly correct any errors or inaccuracies in the IRC Data and the reports delivered to IRC under this Agreement, to the extent caused by National or National Agents. At IRC's request, and at National's expense, National shall promptly correct any other errors or inaccuracies in the IRC Data or such reports caused by input of National processes or resources.

18.06 Return of Data. Upon request by IRC at any time during the Term, upon expiration or termination of this Agreement or during the Termination Assistance Period, National shall (1) promptly return to IRC, in the format and on the media requested by IRC, all or any part of the IRC Data and (2) erase or destroy all or any part of the IRC Data in National's possession, in each case to the extent so requested by IRC. Any archival mediums containing IRC Data shall be used by National and National Agents solely for back-up purposes.

ARTICLE 19. CONTINUED PROVISION OF SERVICES

19.01 Force Majeure. If and to the extent that a Party's performance of any of its obligations pursuant to this Agreement is prevented, hindered or delayed by fire, flood, earthquake, hurricane, elements of nature or acts of God, union work stoppages, acts of war, terrorism, riots, civil disorders, rebellions or revolutions or any other similar cause beyond the reasonable control of such Party (each, a "Force Majeure Event"), or by the declaration of a Force Majeure Event of a Third-Party Provider, and such non-performance, hindrance or delay could not have been prevented by reasonable precautions, then that Party shall be excused for such non-performance, hindrance or delay, as applicable, of those obligations affected by the Force Majeure Event for as long as such Force Majeure Event continues and such Party continues to use its best efforts to recommence performance whenever and to whatever extent possible without delay, including through the use of alternate sources, workaround plans or other means. The Party whose performance is prevented, hindered or delayed by a Force Majeure Event shall immediately notify the other Party of the occurrence of the Force Majeure Event and describe in reasonable detail the nature of the Force Majeure Event. The occurrence of a Force Majeure Event does not excuse, limit or otherwise affect National's obligation to provide either normal recovery procedures or any other Disaster recovery services described in Section 19.02.

19.02 Business Continuity and Disaster Recovery Plan.

- (1) National shall (a) develop, submit to IRC for IRC's review and approval, and implement a business continuity and disaster recovery plan (a "DRP") acceptable to IRC within 10 days of the Effective Date, (b) periodically update

and test the operability of the DRP during every 12 month period that the DRP is fully operational, (c) certify to IRC at least twice during every 12 month period that the DRP is fully operational and (d) implement the DRP upon the occurrence of a Disaster. National shall use its best efforts to ensure that the DRP incorporates industry standards and proven technologies in the planning and recovery from disasters. National shall also define and implement regular system backup and recovery procedures as set forth in the DRP. After approval by IRC, the DRP shall be incorporated into Exhibit 1.

- (2) National shall (a) notify IRC on or before the next business day after the occurrence of a Disaster affecting the Services identified in Exhibit 1 (b) on or before the fifth business day after the occurrence of such a Disaster either (i) reinstate such Services or (ii) present to IRC a written plan for the reinstatement of such Services and reinstate such Services on or before the twentieth business day after the occurrence of such a Disaster.
- (3) In the event of a Disaster, National shall not increase its charges under this Agreement or charge IRC usage fees in addition to the Charges.

19.03 Termination. If a Disaster occurs and National is unable to provide the Services, and IRC is unable to perform or receive the Services from a third-party service provider for a period of 10 days or more, IRC may, in its sole discretion, terminate this Agreement or remove such impacted Services from the scope of this Agreement. IRC will not be liable to National for any early termination charges for any such termination. IRC's rights under this Section shall be cumulative with all of its other rights and remedies under this Agreement.

ARTICLE 20. PAYMENTS TO NATIONAL

20.01 Charges. In consideration of National providing the Services, IRC shall pay to National the Charges set forth in Exhibit 2. Except as expressly set forth in Exhibit 2, there shall be no charges or fees payable by IRC in respect of National's performance of its obligations pursuant to this Agreement.

20.02 Detailed Invoices. National shall provide to IRC's Accounts Payable Division invoices with the detail described in Exhibit 2.

20.03 Progress Payments. IRC shall make progress payments to National on the basis of the approved partial payment request as recommended by the IRC PM in accordance with the provisions of the Local Government Prompt Payment Act, Florida Statutes Section 218.70 et. seq. IRC shall retain ten percent (10%) of the payment amounts due to National until fifty percent (50%) completion of the work. After fifty percent (50%) completion of the work is attained as certified to IRC by the IRC PM in writing, IRC shall retain five percent (5%) of the payment amount due to National until final completion and acceptance of all work to be performed by National under the Contract Documents. Pursuant to Florida Statutes Section

218.735(8)(b), fifty percent (50%) completion means the point at which the County has expended fifty percent (50%) of the total cost of the construction services work purchased under Exhibit 1, together with all costs associated with existing change orders and other additions or modifications to the construction services work provided under the Contract Documents.

20.04 Pay Requests. Each request for a progress payment shall contain National's certification. All progress payments will be on the basis of progress of the work measured by the schedule of values established, or in the case of unit price work based on the number of units completed. After fifty percent (50%) completion, and pursuant to Florida Statutes Section 218.735(8)(d), National may submit a pay request to IRC for up to one half (1/2) of the retainage held by IRC, and IRC shall promptly make payment to National unless such amounts are the subject of a good faith dispute; the subject of a claim pursuant to Florida Statutes Section 255.05(2005); or otherwise the subject of a claim or demand by IRC or National. National acknowledges that where such retainage is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, National shall timely remit payment of such retainage to those subcontractors and suppliers. Pursuant to Florida Statutes Section 218.735(8)(c)(2005), National further acknowledges and agrees that: 1) the IRC shall receive immediate written notice of all decisions made by National to withhold retainage on any subcontractor at greater than five percent (5%) after fifty percent (50%) completion; and 2) National will not seek release from the IRC of the withheld retainage until the final pay request.

20.05 Billing and Payment Disputes. Billing and payment disputes shall be subject Florida Statutes Section 218.76.

20.06 Liquidated Damages. National and IRC recognize that time is of the essence of this Agreement and that IRC will suffer financial loss if the Work is not completed within the times specified in Exhibit 1, plus any extensions thereof allowed in writing as a Change Order to this Agreement. Liquidated damages will commence for this portion of work. The parties also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by IRC if the Work is not completed on time. Accordingly, instead of requiring any such proof, IRC and National agree that as liquidated damages for delay (but not as a penalty), National shall pay IRC \$1,148.00 for each calendar day that expires after the time specified in Exhibit 1 for completion and readiness for final payment until the Work is completed and ready for final payment.

20.07 Accountability. National shall maintain complete and accurate records of and supporting documentation for the amounts billable to and payments made by IRC hereunder in accordance with generally accepted accounting principles applied on a consistent basis. National agrees to provide IRC with documentation and other information with respect to each invoice as may be reasonably requested by IRC to verify accuracy and compliance with the provisions of this Agreement.

20.08 Taxes. The Parties' respective responsibilities for taxes arising under or in connection with the Agreement shall be as follows:

- (1) Each Party shall be responsible for any personal property taxes on property it owns or leases, for franchise and privilege taxes on its business, and for taxes based on its net income or gross receipts.
- (2) National shall be responsible for any sales, use, excise, value-added, services, consumption and other taxes and duties payable by National on the goods or services used or consumed by National in providing the Services where the tax is imposed on National's acquisition or use of such goods or services and the amount of tax is measured by National's costs in acquiring such goods or services.
- (3) National shall be responsible for any sales, use, excise, value-added, services, consumption or other tax becoming applicable during the Term or during the Termination Assistance Period (or that is increased during the Term or the Termination Assistance Period) that is assessed on the provision of the Services as a whole, or on any particular component of the Services. IRC is tax exempt.

ARTICLE 21. AUDITS

21.01 Services. Upon notice from IRC, National and National Agents shall provide IRC or IRC Agents with access to any information and any assistance that they may require for the purpose of performing audits or inspections of the Services and the business of IRC relating to the Services. If any audit by an auditor designated by IRC or an IRC Agent results in National being notified that National or National Agents are not in compliance with any Law, regulation or audit requirement, National shall, and shall cause National Agents to, promptly take actions to comply with such Law, regulation or audit requirement. National shall bear the expense of any such response that is (a) required by a Law, regulation or other audit requirement relating to National's business or (b) necessary due to National's noncompliance with any Law, regulation or audit requirement imposed on National. To the extent the expense is not payable by National pursuant to the preceding sentence, IRC shall bear the expense of any such compliance that is (a) required by a Law, regulation or other audit requirement relating to IRC's business or (b) necessary due to IRC's noncompliance with any Law, regulation or audit requirement imposed on IRC.

21.02 Charges. Upon notice from IRC, National shall provide IRC and IRC Agents with access to such financial records and supporting documentation as may be requested by IRC and IRC and IRC Agents may audit the Charges charged to IRC to determine if such Charges are accurate and in accordance with this Agreement.

- (1) If, as a result of such audit, IRC determines that National has overcharged IRC, IRC shall notify National of the amount of such overcharge and National shall

promptly pay to IRC the amount of the overcharge, plus Interest calculated from the date of receipt by National of IRC's payment of the overcharged amount until the date of payment reimbursing IRC.

- (2) In addition to IRC's rights set forth in Section 21.02(1), in the event any such audit reveals cumulative overcharges to IRC of \$10,000 or more in any rolling 12-month period, National shall reimburse IRC for the reasonable cost of each audit that revealed such overcharges.

21.03 Data. Upon notice from IRC, National and National Agents shall provide IRC and IRC Agents with access to any information and any assistance that they may require for the purpose of performing audits or inspections to verify the integrity of IRC Data and examine the Systems that process, store, secure and transmit that data.

21.04 Audit Follow-Up. Following an audit, IRC shall conduct, or request its external auditors to conduct, an exit conference with National to discuss the issues identified in the review. National and IRC shall meet to review each audit report promptly after the issuance thereof and agree upon the appropriate manner, if any, in which to respond to the changes suggested by the audit report.

21.05 Compliance Requirements. National recognizes that IRC will be subject to Compliance Requirements. National shall provide reasonable assistance to the extent necessary to assist IRC to comply with such requirements solely as they relate to National's provision of Services hereunder in connection with the Deployment. National will comply with IRC's financial reporting and control processes communicated to National by IRC and provide IRC with copies of related records, reports and data maintained by National as necessary for IRC to satisfy Compliance Requirements.

21.06 Record Retention. National shall retain records and supporting documentation sufficient to document the Services and the Charges paid or payable by IRC under this Agreement for a period of two years from the billing for such Services, notwithstanding the expiration or termination of this Agreement.

ARTICLE 22. CONFIDENTIALITY

22.01 General Obligations. All Confidential Information relating to or obtained from IRC or National, including the terms and conditions of this Agreement, shall be held in confidence by the recipient to the same extent and in at least the same manner as the recipient protects its own confidential or proprietary information, but in no event less than reasonable means. Neither IRC nor National shall, or shall cause or permit any third-party to, disclose, publish, release, announce, transfer or otherwise make available Confidential Information of, or obtained from, the other in any form to, or for the use or benefit of, any person or entity without the disclosing Party's consent. Each of IRC and National shall, however, be permitted

to disclose relevant aspects of the other's Confidential Information to (1) its officers, directors, agents, professional advisors, lenders, lender's independent advisors, National, subcontractors and employees to the extent that such disclosure is reasonably necessary for the performance of its duties and obligations under this Agreement or for corporate governance purposes; provided, however, that the recipient shall take all reasonable measures to ensure that Confidential Information of the disclosing Party is not disclosed or duplicated in contravention of the provisions of this Agreement by such officers, directors, agents, professional advisors, lenders, lender's independent advisors, National, subcontractors and employees, and (2) to Third-Party Providers, as and to the extent necessary for IRC to obtain the benefits of this Agreement in the conduct of its business and to coordinate National's services with those of such Third-Party Providers, where in each such case, the receiving Third-Party Provider first agrees in writing to the obligations described in this Section.

22.02 Exclusions. The obligations in this Section shall not restrict any disclosure pursuant to any applicable Law or by order of any court or government agency, or a formal or informal request by the County or any member or employee of the County (provided that the recipient shall give prompt notice to the disclosing Party of such order) and, except to the extent that local law provides otherwise, shall not apply with respect to information that (1) is independently developed by the recipient without violating the disclosing Party's proprietary rights as shown by the recipient's written records, (2) is or becomes publicly known (other than through unauthorized disclosure), including any information contained in and retrievable from the public files of the County or any Federal or state agency, (3) is disclosed by the owner of such information to a third-party free of any obligation of confidentiality, (4) is already known by the recipient at the time of disclosure, as shown by the recipient's written records, and the recipient has no obligation of confidentiality other than pursuant to this Agreement or any confidentiality agreements entered into before the Effective Date between IRC and National or (5) is rightfully received by a Party free of any obligation of confidentiality. Notwithstanding anything to the contrary in this Article, it shall not be a violation or breach of confidentiality if IRC provides information to the public or public officials concerning schedules, delays, numbers of AMR Meters installed, or other information that IRC reasonably believes will increase the public's or government's understanding of the deployment and installation of an AMR System. Further, IRC shall be under no obligation to discuss or seek approval of press announcements, media statements, or similar communications intended to make the public or public officials more aware of IRC's deployment and installation of an AMR System.

22.03 Unauthorized Acts. Without limiting either Party's rights in respect of a breach of this Article, each Party shall:

- (1) promptly notify the other Party of any unauthorized possession, use or knowledge, or attempt thereof, of the other Party's Confidential Information by any person or entity that may become known to such Party;
- (2) promptly furnish to the other Party full details of the unauthorized possession, use or knowledge, or attempt thereof, and assist the other Party in investigating

- or preventing the recurrence of any unauthorized possession, use or knowledge, or attempt thereof, of Confidential Information;
- (3) cooperate with the other Party in any litigation and investigation against third parties reasonably deemed necessary by the other Party to protect its proprietary rights; and
- (4) promptly use its best efforts to prevent a recurrence of any such unauthorized possession, use or knowledge, or attempt thereof, of Confidential Information.

22.04 No Implied Rights. Each Party's Confidential Information shall remain the property of that Party. Unless otherwise expressly set forth in this Agreement, nothing herein shall be construed as obligating a Party to disclose its Confidential Information to the other Party, or as granting to or conferring on a Party, expressly or impliedly, any rights or license to the Confidential Information of the other Party.

22.05 Return or Destruction of Confidential Information. As requested by IRC during the Term, upon expiration or any termination of the Agreement, during the Termination Assistance Period, or upon completion of National's obligations under this Agreement, National shall return or destroy, as IRC may direct, all material in any medium that contains, refers to, or relates to IRC's Confidential Information, and retain no copies.

Each Party shall bear the costs it incurs as a result of compliance with this Section.

22.06 Public Records Compliance. Indian River County is a public agency subject to Chapter 119, Florida Statutes. National shall comply with Florida's Public Records Law. Specifically, National shall:

- (1) Keep and maintain public records required by IRC to perform the service.
- (2) Upon request from IRC's Custodian of Public Records, provide IRC with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law.
- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if National does not transfer the records to IRC.
- (4) Upon completion of the contract, transfer, at no cost, to IRC all public records in possession of National or keep and maintain public records required by IRC to perform the service. If National transfers all public records to IRC upon completion of the contract, National shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If National keeps

and maintains public records upon completion of the contract, National shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to IRC, upon request from the Custodian of Public Records, in a format that is compatible with the information technology systems of IRC.

IF NATIONAL HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO NATIONAL'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

(772) 226-1424

publicrecords@ircgov.com

Indian River County Office of the County Attorney

1801 27th Street

Vero Beach, FL 32960

Failure of National to comply with these requirements shall be a material breach of this Agreement.

ARTICLE 23. REPRESENTATIONS AND WARRANTIES

23.01 By IRC. IRC represents and warrants that:

- (1) IRC is a public agency;
- (2) IRC has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- (3) the execution, delivery and performance of this Agreement has been duly authorized by IRC; and
- (4) to the best of its knowledge, IRC is in compliance with all applicable federal, state, local or other Laws applicable to IRC and has obtained, or will use commercially reasonable efforts to obtain, all applicable permits and licenses required of IRC in connection with its obligations under this Agreement.

23.02 By National. National represents and warrants that:

- (1) National is a corporation duly incorporated, validly existing and in good standing under the Laws of **New Jersey**;
- (2) National has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- (3) National is duly licensed, authorized or qualified to do business and is in good standing in every jurisdiction in which a license, authorization or qualification is

- required for the ownership or leasing of its assets or the transaction of business of the character transacted by it, except where the failure to be so licensed, authorized or qualified would not have a material adverse effect on National's ability to fulfill its obligations under this Agreement;
- (4) the execution, delivery and performance of this Agreement has been duly authorized by National;
 - (5) to the best of its knowledge, National is in compliance with all applicable federal, state, local or other Laws applicable to National and has obtained all applicable permits and licenses required of National in connection with its obligations under this Agreement;
 - (6) there is no outstanding litigation, arbitrated matter or other dispute to which National is a party which, if decided unfavorably to National, would reasonably be expected to have a potential or actual material adverse effect on IRC's or National's ability to fulfill its respective obligations under this Agreement;
 - (7) the National Software, and the Equipment and Tools provided by National do not infringe upon the proprietary rights of any third-party; and
 - (8) any Equipment furnished under the Purchase Order that is subject to Part 68 of the Federal Communications Commission's Rules and Regulations (the "FCC Rules and Regulations") is registered under and complies with Part 68 of the FCC Rules and Regulations, including, all labeling and instruction requirements.

23.03 DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER IRC NOR NATIONAL MAKES ANY OTHER WARRANTIES WITH RESPECT TO THE SERVICES OR THE SYSTEMS AND EACH EXPLICITLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A SPECIFIC PURPOSE.

ARTICLE 24. ADDITIONAL COVENANTS

24.01 By IRC, IRC covenants and agrees with National that during the Term and the Termination Assistance Period, IRC shall comply with all applicable federal, state, local or other Laws applicable to IRC and, except as otherwise provided in this Agreement, shall obtain all applicable permits and licenses required of IRC in connection with its obligations under this Agreement.

24.02 By National. National covenants and agrees with IRC that during the Term and the Termination Assistance Period:

- (1) National shall comply with all applicable federal, state, local or other Laws applicable to National and, except as expressly provided otherwise in this Agreement, shall obtain all applicable permits and licenses required of National in connection with its obligations under this Agreement;

- (2) the Services shall be rendered with promptness and diligence and in a workmanlike manner, in accordance with the practices and high professional standards used by professional services organizations performing services similar to the Services;
- (3) National shall be aware of, and familiar with, all collective bargaining agreements that do or may pertain to or affect the Services or other work at the job sites. National shall plan and conduct its operations so that National Personnel and National Agents will work with the IRC personnel in a manner that avoids delays, work stoppages, excessive labor costs, or other labor difficulties;
- (4) National shall perform all Services under this Agreement, and otherwise conduct its operations in a manner so as to avoid the risk of bodily harm to persons or risk of damage to any property. In the event National fails to promptly correct any violation of safety or health regulations, IRC may suspend all or any part of the Services, and National shall not be entitled to any extension of time or reimbursement for costs caused by any such suspension order. The failure of IRC to order suspension of any or all of the Services shall not relieve National of its responsibility for the safety of persons or property. National shall maintain an accurate record of and shall promptly report to IRC all cases of property damage in excess of \$100 and of death, occupational diseases, or injury to National Personnel or any third-parties arising from or related to the performance of the Services. National shall promptly notify IRC and provide a copy of any safety citation issued by any governmental entity.
- (5) National shall keep all work areas in which it is performing Services free from accumulation of waste materials or rubbish arising out of the Services, and prior to completion of the Services shall remove and properly dispose of any such rubbish, as well as remove all Equipment and materials not property of IRC or its customers. Upon completion of Services, National shall leave the work area in a condition satisfactory to IRC or its customers. In the event of National's failure within a reasonable amount of time to comply with any of the foregoing, IRC may, after notice to National of such failure, perform the cleanup and removal at the expense of National;
- (6) neither the National Software, nor the Tools, Systems or Equipment provided by National, nor the Services or Documents will infringe upon the proprietary rights of any third-party;
- (7) National shall use current industry standard virus detection practices to ensure that no viruses or similar items are coded or introduced into IRC Software or Computing Systems. National agrees that, in the event a virus is found to have been introduced into the IRC Software or Computing Systems, National shall use commercially reasonable efforts to assist IRC in reducing the effects of the virus and, if the virus causes a loss of operational efficiency or loss of data, to assist IRC to the same extent to mitigate and restore such losses at no additional expense to IRC; and
- (8) without the consent of IRC, National shall not insert into the Software or Systems used to provide the Services any code that would have the effect of disabling or

otherwise shutting down all or any portion of the Services. National further covenants that, with respect to any disabling code that may be part of the Software used to provide the Services, National shall not invoke such disabling code at any time, including upon expiration or termination of this Agreement, without IRC's prior written consent.

ARTICLE 25. DISPUTE RESOLUTION

25.01 General. Any dispute between the Parties arising out of or relating to the Agreement, including with respect to the interpretation of any provision of the Agreement and with respect to the performance by National or IRC shall be resolved as provided in this Article.

25.02 Dispute Resolution

- (1) **Notice of Dispute.** Either Party asserting the existence of a material dispute under, arising out of, in connection with or related to the Contract shall deliver a written Notice (a "Dispute Notice") to the other Party describing the nature and substance of the dispute. The Dispute Notice shall be delivered to the attention of the other Party's designated recipient for notices under the Agreement.
- (2) **Initial Negotiation.** The Parties shall then attempt in good faith to resolve the dispute through negotiations by their respective authorized representatives during the fifteen (15) Days following delivery of the Dispute Notice; provided, that upon the written agreement of the Parties, such fifteen-Day period may be extended up to an additional fifteen (15) Days. If such negotiations result in an agreement in principle among such negotiators to settle the dispute, they shall cause a written settlement agreement to be prepared and signed by the Parties, whereupon the dispute shall be deemed settled, and not subject to further dispute resolution hereunder.
- (3) **Executive Negotiation.** If the Parties do not resolve and/or settle the dispute within the negotiation period set forth in Section 25.02(2), the Parties shall then attempt in good faith to resolve the dispute through negotiations by their respective authorized executive officers during the ten (10) Days following the end of the negotiation period under Section 25.02(2) before pursuing any of the further means of dispute resolution hereunder. Upon the written agreement of the Parties, the negotiation period may be extended up to an additional ten (10) Days. If such negotiations result in an agreement in principle among such negotiators to settle the dispute, they shall cause a written settlement agreement to be prepared and signed by the Parties, whereupon the dispute shall be deemed settled, and not subject to further dispute resolution.

- (4) Mediation. Subject to Section 25.02(5), if the Parties do not resolve and/or settle the dispute through the negotiations described in Section 25.02(2) and (3), all remaining disputes shall then be submitted to mediation within ten (10) Days from written notice of concluded negotiations following the Commercial Mediation Rules published by the American Arbitration Association. Unless the Parties agree otherwise, mediation shall be held in Vero Beach, Florida. This agreement to mediate and any other agreement or consent to mediate entered into in accordance with this agreement shall be specifically enforceable under the prevailing laws of Florida. Notice of the demand for mediation shall be filed in writing with the other Party to this Agreement. The demand for mediation shall be made within a reasonable time, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by any applicable statute of limitations.
- (5) Other Dispute Resolution Procedures. Notwithstanding the provisions set forth above in this Section 25.02, the Parties may, by mutual agreement, submit any dispute for resolution in any other manner that they may agree to in writing at the time such dispute arises; provided, however, that a Party's agreement to any such other dispute resolution procedure with respect to any particular dispute shall not act as a waiver of the right of any Party to have any other dispute resolved in accordance with the dispute resolution procedures set forth above in this Section 25.02.
- (6) In the event the dispute resolution procedures set forth in this Section 25.02 are unsuccessful, the provisions of Section 25.03 shall apply.
- (7) Confidential Settlement Context. All negotiations, discussions, offers, counter offers, data exchanges, proposed agreements and other communications between the Parties in connection with any of the pre-litigation negotiations or other dispute resolution procedures contemplated by this Section 25.02 are to be deemed as having been made, exchanged and taken in confidence subject to the confidentiality provisions hereof. Without limiting the preceding sentence, all such communications shall be deemed to be in the context of attempting to settle a disputed claim, shall not be construed, or be admitted in evidence in any related or unrelated arbitration, litigation or other adversary proceeding, as an admission or agreement as to the liability of any Party to such proceeding. However such communications may be disclosed as required by law.

25.03 Jurisdiction. The Parties hereto submit to the exclusive jurisdiction of and venue in the state courts located in Indian River County, Florida for purposes of any suit arising hereunder instituted by any party. Any party hereto not domiciled in the State of Florida expressly assents to extra-territorial service of process.

25.04 Equitable Remedies. National acknowledges that, in the event it breaches (or attempts or threatens to breach its obligations provided in Article 18 and Article 22, IRC may be irreparably harmed. In such a circumstance, IRC may proceed directly to court. If a court of competent jurisdiction should find that National has breached (or attempted or threatened to breach) any such obligations, National agrees that, without any additional findings of irreparable injury or other conditions to injunctive relief, it shall not oppose the entry of an appropriate order compelling performance by National and restraining it from any further breaches (or attempted or threatened breaches).

25.05 Continued Performance. Each Party agrees to continue performing its obligations under the Agreement while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment shall not be deemed to preclude performance) and without limiting either Party's right to terminate the Agreement as provided in Article 26.

ARTICLE 26. TERMINATION

26.01 Termination for Cause.

- (1) The occurrence of any of the following shall constitute a default by National and shall provide IRC with a right to terminate this Contract in accordance with this Article, in addition to pursuing any other remedies which IRC may have under this Contract or under law:
 - a. if in IRC's opinion National is improperly performing work or violating any provision(s) of the Contract Documents;
 - b. if National neglects or refuses to correct defective work or replace defective parts or equipment, as directed by the Engineer pursuant to an inspection;
 - c. if in IRC's opinion National's work is being unnecessarily delayed and will not be finished within the prescribed time;
 - d. if National assigns this Contract or any money accruing thereon or approved thereon; or
 - e. if National abandons the work, is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a trustee or receiver is appointed for National or for any of his property.
- (2) IRC shall, before terminating the Contract for any of the foregoing reasons, notify National in writing of the grounds for termination and provide National with ten (10) calendar days to cure the default to the reasonable satisfaction of IRC.
- (3) If National fails to correct or cure within the time provided in the preceding Sub-Section (2), IRC may terminate this Contract by notifying National in writing.

Upon receiving such notification, National shall immediately cease all work hereunder and shall forfeit any further right to possess or occupy the site or any materials thereon; provided, however, that IRC may authorize National to restore any work sites.

- (4) National shall be liable for:
 - a. any new cost incurred by IRC in soliciting bids or proposals for and letting a new contract; and
 - b. the difference between the cost of completing the new contract and the cost of completing this Contract;
 - c. any court costs and attorney's fees associated with any lawsuit undertaken by IRC to enforce its rights herein.

26.02 Termination for Convenience. IRC may at any time and for any reason terminate National's services and work for IRC's convenience. Upon receipt of notice of such termination National shall, unless the notice directs otherwise, immediately discontinue the work and immediately cease ordering of any materials, labor, equipment, facilities, or supplies in connection with the performance of this Contract. Upon such termination National shall be entitled to payment only as follows:

- (1) the actual cost of the work completed in conformity with this Contract and the specifications; plus,
- (2) such other costs actually incurred by National as are permitted by the prime contract and approved by IRC.
- (3) National shall not be entitled to any other claim for compensation or damages against IRC in the event of such termination.

26.03 Termination in Regards to F.S. 287.135. National certifies that it and those related entities of respondent as defined by Florida law are not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725 of the Florida Statutes, and are not engaged in a boycott of Israel. In addition, if this agreement is for goods or services of one million dollars or more, National certifies that it and those related entities of respondent as defined above by Florida law are not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473 of the Florida Statutes and are not engaged in business operations in Cuba or Syria.

IRC may terminate this Contract if National is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, as defined by section 287.135, Florida Statutes.

IRC may terminate this Contract if National, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies, that exist for the purpose of making profit is found

to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel as set forth in Section 215.4725, Florida Statutes.

ARTICLE 27. INTENTIONALLY LEFT BLANK

ARTICLE 28. SUSPENSION

28.01 Suspension. IRC may order National to suspend, and to subsequently resume, performance of all or of any part of the Services at any time by the issuance of a notice of suspension to National and such notice shall not require acceptance by National for such suspension to take effect. If IRC orders suspension of performance or provision of all or any part of the Services, IRC shall: (1) complete the payments due up to the effective date of the suspension notice and shall resume payments as of the effective date that the suspended Services are ordered resumed, and (2) pay for any Out-of-Pocket Expenses incurred by National as a result of such suspension. In the event that IRC requests that National resume the provision of the suspended Services, National shall provide IRC with revised Milestones or plans, including a revised Deployment Plan, if applicable, that take into account the suspension and resumption of the suspended Services. Such revised Milestones or plans shall be subject to IRC's review and approval. Once approved, National shall resume the suspended Services in accordance with such revised Milestones or plans. National shall provide IRC with sufficient supporting data for evaluation of the reasonableness of the expenses for item (2) above. The provisions of this Section shall be National's sole remedy as a result of any suspension of the Services, in whole or in part.

ARTICLE 29. INDEMNIFICATION

29.01 Indemnification. Each Party hereto shall indemnify and hold harmless the other Party, including its respective officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the indemnifying party and persons employed or utilized by the indemnifying party in the performance of the Services

ARTICLE 30. DAMAGES

30.01 Direct Damages.

- (1) Each Party shall be liable to the other Party for any direct damages arising out of or relating to its performance or failure to perform under this Agreement.
- (2) Subject to Section 30.03, the liability of a Party to the other Party, whether based on an action or claim in contract, equity, negligence, tort or otherwise, for any single event, act or omission, shall not exceed the total contract fees as defined in Exhibit 2.

30.02 Consequential Damages. Subject to Section 30.03, neither IRC nor National shall be liable for, nor will the measure of damages include, any indirect, incidental, special or consequential damages of the other Party arising out of or relating to its performance or failure to perform under this Agreement.

30.03 Exclusions. The limitations on direct damages set forth in Section 30.01(2) shall not apply to (1) the failure of IRC to make payments or the failure of National to issue refunds or Performance Credits due under this Agreement. The limitations on indirect, incidental, special or consequential damages set forth in Section 30.02 shall not apply to any indemnification obligations of the Parties set forth in Article 29.

ARTICLE 31. INSURANCE

31.01 Insurance Coverage. National shall purchase and maintain, at its own expense, the following types and amounts of insurance, primary and non-contributory with IRC's own insurance, in form and companies satisfactory to IRC:

- (1) Workers' Compensation insurance – As required by Florida Statutes, Chapter 440, Workers Compensation Insurance, for all employees of National, employed at the site of work or in any way connected with the work, which is subject of the Services.

The insurance required by this provision shall comply fully with the Florida Workers' Compensation law and include Employers' Liability Insurance with limits of not less than \$500,000 per accident. Any associated or subsidiary company involved in the service must be named in the Workers' Compensation coverage.

- (2) Liability Insurance – Commercial General Liability Insurance, including coverage for operations, independent contractors, products-completed operations, broad form property damage, collapse and underground, and personal injury on an "occurrence" basis insuring National and any other interests, including but not limited to any associated or subsidiary companies involved in the work.

Automobile Liability Insurance which shall insure claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle used by National at the site of the project or in any way connected with the Services

The Liability Insurance shall name IRC as an additional insured

The limit of liability shall be a combined single limit for bodily injury and property damage of no less than \$1,000,000 per occurrence. If insurance is provided with a general aggregate, then the aggregate shall be in an amount of no less than \$1,000,000.

31.02 Insurance Conditions. The insurance coverages under Section 31.01 shall be primary, and all non-contributing with respect to any other insurance or self-insurance which may be maintained by IRC. All required insurance coverages shall include a waiver of subrogation and a waiver of any insured-versus-insured exclusion regarding IRC. To the extent any coverage is written on a claims-made basis, it shall have a retroactive date prior to the Effective Date and shall allow for reporting of claims for at least one year after the Term.

31.03 Insurance Documentation. To the extent third-party insurance is obtained or maintained pursuant to Section 31.01, National shall (1) within 30 days after the Effective Date and (2) upon IRC's request, furnish to IRC certificates of insurance or other appropriate documentation (including evidence of renewal of insurance) evidencing all coverages referenced in Section 31.01 and, if and to the extent applicable, naming IRC as an additional insured. Such certificates or other documentation shall include a provision whereby 30 days' notice must be received by IRC prior to coverage cancellation or material alteration of the coverage by either National or National Agents or the applicable insurer. Such cancellation or material alteration shall not relieve National of its continuing obligation to maintain insurance coverage in accordance with this Article. If any of the required insurance coverages contain aggregate limits applying to other operations of National outside this Agreement, and such limits are diminished by any incident, occurrence, claim, settlement or judgment against such insurance, National shall take immediate steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits.

31.04 Risk of Loss.

- (1) Except as set forth in Section 31.04(2) National shall be responsible for the risk of loss of, or damage to, any property of National, including the National Equipment, unless such loss or damage was caused by the acts or omissions of IRC or an IRC Agent and IRC shall be responsible for the risk of loss of, or damage to, any property of IRC, including the AMR Meters, unless such loss or damage was caused by the acts or omissions of National or a National Agent.
- (2) National is responsible for the risk of loss of, or damage to, any property of IRC at a Designated National Service Location, or otherwise in National's possession, unless such loss or damage was caused by the acts or omissions of IRC or an IRC Agent. IRC is responsible for the risk of loss of, or damage to, any property of National at an IRC Service Location, unless such loss or damage was caused by the acts or omissions of National or a National Agent.
- (3) If National fails to comply with any of the provisions of this Article, National shall, without regard to Section 29.01, at its own cost, defend, indemnify and hold

harmless IRC, its officers, agents, employees, assigns and successors in interest, from and against any and all liability, damages, losses, claims, demands, actions, causes of action, costs, including attorney's fees and expenses, or any of them, resulting from the death of or injury to any person or damage to any property to the extent that IRC would have been protected had National complied with all of the provisions of this Article.

31.05 Reporting Claims. National shall report immediately to the IRC Project Manager and confirm in writing any injury, loss, or damage incurred by National or its employees or Nationals in connection with the Services, or its receipt of notice of any claim by a third-party, or of any occurrence that might give rise to a claim.

ARTICLE 32. MISCELLANEOUS PROVISIONS

32.01 Assignment.

- (1) Neither Party shall, without the prior written consent of the other Party, assign this Agreement or any amounts payable pursuant to this Agreement, except that IRC may assign this Agreement to an Affiliate or another entity or business unit of IRC or pursuant to a reorganization or Change in Control of IRC without such consent. Upon IRC's assignment of this Agreement to an Affiliate or another entity or business unit of IRC or pursuant to a reorganization or Change in Control of IRC, IRC shall be released from any obligation or liability under this Agreement. The consent of a Party to any assignment of this Agreement shall not constitute such Party's consent to further assignment. This Agreement shall be binding on the Parties and their respective successors and permitted assigns. Any assignment in contravention of this subsection shall be void.
- (2) In the event that IRC divests an (a) entity, (b) business unit or (c) service territory of IRC, including any group of AMR Meters, National shall, for the remainder of the Term after such divestiture, at IRC's request, continue to provide the Services through IRC under this Agreement for the benefit of such divested IRC entity, business unit or service territory at the Charges then in effect.

32.02 Notices. Except as otherwise specified in this Agreement, all notices, requests, consents, approvals, agreements, authorizations, acknowledgments, waivers and other communications required or permitted under this Agreement shall be in writing and delivered via certified mail or other priority mail verified by signature delivery to:

In the case of IRC

Indian River County Department of Utility Services
1801 27th St.

Vero Beach, FL 32960
Attention: Vincent Burke, Director

In the case of National:

163 Schuyler Avenue
P.O Box 491
Kearny, New Jersey
Attention: William Castle

Either Party may change its address or contact for notification purposes by giving the other Party 10 days' notice of the new address or facsimile number and the date upon which it will become effective.

32.03 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which taken together shall constitute one single agreement between the Parties.

32.04 Relationship. The Parties intend to create an independent National relationship, and nothing contained in this Agreement shall be construed to make either IRC or National partners, joint venturers, principals, agents or employees of the other. No officer, director, employee, agent, Affiliate or subcontractor retained by National to perform work on IRC's behalf under this Agreement shall be deemed to be an employee, agent or subcontractor of IRC. Neither Party shall have any right, power or authority, express or implied, to bind the other.

32.05 Consents, Approvals and Requests. Except as specifically set forth in this Agreement, all consents and approvals to be given by either Party under this Agreement shall not be unreasonably withheld or delayed and each Party shall make only reasonable requests under this Agreement.

32.06 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, then the remaining provisions of this Agreement, if capable of substantial performance, shall remain in full force and effect.

32.07 Waivers. No delay or omission by either Party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by any Party of any breach or covenant shall not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be signed by the Party waiving its rights.

32.08 Publicity. National shall (1) submit to IRC all advertising, written sales promotions, press releases and other publicity matters relating to this Agreement in which the IRC's name or mark is mentioned or which contains language from which the connection of said name or mark

may be inferred or implied and (2) not publish or use such advertising, sales promotions, press releases or publicity matters without IRC's consent.

32.09 Entire Agreement. This Agreement and the Exhibits and Appendices to this Agreement represent the entire agreement between the Parties with respect to its subject matter, and there are no other representations, understandings or agreements between the Parties relative to such subject matter.

32.10 Amendments. No amendment to, or change, waiver or discharge of, any provision of this Agreement shall be valid unless in writing and signed by an authorized representative of each of the Parties.

32.11 Survival. Any provision of this Agreement that contemplates performance or observance subsequent to the termination or expiration of this Agreement or during the Termination Assistance Period, shall survive the termination or expiration of this Agreement.

32.12 Third-Party Beneficiaries. Each Party intends that this Agreement shall not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the Parties.

32.13 Governing Law. This Agreement and the rights and obligations of the Parties under this Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without giving effect to the principles thereof relating to the conflicts of laws.

32.14 Sole and Exclusive Venue. Each Party irrevocably agrees that any legal action, suit or proceeding brought by it in any way arising out of this Agreement must be brought solely and exclusively in the United States District Court for the Southern District of Florida or in the state courts of the State of Florida and irrevocably accepts and submits to the sole and exclusive jurisdiction of each of the aforesaid courts in personam, generally and unconditionally with respect to any action, suit or proceeding brought by it or against it by the other Party; provided, however, that this Section shall not prevent a Party against whom any legal action, suit or proceeding is brought by the other Party in the state courts of the State of Florida from seeking to remove such legal action, suit or proceeding, pursuant to applicable Federal law, to the district court of the United States for the district and division embracing the place where the action is pending in the state courts of the State of Florida, and in the event an action is so removed each Party irrevocably accepts and submits to the jurisdiction of the aforesaid district court. Each Party hereto further irrevocably consents to the service of process from any of the aforesaid courts by mailing copies thereof by registered or certified mail, postage prepaid, to such Party at its address designated pursuant to this Agreement, with such service of process to become effective 30 days after such mailing.

32.15 Covenant of Further Assurances. IRC and National covenant and agree that, subsequent to the execution and delivery of this Agreement and, without any additional consideration, each of IRC and National shall execute and deliver any further legal instruments and perform any acts that are or may become necessary to effectuate the purposes of this Agreement.

32.16 Negotiated Terms. The Parties agree that the terms and conditions of this Agreement are the result of negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.

32.17 Conflict of Interest.

- (1) National affirms that, to the best of its knowledge, there is no actual or potential conflict of interest between National, its employees or their families, National agents, or business interest, and IRC. During the Term, neither Party, without the consent of the other Party, shall hire or offer to hire any individual while that individual is an employee of the other Party or employee's immediate family member. National shall not pay any salaries, commissions, fees or make any payments or rebates to any employee of IRC or to any designee of such employee, or favor any employee of IRC or any designee of such employee, with gifts or entertainment of significant cost or value or with services or goods sold at less than full market value. National agrees that its obligation to IRC under this Section shall also be binding upon National Agents. National further agrees to insert the provisions of this Section in each contract with a National Agent.
- (2) During the Term and for two years after the expiration or termination of this Agreement, neither National nor the National Project Manager or a member of the Project Staff shall, without IRC's prior consent, undertake any engagement (a) to act as an expert for a third-party in any regulatory proceeding, litigation or transaction in which IRC or any of its Affiliates is, or is reasonably expected to become, adverse to the third-party or (b) for any third-party which is, or is reasonably expected to become, adverse to IRC in a proceeding, litigation or transaction related to this Agreement.

National shall notify IRC within 30 days of any violation of this Section and promptly use its best efforts to minimize or eliminate any adverse impact on IRC.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or on their behalf.

This Agreement will be effective on _____, 20____ (the date the Agreement is approved by the Indian River County Board of County Commissioners, which is the Effective Date of the Agreement).

OWNER:

INDIAN RIVER COUNTY

By: _____
Bob Solari, Chairman

By: _____
Jason E. Brown, County Administrator

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

By: _____
Dylan Reingold, County Attorney

Jeffrey R. Smith, Clerk of Court and Comptroller

Attest: _____
Deputy Clerk
(SEAL)

Designated Representative:
Name:
Title:
Address:
Phone
Email

CONTRACTOR:

By: _____
(Contractor)

(CORPORATE SEAL)

Attest _____

Address for giving notices:

License No. _____
(Where applicable)

Agent for service of process: _____

Designated Representative:
Name: _____
Title: _____
Address: _____

Phone: _____
Email: _____

(If CONTRACTOR is a corporation or a partnership, attach evidence of authority to sign.)

EXHIBIT 1 –SERVICES

THIS DEPLOYMENT SERVICES STATEMENT OF WORK is subject to the terms and provisions, and is made a part of that certain Agreement for Meter Deployment Services between Indian River County and National Meter Services, Inc. dated _____, 2019 (the “Contract”) by and between Indian River County (“IRC”) and National Metering Services, Inc. (“National”). Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Contract.

This Exhibit 1 - Services, describes activities, roles and responsibilities of the Parties associated with the planning, design, deployment, implementation, and testing of the AMR System within Indian River County service territory and MDM Portal (collectively, the “**AMR Solution**”).

1. PROJECT OVERVIEW

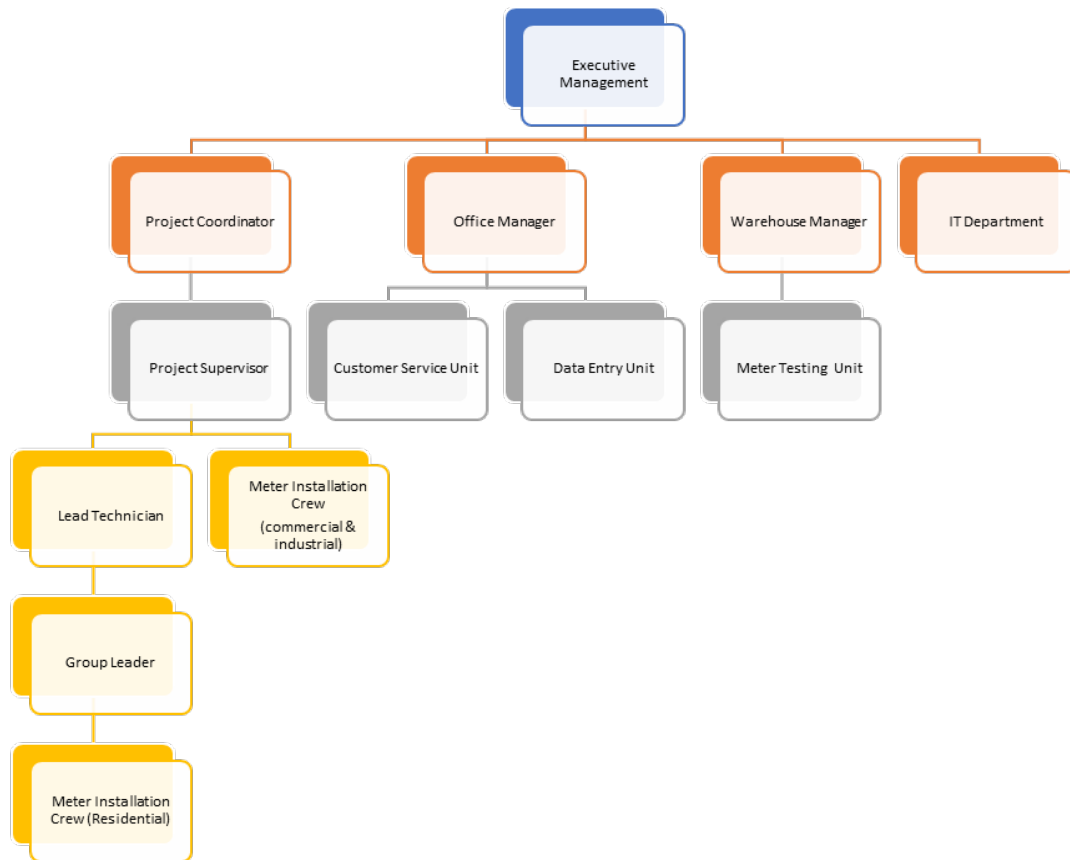
The Parties desire to and will deploy the AMR Solution as an end-to-end functional system comprised of AMR Water Meters and National’s MDM Portal. The Parties will deploy the AMR Solution in accordance with the schedule as documented in **Deployment Schedule**, and as may be updated, in the Deployment Plan. National will collaborate with Indian River County throughout deployment of the AMR Solution as outlined in this Deployment Services SOW. The Parties will continue to work together in good faith to further define specific Deliverables and timelines.

National will deploy approximately 34,000 meters across the service territory. IRC will purchase all appropriate AMR Meters, check valves, lids, meter boxes, and risers, and National will provide to IRC the Services as described in this Deployment Services SOW.

This Deployment Services SOW sets forth in detail the specific tasks and the Parties’ respective roles and responsibilities for those tasks.

2. PROJECT RESOURCES

National’s Project organization is described in the chart below.



Executive Management – Includes the President, CEO, CFO, CTO, Vice President, Business Development Director. The Executive Management oversees all operations and administrative functions of NMS. It ensures that all projects run smoothly from both field operations and administrative perspectives.

Project Coordinator (Key National Position) – The Project Coordinator works with the Office and Warehouse Managers to insure that tasks are assigned to office staff, monitors customer service unit’s interaction with customers, verifying work order information as entered by data processing unit, supervising work order preparation & customer notices, scheduling of mailings, tracking progress of project by area or route, scheduling follow-up mailings, time record keeping, payroll certification, invoice preparation, execution of required AIA forms. All Project Coordinators report directly to Executive Management regarding the status of a program, inventory, customer service, field reports etc. Project Coordinator is an offsite resource.

Richard Verdiramo
 RVerdiramo@nmsnj.com
 201-628-2845

Office Manager – Manages the Customer Service and Data Entry Units. Ensures that both of these functions are up to date with all customer and client facing aspects of all projects.

Warehouse Manager – Oversees warehouse operations, manages inventory of both new and old meter stock in Kearny location.

IT Department – Manage and support NMS’ proprietary MDM software. Upload and maintain all clients’ customer data. Process photos and append to premises records across all projects.

Project Supervisor (Key National Position) – The Project Supervisor monitors the activity of the field personnel and interacts with the Utility staff to schedule deliveries of all ODP materials the Utility as well as the return of old meter and materials back to the Utility. The Project Supervisor monitors inventory and is available to respond to field emergencies when needed. The Project Supervisor conducts field surveys of commercial and industrial meters and all OSHA vaults. The Project Supervisor assists the Lead Technician and augments in the field when necessary. The Project Supervisor reports directly to the Project Coordinator. Project Supervisor is an offsite resource.

Kelly Dever
kdever@nmsnj.com
407-461-1527

Customer Service Unit – Includes all CSRs whose task it is to make and receive customer telephone and mail contacts. The CSRs make all appointments with customers as needed across all projects.

Data Entry Clerk/Customer Service Representative – Preparing customer notices & work orders from electronic data provided by the Utility, processing completed work orders, processing incomplete work orders by identifying the problem or violation and entering the data into the new customer database, processing meter certification test results and entering results into a comprehensive report, entering test results into the customer database.

Meter Testing Unit – Conducts all meter testing on new and old meter stock as applicable depending on project parameters.

Lead Technician (Key National Position) – The Lead Technician is responsible for all interaction with the utility, ordering, cataloging and distribution of inventory materials, assigning and recovering work to & from installers daily. Progress meetings, customer concerns or callbacks, distribution of appointments and schedules, forwarding completed work orders to the data processing center, logging accounts that could not be installed (locked gates and dogs), keeping daily time records of installers hours. The Lead Technician reports directly to the Project Supervisor with daily reports and a weekly summary of installations, and project progress. Lead Technician is an onsite resource.

James Ratcliff
jratcliff@nmsnj.com
828-335-7664

Group Leader – The Group Leader, is responsible for collection of old meters for testing, verifying exit readings of old meters, re-supply of equipment to installers in the field, provide assistance on difficult installations, survey large meter accounts, freeze service lines when shut down is not possible using existing valves, verify conditions when a unit cannot be installed as reported, locate and operate curb valves for shut down, cover appointments pending if an installer is delayed or has other issues.

Meter Installation Technician – Our Installation Technicians have several years of experience, installing water meters. National has a very low employee turnover rate. Many of our Installers have been with the company over 5 years. The responsibilities of our Meter Installation Technicians are: providing meter installation service by appointment and by solicitation, logging pertinent data on installation order, final reading of meter and serial number confirmation, tagging removed meter with an address verification tag, testing of meter installation with manufacturers test equipment (IRC supplied), checking for leaks after installation is complete, verifying service has been restored, updating account records if an account is missing or indicating why the unit cannot be installed as per request.

3. PROJECT MANAGEMENT

3.1 Description

This Section describes the work to be performed to plan and manage the project including the meter installation, customer communications, and MDM portal configuration.

National and IRC will work together to initiate and complete the development of the Project Plan and Deployment Schedule as a part of this Deployment Services SOW. The mutually signed Deployment Plan shall be deemed incorporated into this Deployment Services SOW and made a part of it. Only mutually agreed on changes to the Deployment Plan shall be effective. Changes will be documented and confirmed during Project Management meeting.

The Project is expected to last approximately two (2) years and includes the installation of approximately 39,000 Meters, all customer communications necessary for planning installations and addressing customer concerns, configuration of the MDM portal, and data support.

3.2 Project Management Roles and Responsibilities Matrix

Below is the Project Management roles and responsibilities matrix.

The following project roles and responsibilities descriptions establish base level requirements. National will participate in joint planning sessions with IRC to further refine roles and responsibilities as part of detailed planning. National will comply with all IRC policies and procedures. IRC reserves the right to review and approve all final project roles and responsibilities, designs and project plans.

Activity	Tasks		National Deliverables
	National	IRC	
3.2.1 Initiate Project	<ul style="list-style-type: none"> • Provide dedicated project coordinator for total project accountability • Review Contract • Assign resources to Project • Uncover initial assumptions and risk • Execute an Internal Kick-off Meeting • Initiate Project with IRC's Project Manager • Acquire facilities for warehousing and local management of project 	<ul style="list-style-type: none"> • Assign IRC Project Manager for single point of contact or provide clear path to appropriate parties • Work jointly with National to schedule the Kick-off meeting • Work jointly with National in initiating the Project 	<ul style="list-style-type: none"> • N/A
3.2.2 Project Resources	<ul style="list-style-type: none"> • Assign team members • Provide IRC with team member names, contact information and resumes • Provide IRC with information on vehicles to be used on the project • Document roles and responsibilities • Note any resource constraints 	<ul style="list-style-type: none"> • Assign IRC Project team members and key Subject Matter Experts • Provide project contact list • Document roles and responsibilities of IRC project team 	<ul style="list-style-type: none"> • Project Org Chart • Project Contact List
3.2.3 MDM Plan	<ul style="list-style-type: none"> • Develop the MDM plan including data integration requirements, training and support. • Import the customer data into the MDM 	<ul style="list-style-type: none"> • Provide Customer /Account Information File • Review and approve MDM Plan 	
3.2.4 Communication Plan	<ul style="list-style-type: none"> • Develop Communication plan including scripts, answers to FAQs, follow-up procedures 	<ul style="list-style-type: none"> • Review and Approve Communication Plan 	
3.2.5 Deployment Plan	<ul style="list-style-type: none"> • Develop the Deployment Plan that will detail installation activities for AMR Meters • The Deployment Plan will include detailed deployment tasks, roles and responsibilities, route planning, safety requirements, warehouse operations, customer contact & communications strategy, training, work procedures, customer claims management, deployment plans / strategy / sequence and blackout dates, KPIs, communications / status 	<ul style="list-style-type: none"> • Provide route information • Provide blackout dates including holidays • Approve the Deployment Plan 	<ul style="list-style-type: none"> • Deployment Plan

Activity	Tasks		National Deliverables
	National	IRC	
	reporting, and quality assurance plan		
3.2.6 Safety and Training Plan	<ul style="list-style-type: none"> • Develop an Installation Training Plan including required technical and safety training for installers • OSHA 10 certification is required for all National technicians. 	<ul style="list-style-type: none"> • Review, comment on and approve National's training plan 	
3.2.7 Materials and Logistics Plan	<ul style="list-style-type: none"> • Develop the material forecasts, schedules and inventory levels required to support deployment 	<ul style="list-style-type: none"> • Review and approve Materials and Logistics plans 	
3.2.8 Project Schedule	<ul style="list-style-type: none"> • Jointly develop Project baseline schedule and milestones • Maintain Project Schedule as reflected in MDM, incorporate approved changes, and produce updated schedule versions as necessary • Reflect in Deployment Plan as necessary 	<ul style="list-style-type: none"> • Participate in developing Project baseline schedule and milestones • Approve Project baseline schedule • Review updated schedules to understand impact of approved changes 	
3.2.9 Project Status	<ul style="list-style-type: none"> • Jointly participate in bi-weekly project status meetings • Immediately inform IRC PM of safety and customer problems 	<ul style="list-style-type: none"> • Lead bi-weekly project status meetings • Monitor MDM for project status 	
3.2.10 Risk Management Plan	<ul style="list-style-type: none"> • Jointly develop the Risk Monitoring and Mitigation Plans • Assist IRC in developing risk mitigations strategies • Implement risk mitigations when required • Perform risk identification, tracking, and mitigation throughout Project as required 	<ul style="list-style-type: none"> • Jointly develop the Risk Monitoring and Mitigation Plans • Implement risk mitigations when required 	
3.2.11 Project Management	<ul style="list-style-type: none"> • Manage and supervise all National resources • Address any issues identified by IRC as severe 	<ul style="list-style-type: none"> • Notify National of any project personnel issues or conduct concerns 	

4. METER INSTALLATION

4.1 Description

This Section describes the work to be performed to field install the AMR Meters, check valves, lids and other equipment.

National will install all meters and check valves in IRC service territory except those designated as non-accessible or RTO. National considers meters temporarily non-accessible if the meter pit is located behind a locked gate, near a loose animal, has a car parked over pit, under concrete or asphalt, or is inaccessible due to overgrowth of tree roots in box. Multiple attempts will be made to access meter as described in the accessible meter and non-accessible meter definitions in Exhibit 5. National will contact the customer by phone and leave door hangers in all instances advising the customer of the situation.

4.2 Meter Installation Roles and Responsibilities Matrix

Below is the Meter Installation roles and responsibilities matrix.

The following project roles and responsibilities descriptions establish base level requirements. National will participate in joint planning sessions with IRC to further refine roles and responsibilities as part of project kickoff and detailed planning. National will comply with all IRC policies and procedures. IRC reserves the right to review and approve all final project roles and responsibilities, designs and project plans.

Activity	Tasks		National Deliverables
	National	IRC	
4.2.1 Material storage	<ul style="list-style-type: none"> • Take delivery of material shipments • Inspect shipments provide list of all inventory received, size, quantity, serial numbers etc., to be able to verify that every meter purchased ends up in the ground and attached to a billing account (or is leftover at the end of the project) • Identify shipment irregularities • Identify defective materials and notify IRC PM • Provide all required documentation and electronic files associated with shipments deliveries • Provide warehousing and inventory management for Meters • Report RMA and warrantee to IRC, store materials for IRC to process • Track inventory 	<ul style="list-style-type: none"> • Rectify shipment irregularities • Process RMAs and defective materials returns • Order all materials with appropriate lead times to ensure delivery of materials according to Plan 	<ul style="list-style-type: none"> • N/A
4.2.2 Job Preparation	<ul style="list-style-type: none"> • Areas of operation are issued each morning when 	<ul style="list-style-type: none"> • Provide route information update 	<ul style="list-style-type: none"> • N/A

Activity	Tasks		National Deliverables
	National	IRC	
	<ul style="list-style-type: none"> the installers are preparing for work. Routes are followed per the owners request so as not to interfere with reading routes or reading operations. The Lead Tech will issue the routes as confirmed by the office according to the preapproved schedule. Any and all special requests or revisits for recalls, complaints are issued with the work in the morning. Special requests are also addressed for IRC Staff's immediate needs – IE high Bill complaint or non-reading meter or unit etc. Safety procedures are reviewed Inventory is validated for workday installations Inventory is visually inspected for defects or damages 	<ul style="list-style-type: none"> Review National schedule to assure no conflicts with IRC Operations 	
4.2.3 Meter Installation	<ul style="list-style-type: none"> Coordinate with IRC staff for any location assistance prior to entering an area for installation. Installation technician arrives on customer site for meter replacement Technician examines existing condition if meter setting and takes pre-installation digital photo If any evidence of Tamper, technician take picture and notifies IRC PM If meter is not accessible, Technician takes a picture and notifies IRC PM of Non-Accessible meter Technician clears debris (sand, dirt) from meter box and/or de-waters meter pit as required Technician takes photo of meter reading Technical shuts main valve 	<ul style="list-style-type: none"> Support field activities Provide shut off assistance if National is unable to shut off service prior to installation Provide location assistance. Assess failure and determine action 	

Activity	Tasks		National Deliverables
	National	IRC	
	<ul style="list-style-type: none"> • Technician replaces existing meter with a new meter and radio unit • Replace meter valves, check valves and curb stops as necessary • Technician takes photo of new meter install • Technician restores water and checks for leak and verifies that there is a watertight seal at the meter fittings • Technician mounts pit receptacle to meter pit lid • Technician programs MIU with Supplier's authorized equipment as supplied by IRC and enters the data into the electric format and paper work order • Technician cleans work area and takes the post installation digital photo showing mounted antennae and secure meter box lid • Technician completes meter change work order indicating the following: customer account number, read sequence, install date, meter size & type, new meter serial number, new MIU serial number, reading on old meter. Technician purges the water lines from the outside hose spigot (if available). • Technician informs the customer of the successful installation. In the event the customer was not home during the installation a Flush the Water line notice will be left at the property. • National Staff will be equipped with the meter reading unit for the selected products. • National will acquire the appropriate units for technicians to test read 		

Activity	Tasks		National Deliverables
	National	IRC	
	<ul style="list-style-type: none"> the RF unit after installation. A photo of the positive reading will be taken and appended to the account information with the installation sequenced photos Update MDM with installation information, photos and notes within one workday 		
4.2.4 Post Installation	<ul style="list-style-type: none"> Address any leaks reported as a result of meter replacement within one hour from time the call is received. National Technicians will remove all refuse created by the installation process 	<ul style="list-style-type: none"> Resolve Non-Accessible meters after National has satisfied the attempts as described in the accessible meter and non-accessible meter definitions in Exhibit 5 	<ul style="list-style-type: none"> N/A
4.2.5 Non-Accessible/RTO meters	<ul style="list-style-type: none"> National will inform IRC of RTO accounts per IRC requirements and Non-accessible meter definition 	<ul style="list-style-type: none"> IRC to assist National in gaining access to meters that are located inside locked fences, inaccessible, etc. Address non-accessible accounts 	<ul style="list-style-type: none"> N/A

5. CUSTOMER COMMUNICATIONS

5.1 Description

This Section describes the work to be performed to inform customers of installations, address questions and route concerns to appropriate IRC parties.

National will notify all customers of planned installations, schedule installations with businesses, and difficult to access areas, handle customer calls, and provide 24/7 customer care. Prior to beginning installation operations, National will direct mail customers in the selected area of operation at least 1 week prior and no more than 3 weeks prior to commencement of installation services. The mailer will be approved by the IRC prior to being issued, and will detail the installation service, what to expect, and advise customers who may need an appointment to give access to their property or meter with toll free phone number and National internet page where they can schedule an appointment. This mailer must clearly explain that any questions or concerns regarding the installation shall be directed to National at (phone or e-mail) and not IRC.

5.2 Customer Communications Roles and Responsibilities Matrix

Below is the Customer Communication roles and responsibilities matrix.

The following project roles and responsibilities descriptions establish base level requirements. National will participate in joint planning sessions with IRC to further refine roles and responsibilities as part of project kickoff and detailed planning. National will comply with all IRC policies and procedures. IRC reserves the right to review and approve all final project roles and responsibilities, designs and project plans.

Activity	Tasks		National Deliverables
	National	IRC	
5.2.1 Public Information Campaign	<ul style="list-style-type: none"> • Prepare door hangers. See Exhibit 4 • Mail notices as National moves into new areas (at least one week and no more than 3 weeks prior) See Exhibit 3 • NMS website will show examples of uniforms, vehicles etc. 	<ul style="list-style-type: none"> • Inform customers of project • Provide customer information at least 5 weeks before NMS is scheduled to be in an area • Review and approve mailing before it is released. • Review and approve door hangers 	<ul style="list-style-type: none"> • Postcard • Door hangers
5.2.2 Customer Contact	<ul style="list-style-type: none"> • Prepare CSR project fact sheet and scripts • Provide 50 inbound phone lines to handle customer calls • Provide 24/7 call center operations • Log all customer calls in MDM • Provide E-appointment's function to customers. • Add notes for all customer interaction in MDM 	<ul style="list-style-type: none"> • Review and approve CSR fact sheet and scripts 	<ul style="list-style-type: none"> • CSR Fact Sheet and scripts
5.2.3 Installation Scheduling	<ul style="list-style-type: none"> • Provide scheduling of installations to customers as needed through e-appointment or call center • Send reminder text/phone call day before appointment • Provide IRC with list of scheduling problems 	<ul style="list-style-type: none"> • Review Installation Schedule • Work with National to resolve scheduling problems 	

6. MDM PORTAL

6.1 Description

This Section describes the work to be performed to provide IRC access to National's MDM Portal.

With the customer account information provided by IRC, National will create a new customer database, and generate workorders. Customer data is cleansed and processed into National's custom SQL Based Data Management Program – Basic Accounting Billing utility (BABU). Once integrated into BABU, National IT staff create workorders, mailing list, customer notices and the

meter installation database. National also utilizes the power of the BABU System to track inventory by size, type, application, new meter test data and stock quantiles. This data is sent to National by the meter manufacture (Master Meter) once meters are shipped from the factory. National creates a format where the information is printed in both analog characters and in barcode on the work order. All new meter information is scanned into the database for the appropriate account. Data is posted “live” as entered into the Customer Portal. Once in the Customer Portal it can be reviewed individually as needed by IRC or downloaded in batches into IRC’s billing program software.

National’s IT department will provide Help Desk services to IRC staff with regard to the functionality and accessibility to the MDM Portal and the customer data and installation data contained therein.

6.2 MDM Portal Roles and Responsibilities Matrix

Below is the MDM Portal roles and responsibilities matrix.

The following project roles and responsibilities descriptions establish base level requirements. National will participate in joint planning sessions with IRC to further refine roles and responsibilities as part of project kickoff and detailed planning. National will comply with all IRC policies and procedures. IRC reserves the right to review and approve all final project roles and responsibilities, designs and project plans.

Activity	Tasks		National Deliverables
	National	IRC	
6.2.1 Installation	<ul style="list-style-type: none"> • Create usernames and passwords for IRC staff • Create MDM Portal using IRC customer data • Ensure accurate import of all IRC provided data • Ensure accuracy of all new meter installation information and customer interaction notes • Correct information inaccuracies 	<ul style="list-style-type: none"> • Provide information for MDM users • Provide customer account and meter data • Notify NMS of data inaccuracies 	
6.2.2 Functionality	<ul style="list-style-type: none"> • Track inventory by size, type, application, test data, and stock quantities. • For each meter location the MDM will capture: <ul style="list-style-type: none"> ○ Address ○ GPS coordinates at meter ○ Install date ○ Meter size ○ Previous meter reading on meter to be removed 	<ul style="list-style-type: none"> • N/A 	<ul style="list-style-type: none"> • MDM

Activity	Tasks		National Deliverables
	National	IRC	
	<ul style="list-style-type: none"> • The MDM will allow IRC to: <ul style="list-style-type: none"> ○ Monitor daily productivity ○ Review installation photos ○ Confirm out reads ○ Confirm site conditions ○ Confirm unit was reading at time of installation ○ See appointment schedule ○ See RTO or reported issues detail ○ See and be informed of Tamper evidence ○ See and monitor all notes around customer interaction ○ Review open routes or remaining to do in routes for closure ○ Pull quantities installed by size/route or however needed ○ Monitor installation rates by day/week/month ○ Forecast material purchases ○ Confirm invoice quantities • Email electronic copies of database to IRC daily • Provide import / export files in format compatible with IRC's Harris Advanced Utility Systems, CIS Infinity v 3.1.23b • Maintain compatibility for Internet Explorer and Chrome browsers 		
6.2.3 Training and Support	<ul style="list-style-type: none"> • Provide onsite training for all IRC users • Provide users manual for IRC staff • Provide help desk support during business hours (8am – 5pm EST M-F) • Promptly (within 24 hours) address any data upload or accuracy issues identified 	<ul style="list-style-type: none"> • Identify IRC users 	

Activity	Tasks		National Deliverables
	National	IRC	
6.2.4 Disaster recovery	<ul style="list-style-type: none"> NMS utilizes the services of Iron Mountain. All of NMS's servers are co-located at their facility. All data and backups are maintained by Iron Mountain NMS will restore systems and data, and return to operation within 24 hours of a Disaster Event 	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> Disaster Recovery Plan

7. SOFTWARE, TOOLS, AND METHODOLOGIES

The following are the software, tools, and methodologies National will employ during the delivery of the Services:

- MDM - Basic Accounting Billing utility (BABU)
- EAppointment
- NMSNJ.com

8. DEPLOYMENT SCHEDULE

This Section sets forth certain milestone dates and other information with respect to National's deployment of the AMR Solution in accordance with the terms of the Contract.

Activity	Milestone Date
Project Start Date	County Notice to Proceed (NTP)
IRC send to NMS customer list and information	NTP +1 day
IRC order first 6000 meters, associated parts and pieces	NTP +1 day
Kickoff mtg – establish detail schedule	NTP +7 days
NMS reviews data	NTP +30 days
MDM Training	NTP +55 days
MDM Activated	NTP +45 days
Draft Deployment Plan Delivered	NTP +45 days
Preconstruction mtg	NTP +50 days
First delivery of 3000 Meters	NTP +70 days
Commence Meter deployment	NTP +77 days
Second delivery of 3000 Meters	NTP +100 days

EXHIBIT 2 - CHARGES AND PERFORMANCE

SERVICE PRICING

Following is a list of possible services to be provided under this contract. All quantities are estimates. Invoices submitted for payment will be accompanied by a spreadsheet of the completed work covered by such invoice.

Item Description	Estimated Quantity	Unit Price	Estimated Price
Install 5/8 x 3/4 inch meter with check valve	33,500	\$58.00	\$1,943,000.00
Install 1" meter with check valve	860	\$65.00	\$55,900.00
Install 1 1/2 " meter with check valve	0	\$145.00	\$0.00
Install 2" meter with check valve	270	\$160.00	\$43,200.00
Install 5/8 x 3/4 inch meter	50	\$26.00	\$1,300.00
Install 1" meter	40	\$26.00	\$1,040.00
Install 1 1/2 " meter	0	\$88.00	\$0.00
Install 2" meter	0	\$105.00	\$0.00
Install 3" meter	7	\$325.00	\$2,275.00
Install 4" meter	15	\$400.00	\$6,000.00
Install 6" meter	1	\$550.00	\$550.00
Install 8" meter	1	\$1,350.00	\$1,350.00
Replace 4G register only****	2,000	\$19.00	\$38,000.00
Replace residential check valve*	2,000	\$33.00	\$66,000.00
Replace meter pit lid - 10" x 15" x 2"	100	\$1.00	\$100.00
Replace meter pit lid - 11" x 18" x 2"	20,000	\$1.00	\$20,000.00
Replace meter pit lid - 13" x 24" x 2"	50	\$5.00	\$250.00
Replace meter pit lid - 17" x 30" x 2"	150	\$15.00	\$2,250.00
Replace meter pit lid - 30" x 48" Bolt down	2	\$42.00	\$84.00
Replace box 10" x 15"	90	\$10.00	\$900.00
Replace box 11" x 18"	20,000	\$12.00	\$240,000.00
Replace box 13" x 24"	50	\$18.00	\$900.00
Replace box 17" x 30"	150	\$18.00	\$2,700.00
Install 6" riser (resetter) with new meter**	1,000	\$7.50	\$7,500.00
Install 12" riser (resetter) with new meter**	1,000	\$10.00	\$10,000.00
GPS coordinates of each meter box – includes data capture, equipment, labor, transportation and digital photo	36,744	\$9.70	\$356,416.80
MDM Software – Initial upload	36,744	\$3.25	\$119,418.00

		Subtotal	\$2,919,133.80
Meter Testing			
5/8" x 3/4"	33,550	\$2.50	\$83,875.00
1"	750	\$4.50	\$3,375.00
1 1/2"	150	\$17.50	\$2,625.00
2"	270	\$17.50	\$4,725.00
3"	7	\$275.00	\$1,925.00
4"	15	\$275.00	\$4,125.00
6"	1	\$275.00	\$275.00
8"	1	\$275.00	\$275.00
		Subtotal	\$101,200.00
Meter Recycling			
5/8" x 3/4"	33,550	\$(3.50)	\$(117,425.00)
1"	750	\$(5.50)	\$(4,125.00)
1 1/2"	150	\$(12.50)	\$(1,875.00)
2"	270	\$(12.50)	\$(3,375.00)
3"	7	\$(50.00)	\$(350.00)
4"	15	\$(60.00)	\$(900.00)
6"	1	\$(70.00)	\$(70.00)
8"	1	\$(80.00)	\$(80.00)
Credit for Recycling		Subtotal	\$(128,200.00)
Optional Additional Services			
Meter Seals (NMS Seals, sequentially numbered)		\$1.27	\$0.00
Meter Seals (IRC Seal, sequential numbering)		\$1.62	\$0.00
1/8" thick, 48" Bypass Cable Seals (sequentially numbered)		\$15.42	\$0.00
Downsize 1" meter to 5/8", includes parts & labor	710	\$60.00	\$42,600.00
Downsize 2" meter to 1", includes parts & labor	250	\$350.00	\$87,500.00
Downsize 2" meter to 5/8", includes parts & labor	50	\$350.00	\$17,500.00
Downsize 1 1/2" meter to 5/8", includes parts & labor	75	\$350.00	\$26,250.00

Downsize 1 ½" meter to 1", includes parts & labor	50	200.00	\$10,000.00
Downsize 3" meter to 2", includes parts & labor	0	\$620.00	\$0.00
Downsize 4" meter to 2", includes parts & labor	0	\$725.00	\$0.00
Upsize 1 ½" meter to 2", plus meter install	25	\$300.00	\$7,500.00
MDM Annual Hosting (Starts 6 months after Project Completion)	0	\$2.00	\$0.00
MDM Data Modification per Unit	0	\$1.50	\$0.00
		Subtotal	\$191,350.00
		Total	\$3,083,483.80

WARRANTEE

All installation work performed under this contract will be guaranteed for a period of one year from the date of installation for defects in workmanship and will be repaired at the expense of National. Leaks reported within thirty days from date of installation, **five feet before or five feet after** the meter will be repaired by the contractor at no additional expense to the County or its customers within four hours after notification. Leaks reported after 30 days will be repaired at no additional expense to the County or its customers if determined to be the result of defect in workmanship within six hours after notification. Warranty is limited to National as stated. National is not responsible for failed or non-working units. Units installed that do not show any consumption – stuck or zero read will be replaced at no additional charge to the utility and the meter returned to manufacturer for warranty. Meters tested and read with photo proof unit was transmitting at time of install are covered by manufacturer warranty and not National. Additional installation/labor fees may apply.

PERFORMANCE CRITERIA

Performance Criteria	Measurement	Corrective action
Meter Installation Failure Rate	Number of installations that must be revisited by National crews after installation	≥4 in a month – National must provide quality assurance inspections by Project Supervisor of each installation for three weeks or until rate improves
Attendance to Project Management mtgs	Project Coordinator and/or Project Supervisor or alternate attend all scheduled PM calls with IRC PM	Escalation to executive leadership with leadership attendance in subsequent meetings

Deployment Plan Completion	Completion of meter installations within the Deployment Plan within 24 months of NTP	Execution of Liquidated Damage as stated in Section 20.06
Citizen Complaints	Complaints relating to NMS field crew behavior/conduct and/or workmanship Complaints to be discussed/validated in PM mtg and agreed by both parties	≥2 validated complaints in a week or more that 6 in 4 consecutive weeks - IRC has the right to have National replace resources

EXHIBIT 3 – CUSTOMER NOTIFICATION POSTCARD

National Metering Services, Inc.
P.O. BOX 491
Kearny, NJ 07032



FIRST-CLASS MAIL
U.S. POSTAGE
PAID
PERMIT NO. 7203
NEWARK, NJ

NOTICE

REF # 10000

Acct # : 0019394
JOHN SMITH
200 Main Street
Sands Point NY 11050

(Your Town) - Regarding Your Water Meter

National Metering Services, Inc. Contractors for (Your Town)

The "Your Town", has contracted National Metering Services, Inc. to replace water meters throughout the City beginning September 2018. The new meters being installed will be read automatically using radio transmitters attached to the water meters. All water meters are located outside of your home or place of business in a meter box by the curb or in an easement. Access to home or place of business will not be required. The installation process takes about 20 min to complete during which water service interruption will occur. Customers are asked to secure loose pets on property and make sure the meter area is clear for the safety of our meter installers. All installers are required to have I.D. displayed at all times and to be in uniform. Additionally, installers have had background checks completed by the State Police prior to employment. If no one is home or your place of business is closed, you will receive a notice on your door stating that your meter was upgraded.

Thank you for your cooperation

For additional information, please call:
1-888-448-0009
Or visit us at: www.nmsnj.com

EXHIBIT 4 – CUSTOMER NOTIFICATION DOOR HANGERS

ATTENTION

The Contractor For
The Water Department
National Metering Services, Inc.
replaced your water meter today

____ / ____ / 20

The water may be discolored.
This is a result of the water being turned off at the main.

Please flush your water system by turning on your faucets and letting the water run for 1 minute or until it runs clear.

If you have any questions or require further assistance please call
1-888-448-0009

Office Hours:
9:00 AM - 5:00 PM

Thank you
National Metering Services, Inc.
www.nmsnj.com

ATENCIÓN

El Contrista para el
Departamento de Agua,
National Metering Services, Inc.
remplazó su medidor de agua el día de hoy

____ / ____ / 20

El agua puede estar turbia.
Este es el resultado que la tubería principal fue cerrada. Por favor limpie su sistema de agua abriendo las llaves del agua y dejandola correr por un minuto o hasta que corra claramente.

Si tiene preguntas o necesita mas informacion, por favor llame al
1-888-448-0009

De lunes a viernes entra las:
9:00 AM - 5:00 PM

Gracias
National Metering Services, Inc.
www.nmsnj.com

EXHIBIT 5 - DEFINITIONS

“Accessible Meter” means any IRC water Meter: (i) not obstructed or blocked in a manner that prohibits reasonable access; (ii) the condition of which does not make installation of the meter impractical in terms of time, expense or safety; (iii) with respect to which National has access to the premises and the IRC water meter; (iv) where IRC has provided National with accurate and up-to-date customer contact information and/or physical access keys; and (v) where National’s field crew does not encounter an Unsafe Condition or situation where the IRC meter has been tampered with. Without limiting the foregoing, an IRC Meter is not an Accessible Meter if National contacts the occupant on three (3) occasions (two (2) physical (door knock, etc.) and one (1) phone attempt) as required hereunder and is unable to install a meter or schedule an appointment for meter installation where access to the IRC Meter is not available without the cooperation of the occupant or owner of the premises. National will notify IRC when Meters are not Accessible and provide a reason or description for inaccessibility by end of the business day on which the meter was scheduled to be replaced.

“Affiliates” shall mean, with respect to any entity, any other entity Controlling, Controlled by or under common Control with such entity.

“Agreement” shall have the meaning specified in the Preamble.

“AMR Meter” shall mean a Master Meter water meter capable of automatically collecting customer consumption information and wirelessly transferring that data to a central database.

“AMR System” shall mean the technology of automatically collecting consumption information from an AMR meter and wirelessly transmitting the data to the MDM and then to the billing system.

“Change Control Procedures” shall mean the change control procedures applicable to any Changes to this Agreement as set forth in Section 17.03.

“Change in Control” shall mean the (1) consolidation or merger of a Party with or into any entity, (2) sale, transfer or other disposition of all or substantially all of the assets of a Party or (3) acquisition by any entity, or group of entities acting in concert, of beneficial ownership of 20 percent or more of the outstanding voting securities or partnership interests of a Party.

“Change Order” shall mean a document issued by IRC for Changes to this Agreement as set forth in Section 17.03.

“Change(s)” shall mean any change to (1) the Services, (2) the Equipment, Software or National Processes used to provide the Services that would materially alter the functionality, performance standards or technical environment of such Equipment or Software, (3) the manner in which the Services are provided, (4) the composition of the Services or (5) the cost to IRC of the Services.

“Charges” shall mean all of the compensation payable to National with respect to the Services, as set forth in Exhibit 2.

“Claim” shall mean any civil, criminal, administrative or investigative action or proceeding against a Party.

“Compliance Requirements” shall mean the requirements of the Securities and Exchange Commission Act of 1934 and all amendments thereto, including the Sarbanes-Oxley Act of 2002, and any similar, future Securities and Exchange Commission requirements, and any requirements and rules pertaining thereto established by Law, including requirements imposed by auditing standards or reporting requirements promulgated by the American Institute of Certified Public Accountants, the Public Company Accounting Oversight Board or the Securities and Exchange Commission.

“Computing Systems” shall have the meaning set forth in Section 8.03(1).

“Confidential Information” of IRC or National shall mean all information and documentation of IRC and National, respectively, whether disclosed to or accessed by IRC or National in connection with this Agreement, including (1) with respect to IRC all IRC Data and all information of IRC or its customers, suppliers, contractors and other third parties doing business with IRC, including any such information of IRC that is not permitted to be disclosed to third parties under local laws or regulations, (2) with respect to IRC and National, the terms of this Agreement and (3) any information developed by reference to IRC’s or National’s information.

“Consents” shall mean all licenses, consents, authorizations and approvals that are necessary to allow National and National Agents to use (a) IRC’s owned and leased assets, (b) the services provided for the benefit of IRC under IRC’s third- party services contracts, (c) the IRC Software, (d) any National Software and Tools, (e) any assets owned or leased by National and (f) any third-party services retained by National to provide the Services during the Term and the Termination Assistance Period. All Consents shall be in writing.

“Contract Year” shall mean each 12-month period commencing on the Effective Date and thereafter upon the completion of the immediately preceding Contract Year.

“Control” and its derivatives, shall mean, with regard to any entity, the legal, beneficial or equitable ownership, directly or indirectly, of 50 percent or more of the capital stock (or other ownership interest, if not a corporation) of such entity ordinarily having voting rights, or effective control of the activities of such entity regardless of the percentage of ownership.

“Data Safeguards” shall have the meaning set forth in Section 18.02.

“Deployment” shall have the meaning given in Section 5.01.

“Deployment Plan” shall have the meaning given in Section 5.01.

“Deployment Schedule” shall mean the project schedule of activities as initiated in Exhibit 1 Section 8 and to be completed and included in the Deployment Plan.

“Designated National Service Location(s)” shall mean any National service location set forth in Exhibit 1

“Disaster” shall mean an unanticipated incident or event, including Force Majeure Events, technological accidents, or human-caused events, that may cause a material service, critical application, manufacturing capability or capacity, or communications network to be unavailable without any reasonable prediction for resumption, or that causes data loss, property damage or other business interruption without any reasonable prediction for recovery, within such period as determined by IRC, in its sole discretion.

“Dispute” shall mean any disagreement, argument or difference of opinion between (1) any of National and or of its respective Affiliates (collectively, the “National Parties”) on one hand and (2) IRC and any of its respective Affiliates (collectively, the “IRC Parties”) on the other hand as to (a) any matter, whether deemed material or not, directly or indirectly concerning or related to this Agreement, the Purchase Order or any Change Order (whether proposed, pending, or previously agreed to) or (b) any other matter that arises between or as to any of the National Parties and any of the IRC Parties at any time.

“Dispute Notice” shall have the meaning set forth in Section 25.02(1).

“Documents” shall have the mean any literary works or other works of authorship created under this Agreement, including deployment and installation plans, reports, training materials, data, documentation and information, in whatever form, produced or created by National for IRC in connection with the Services

“DRP” shall have the meaning set forth in Section 19.02(1).

“Effective Date” shall have the meaning set forth in the Preamble.

“Equipment” shall mean deployment and installation tools, work management tools, data storage and management tools (including handheld devices), inventory tools for bar-coding and Radio-frequency Identification (RFID), vehicles, computers and related equipment, including processors, controllers, storage devices, networks, modems, routers, communications and telecommunications equipment (voice, data and video), cables, printers, terminals, other peripherals and input and output devices, transmitters and receivers, automated work order systems, test boards and other tangible mechanical and electronic equipment intended for the processing, input, output, storage, manipulation, communication, transmission, testing and retrieval of information and data.

“FCC Rules and Regulations” shall have the meaning set forth in Section 23.02(8).

“Force Majeure Event” shall have the meaning set forth in Section 19.01.

“Governmental Approval” shall mean any license, consent, permit, approval or authorization of any person or entity, or any notice to any person or entity, the granting of which is required by applicable law, rule or regulation during the Term for the consummation of the transactions contemplated by this Agreement. Governmental Approvals include Board Approvals.

“In-source” shall have the meaning set forth in Section 4.04.

“Initial Agreement Expiration Date” shall have the meaning set forth in Section 3.01.

“Interest” shall mean the commercial paper non-financial interest rate for the one-month commercial paper published in the then-current month’s issue of the Federal Reserve Statistical Release G.13 (selected interest rates) at the applicable time.

“IRC Agents” shall mean the agents, contractors and representatives of IRC, other than National and National Agents.

“IRC Assets” shall mean all IRC assets, including the IRC Service Locations, all IRC Software and Equipment, the IRC Data, the AMR Meters and any rights and easements of IRC to access the AMR Meters.

“IRC Data” shall mean all data and information of IRC or its customers, suppliers, contractors and other third parties doing business with IRC that is (1) submitted to National or National Agents by IRC or such customers, suppliers, Nationals or other parties in connection with this Agreement, including IRC PII, (2) submitted to IRC by National or National Agents in respect of the Services or (3) obtained, developed or produced by National or National Agents in connection with this Agreement, including, information relating to IRC’s customers, employees, technology, meters, operations, facilities, consumer markets, products, capacities, systems, procedures, security practices, research, development, business affairs and finances, ideas, concepts, innovations, inventions, designs, business methodologies, improvements, trade secrets, copyrightable subject matter, patents and other intellectual property and proprietary information. IRC Data shall not include statistical data solely in respect of National’s actual performance against the Service Levels under this Agreement presented in a manner that does not disclose any Confidential Information of IRC or from which Confidential Information of IRC can be derived.

“IRC PII” shall mean all personally identifiable information of IRC’s or its Affiliates’ employees or customers provided to or acquired by National in connection with the Services.

“IRC Project Manager” shall have the meaning set forth in Section 11.01.

“IRC Proprietary Software” shall mean the Software and Related Documentation owned, acquired or developed by IRC (1) prior to the Effective Date and to which access by National is required in order for National to provide the Services, and (2) after the Effective Date and to which access by National is required in order for National to provide the Services.

“IRC Service Location(s)” shall mean any IRC facilities or service locations.

“IRC Software” shall mean the IRC Proprietary Software and the IRC Third-Party Software.

“IRC Third-Party Software” shall mean the Software and Related Documentation that is licensed or leased by IRC from a third-party (1) prior to the Effective Date and to which access by National is required in order for National to provide the Services, and (2) after the Effective Date and to which access by National is required in order for National to provide the Services.

“IRC’s Regulatory Requirements” shall mean the laws, rules and regulations on an international, Federal, state and local level to which IRC is required to submit or voluntarily submits from time to time.

“IRC” shall have the meaning set forth in the Preamble.

“Key National Position” shall have the meaning set forth in Section 13.02.

“Key Personnel” means those persons to be used by National in performance of the Services as identified in this Deployment Services SOW. In addition to any person identified by name, all persons filling positions identified as "Key Personnel" members in Exhibit 1 shall be deemed Key Personnel.

“Law” shall mean all federal, state, and local laws, statutes, ordinances, regulations, rules, executive orders, supervisory requirements, directives, circulars, opinions, interpretive letters and other official releases of or by any government, or any authority, department or agency thereof, or any regulatory or administrative entity, including the PUC Regulatory Requirements and the FCC Rules and Regulations.

“Milestone” shall mean that date upon which a Documents, deliverable or significant activity is to be completed.

“Monthly Service Level Report” shall have the meaning set forth in Section 9.05.

“National Agents” shall mean the agents, subcontractors and representatives of National.

“National Data Connection” shall have the meaning set forth in Section 12.03.

“National Equipment” shall mean the Equipment rented, leased or owned by National and National Agents that is used by National and National Agents to provide the Services.

“National Personnel” shall mean employees of National and National Agents who provide the Services.

“National Processes” shall mean the processes and Related Documentation owned or developed by or on behalf of National that are used in connection with the Services.

“National Project Coordinator” shall have the meaning set forth in Section 13.01.

“National Proprietary Software” shall mean the Software and Related Documentation owned or developed by or on behalf of National that is used in connection with the Services.

“National Software” shall mean the National Proprietary Software and the National Third-Party Software, collectively.

“National Third-Party Software” shall mean the Software and Related Documentation licensed or leased by National from a third-party that is used (1) in connection with the Services or (2) with any National Proprietary Software.

“National” shall have the meaning set forth in the Preamble.

“Non-accessible Meter” means any meter that has imminent failure of plumbing, rotted pipes, preexisting leaks or plumbing that is not conforming to local plumbing code, meters that are hard piped (no couplings), customer refusal of service or customer refusal of RF Integrated equipment being installed, appointments that require access to secure or locked areas and customer does not make arrangements, hazardous materials in meter box or on piping IE Asbestos lined pipes, and when National has made attempts multiple attempts to access meter as defined in “Accessible Meter”.

“On-Site Repairs” shall mean any repairs required after installation resulting from improper installation or oversight on the installation crew

“Out-of-Pocket Expenses” shall mean reasonable, demonstrable and actual out-of-pocket expenses incurred by National for Equipment, materials, supplies or services provided to or for IRC as identified in this Agreement, but not including National’s overhead costs (or allocations thereof), internal administrative expenses or other mark-ups.

“Out-of-Scope Service(s)” shall mean any service that is outside the Scope of the Services.

“Parties” shall have the meaning set forth in the Preamble.

“Party” shall have the meaning set forth in the Preamble.

“Pass-Through Expenses” shall mean third-party charges that are paid by National and for which National is reimbursed. Pass-Through Expenses exclude National’s overhead costs (or allocations thereof), internal administrative expenses or other markups.

“Preamble” shall mean the first paragraph of this Agreement.

“Privacy Laws” shall have the meaning set forth in Section 18.03.

“Prohibited Items” shall have the meaning set forth in Section 8.04(3).

“Re-source” shall have the meaning set forth in Section 4.04.

“Rejected Meters” shall mean non-working or meters failing testing criteria

“Related Documentation” shall mean, with respect to National Processes, Software, Tools and AMR Modules, all materials, documentation, specifications, technical manuals, user manuals, flow diagrams, file descriptions and other written information that describes the function and use of such National Processes, Software, Tools or AMR Modules, as applicable.

“Replaced Meters” shall mean the as found meter prior to National’s installation of the AMR meter as outlined in Services

“Return to Owner” means a non-Accessible Meter for which responsibility for installation has been transferred from National to IRC as provided Exhibit 1.

“Route” shall mean a group of AMR Meters in the IRC territory identified in the Deployment Plan as a “Route”.

“Service Level Default” shall mean the failure of National to meet a Service Level.

“Service Level” shall mean the quantitative performance standards for the Services set forth in Exhibit 5.

“Service Location(s)” shall mean any IRC Service Location or Designated National Service Location, as applicable.

“Services” shall have the meaning set forth in Section 4.01.

“Software” shall mean the source code and object code versions of any applications programs, operating system software, computer software languages, utilities, other computer programs and Related Documentation, in whatever form or media, including the tangible media upon which such applications programs, operating system software, computer software languages, utilities, other computer programs and Related Documentation are recorded or printed, together with all corrections, improvements, updates and releases thereof.

“Statement of Work” shall mean the description of activities, tasks, responsibilities and duties of National set forth in Exhibit 1.

“Systems” shall mean any Equipment or Software comprising a Party’s computing system, and includes the IRC Computing Systems.

“Term” shall mean the Term of the project as set forth in Section 3.01.

“Termination Assistance Period” shall mean a period of time designated by IRC commencing on the date a determination is made that there will be an expiration or termination of this Agreement and continuing for up to 12 months after the expiration or termination of this Agreement, during which National shall provide the Termination Assistance Services.

“Termination Assistance Services” shall mean (1) the Services (and any replacements thereof or substitutions therefor), to the extent IRC requests such Services during the Termination Assistance Period, (2) National’s cooperation with IRC or another service provider designated by IRC in the transfer of the Services to IRC or such other service provider in order to facilitate the transfer of the Services to IRC or such other service provider and (3) any Out-of-Scope Services requested by IRC in order to facilitate the transfer of the Services to IRC or another service provider designated by IRC.

“Third-Party Providers” shall mean any parties other than National and IRC that are providing services and equipment in connection with Exhibit 1.

“Tools” shall mean any Software development and performance testing tools, know-how, methodologies, processes, technologies or algorithms and Related Documentation used by National in providing the Services and based upon trade secrets or proprietary information of National or otherwise owned or licensed by National.

“Use” shall mean the right to use, load, execute, store, transmit, display, distribute, copy, maintain, modify, enhance and create derivative works.

“WMDVBE” shall mean a certified Women Minority Disabled Veteran Business Enterprise.