



## INCORPORATED COUNTY OF LOS ALAMOS SERVICES AGREEMENT

This **SERVICES AGREEMENT** ("Agreement"), effective as of January 31, 2018 (the "Effective Date") is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("County"), and **Anixter Inc.**, a Delaware corporation ("Contractor"), authorized to do business in the State of New Mexico, referred to herein each as "Party" or collectively as "Parties."

**WHEREAS**, the County Purchasing Agent determined in writing that the use of competitive sealed bidding was either not practical or not advantageous to County for procurement of the Services and County issued Request for Proposals No. 17-32 ("RFP") on January 25, 2017, requesting proposals for Advanced Metering Infrastructure ("AMI"), as described in the RFP; and

**WHEREAS**, Contractor timely responded to the RFP by submitting a response dated March 14, 2017 ("Contractor's Response"); and

**WHEREAS**, based on the evaluation factors set out in the RFP, Contractor was the successful Offeror for the services listed in the RFP; and

**WHEREAS**, the Board of Public Utilities approved this Agreement at a public meeting held on January 17, 2018; and

**WHEREAS**, the County Council approved this Agreement at a public meeting held on January 30, 2018; and

**WHEREAS**, Contractor shall provide the Services, as described below, to County.

**NOW, THEREFORE**, for and in consideration of the premises and the covenants contained herein, County and Contractor agree as follows:

### **SECTION A. SERVICES:**

1. **Purpose.** The purpose of this Agreement between the Parties is for Contractor to procure, deliver install and make functional in accordance with the requirements set forth herein (collectively, the "Services") the public utility metering parts, supplies, equipment ("AMI Equipment") and Software (as defined herein) necessary to allow County to remotely monitor and collect County utility customer billing information for gas, water and electric services through the use of the AMI Equipment ("Project"). The combination of AMI Equipment, Software and Services that will be acquired hereunder by County from Contractor and any required third parties shall collectively be referred to as the "System." The Project is to automate the reading of gas, water, and electric meters throughout the utility system pursuant to the parameters provided in the RFP and as proposed and accepted by County in the Contractor's proposal ("Proposal"). The Project is divided into several key stages which begins with a Pilot Test installation and testing of Contractor's supplied parts and services. Once the pilot phase of the installation is completed, tested,

and approved by County, County shall then issue to Contractor, authorization to proceed with installation of the remaining metering parts, supplies and installation services. The specific Project related deliverables, schedules, deadlines, and mutual responsibilities of the Parties are more fully provided below. **IT IS SPECIFICALLY UNDERSTOOD AND AGREED BY THE PARTIES THAT THIS IS A PERFORMANCE AGREEMENT AND THAT CONTRACTOR OR ITS SUPPLIER SHALL BE RESPONSIBLE FOR ANY AND ALL SERVICES, SOFTWARE, SUPPORT, AND EQUIPMENT NECESSARY TO DELIVER TO COUNTY A FULLY FUNCTIONAL AND OPERATIONAL ADVANCED METERING INFRASTRUCTURE (“AMI”) PROJECT, SUBJECT TO ONLY THE EXPRESSED LIMITATIONS IDENTIFIED IN CONTRACTOR’S PROPOSAL, INCORPORATED BY REFERENCE HERE, AND THIS AGREEMENT.** The Agreement and exhibits, where attached hereto or included by reference (“Contract Documents”) are complementary; what is required by one is as binding as if required by all. It is the intent of Agreement to describe a functionally complete project to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to County. Any required repairs or replacements of Meter Bases shall be the responsibility of County. Any electrical work required to energize Nexgrid network equipment (e.g. transformer, cable drop) shall be the responsibility of County. Any maintenance or repairs required of water and gas meters and pits/cans shall be the responsibility of County.

2. **Project Schedule and Implementation.** As provided in the Request for Proposal and Response to the Proposal by Contractor, both incorporated by reference herein, **Exhibit “A”** is the target schedule, order, and estimated general length of work to be performed (“Services”) by Contractor for the Project. The Project’s detailed listing of Services and AMI Equipment to be provided by Contractor to County pursuant to this Agreement, including the agreed upon costs for each of the AMI Equipment and Services, are attached hereto and included herein as **Exhibit “B.”** The respective controlling duties, obligations, and responsibilities of County and Contractor (“Responsibility Matrix”) is attached hereto as **Exhibit “C.”**
  - a. **Phase 1. Equipment Purchase, Installation, Pilot Test, and Full Implementation.** As provided in the RFP (including required operating and performance goals) and Contractor’s Proposal, included herein by reference, Contractor shall schedule a Project Kick-Off meeting onsite with County within thirty (30) days of the effective date of this Agreement, or as may be mutually agreed by the Parties. During the Kick-off meeting, Contractor shall, while onsite, provide to County Project staff a proposed Project schedule, including dates and activities, including delivery of any necessary Pilot/Phase 1, meters, relays, modules, etc. The proposed Project schedule shall be in general conformity to **Exhibit “A”** using the Services and AMI Equipment outlined in **Exhibit “B.”**
  - b. After receiving input from County staff, within thirty (30) days from the onsite meeting, or as may be agreed to in writing by the Contractor and County’s Project Manager, Contractor shall then deliver to County a final and detailed Project Implementation plan (“Project Plan”). Contractor shall only proceed with the Project Plan at the written authorization from the County’s designated Project Manager.

- c. The proposed and final approved Project Plan shall include all required County revisions and requirements of this Agreement, the RFP, and Contractor Proposal. The Project plan shall also include a map of the coverage area for the Project.
3. **Software Licensing & Support Services.** As part of the Project, Contractor's supplier, Nexgrid, LLC ("Nexgrid"), shall license to County the use of proprietary enterprise and end-user software ("Software") through a Software License Agreement and provide Software support and maintenance through a Professional Services and Support Agreement, both between Nexgrid and County. Attached hereto as **Exhibit "D"** is Contractor's agent ("Nexgrid") executed Software License Agreement ("Licensing Agreement"). Contractor further agrees and warrants that any Software it or its supplier provides, including network components, shall perform according to the RFP and Proposal. Contractor further agrees and warrants that:
- a. The Software fully meets the functionality requirements as provided in County's RFP and Contractor's Response.
  - b. Contractor shall directly bill County for the one-time License fee(s) and is responsible for remitting fees to Nexgrid or agent for the Software.
  - c. Contractor agrees that in case of a breach, dispute, or cancellation by and between Nexgrid and County of the License Agreement, Contractor shall within thirty (30) days of receiving written notice by County, provide a commercially available product of equal or same use and value to County for the remainder of the Term of the Agreement.
  - d. Any replacement software provided to County by Contractor shall meet the required RFP and Proposal parameters.
  - e. Contractor, in providing any replacement Software, shall provide at no cost to County, all costs in downloading, replacing, transferring, recoding, reformatting, or uploading any County data to the new Software.
  - f. Contractor specifically agrees that it shall fully indemnify County for any action arising from a dispute by and between Nexgrid and County, but such indemnity shall not cover any claim arising from County's breach of any copyright, license, or similar negligent act of and in the use of the Licensed Software.
4. **General Project Terms and Conditions.**
- a. **Metering and Modules.** Contractor, through its suppliers, shall provide all AMI Equipment ordered by County for automated meter reading, remote administration, and outage management of the gas, water, and electric systems in Los Alamos for Phase 1-Pilot. Phase 1-Pilot will require Contractor to install the Project AMI equipment and meters at a minimum of approximately 330 homes in the White Rock area as provided in the RFP, Section 3, Deployment Plan.
  - b. Contractor or its supplier, shall develop and make operational, EDS clusters, ecoOne and intelaHome provisioning, and ensure MultiSpeak/Data exchange is enabled and operational.
  - c. Contractor shall be responsible for the shipping, receiving, delivery and storage of the Project meters, modules, parts, and supplies during Phase 1 and Phase 2 of the Project. All new meters and equipment/AMI modules shall be warehoused, stored, and delivered at the sole costs and responsibility of Contractor. County shall provide limited "staging" and/or storage of delivered equipment as needed for immediate as needed within one

- (1) week deployment. Any County meters, parts, components, or system items removed or replaced as part of the Project by Contractor or their suppliers, employees, or subcontractors shall be returned to County for storage and final disposal at County's expense in accordance with State and local laws, policies, and regulations.
- d. Contractor shall be responsible for ensuring that any installation crew(s) are properly licensed for the Services being performed. Electric meter change outs will be according to the change out process described in the Proposal.
  - e. As provided in the Responsibility Matrix attached hereto as **Exhibit "C,"** County shall install the various network emitters, repeaters, and other network parts (*i.e.*, ecoNet gateways) on street lights where suitable mounts are available and shall install mounts and gateways at other County locations as determined necessary by Contractor to achieve coverage commitments specified in proposal. County understands and agrees, however, that Contractor's pricing is on an "all or none" basis and will not be reduced to account for any partial installation by County of such emitters, repeaters or other network parts. If during the course of the project additional quantities of network equipment installations are identified as required, said installations will be performed by County or by Anixter at commercially reasonable pricing to be negotiated at that time.
  - f. Contractor or its supplier shall provide onsite training to County staff on the installation, System maintenance and management, remote/real time operation, customer interface, and all System functionality described in Proposal and subsequent on-site demonstration.
  - g. Time for Performance.
    - i. Contractor shall use commercially reasonable efforts to perform the Services and complete the Project within the times set forth on **Exhibits "A"** and herein. County understands and agrees that the ability of Contractor to make such deliveries and provide such Service within such times is dependent upon the timely issuance of purchase orders by County (if required) and the timely performance of County's obligations hereunder, and County agrees that it shall use commercially reasonable efforts to cause County personnel to perform their respective obligations in a timely fashion and to reasonably cooperate with Contractor.
    - ii. Neither Party shall be liable to the other for failure or delay in performance of a required obligation if such failure or delay is caused by an act or omission of the other Party or a third party, or is due to acts or events within the reasonable control of that Party.
    - iii. Neither Party shall be liable to the other for failure or delay in performance of a required obligation if such failure or delay is caused by unavoidable delays in shipment, delivery or taking receipt of any items sold hereunder, including delays caused by Contractor's suppliers, or loss or damage thereto, acts of God, acts of the other Party, acts of civil, regulatory or military authority, U.S. Governmental restrictions or embargoes, war, terrorism, riot, fires, strikes, flood, epidemics, quarantine, restrictions, default or unavoidable delay by supplier, unavoidable delays in transportation or uncontrollable difficulties in obtaining necessary materials, labor or manufacturing facilities due to such causes, or any other cause beyond a Party's reasonable control. In the event of such occurrence, performance shall be suspended to the extent made necessary by such forces, and the time for performance shall be extended by a period equal to the time of delay. Upon the occurrence of such an event the Party whose performance is adversely affected shall promptly notify the other Party

of the nature and extent of the occurrence and the anticipated period of delay in performance.

- h. **RIGHT TO USE SYSTEM NOT YET ACCEPTED:** During the testing period, County shall have the right to use System that has been installed even if not yet accepted by County. Use of the System shall not result in any waiver of any County rights under this Agreement. The use of the System is primarily conducted as a System Acceptance Test ("SAT") prior to the Final System Acceptance. If the System is in productive use for more than nine (9) months, it shall be deemed accepted.
- i. **RIGHT TO USE ACCEPTED SYSTEM:** County shall have the right to use, modify, and adapt the System in any manner it desires as long as it is in accordance with the terms and conditions of this Agreement or the supplier's software license agreement.
- j. **INSTALLATION AND PRODUCT WARRANTIES:**
  - i. **Warranty for Nexgrid Products.** The warranty for any purchased Nexgrid devices, equipment, or products in performance of this Agreement shall be in accordance with the terms and conditions of the Nexgrid Warranty attached hereto as **Exhibit E-1**. The warranty for any Aclara meters purchased in performance of this Agreement shall be in accordance with **Exhibit E-2**.
  - ii. **Contractor Installation Services.** With respect to Services to be performed by Anixter under this Agreement, Anixter warrants that the Services shall be performed in a professional, competent and workmanlike manner by Anixter Personnel appropriately qualified and trained to perform such Services. County acknowledges and agrees that, in performing the Services, Anixter will rely upon the accuracy and completeness of the information and data provided by County and that Anixter's performance is dependent on County's provision of complete and accurate information and data. County acknowledges and agrees that any work performed by County or directed to be performed by County outside of standard Anixter processes, County bears responsibility. County acknowledges and agrees that in the event it follows any suggestions, advice or recommendation, it does so at its own risk. County agrees that Anixter will not be liable for any damage or loss (including but not limited to, any obligation of Anixter arising from tort or strict product liability claims or for loss of use, revenue or profits, or consequential damages) suffered by County or any third party, directly or indirectly, due to any suggestion, advice, or recommendation provided by Anixter. In the event of a breach of the foregoing warranties relating to Services occurs within three (3) months from date service performed, Anixter shall, at its sole cost and expense and as County's sole and exclusive remedy, re-perform such Services. Notwithstanding the foregoing, Anixter shall charge County standard rates for all Services required as a result of defective Materials or other warranty claims against the manufacturer. Anixter excludes and disclaims all other express and implied warranties with respect to services.
  - iii. **Other Product and Equipment Warranties.** Contractor will assign and/or transfer to County, where applicable and allowed by law, any warranties for any products, equipment, or services it receives in the purchase of a product, service, or equipment related in the performance of this Agreement. Warranties related to the licensing and use of the Nexgrid software and Nexgrid's Professional Services and Support shall be in accordance with the terms and conditions of the agreements found in **Exhibit D**.

- iv. The warranties herein are exclusive and in lieu of, and Contractor disclaims and County waives, all other warranties of merchantability, fitness for a particular purpose and of any other type, whether express or implied, arising by law (statutory or otherwise). In the event disclaimer of warranty statements are disallowed in the governing jurisdiction, such express or implied warranties shall be limited in duration to the applicable warranty period (or the minimum period required by the applicable law).
  - v. Contractor warrants that the Services shall be performed and the System provided in a professional, competent and workmanlike manner by Contractor personnel appropriately qualified and trained to perform such Services in accordance with a standard that meets the industry standard of care for performance of the Services. Contractor warrants that the Services and the System shall comply with and have been produced, processed, delivered, and sold in conformity with all applicable federal, state, and local laws and administrative regulations and orders. The foregoing warranties shall survive inspection, testing, delivery, installation, and payment and shall run in favor of the County and its successors and assigns.
  - vi. Contractor shall deliver to County all Original Equipment Manufacturer ("OEM") warranty documentation prior to receiving final payment for AMI Equipment and Services provided hereunder. All warranties begin on date set forth in the warranty documentation or as provided herein.
- k. **SYSTEM LIFE EXPECTANCY:** Subject to a valid Professional Services and Support Agreement between County and Contractor recommended supplier of Software, the Services, AMI Equipment, and Software purchased from Contractor shall be supported for a minimum of ten (10) years from the date of Final System Acceptance, said term being the **Life Expectancy**. Contractor shall make available spare parts of equal or similar performance or specification for all AMI Equipment ordered under this Agreement and corrections for any Software ordered for the Life Expectancy of the AMI Equipment and Software, starting from the date of Final System Acceptance, using commercially reasonable efforts to the extent allowed by applicable laws and regulations.
- l. **DEPLOYMENT PLAN:**
- i. The deployment shall occur in two (2) phases. Phase I shall mean initial deployment as defined in the RFP. Phase I shall end on the date of Final Pilot System Acceptance as defined herein. Phase II shall commence upon the completion of Phase I and shall mean deployment within the remaining service territory of County not covered in Phase I. The Parties shall work together to develop the deployment plan and schedule at a project kick-off meeting as provided above.
  - ii. Contractor before undertaking any part of the Services, shall review and carefully study and compare any pertinent documents, figures, schedule or related schedules and shall immediately report to the County any conflict, error, ambiguity, or discrepancy the Contractor finds or has knowledge of and shall obtain a written interpretation or clarification from County before proceeding with any Services.
- m. **EQUIPMENT FORECASTS:** Within thirty (30) days after the Effective Date of this Agreement, Contractor shall supply County a written forecast of total anticipated AMI Equipment needs by month. Any changes to the AMI Equipment forecast should also be furnished to Contractor. Failure to provide an accurate forecast, within reason, may negate the stated AMI Equipment lead times and may for cause extend delivery of product to County.

- n. **CANCELLATION AND MODIFICATIONS:** In addition to the cancellation provisions above, County may, without penalty, cancel or reduce an AMI Equipment order on written notice to Contractor no later than sixteen (16) weeks prior to scheduled delivery of the AMI Equipment order. County may not cancel or modify an AMI Equipment order within sixteen (16) weeks prior to delivery. Notwithstanding the foregoing, cancellation charges do not apply to Software or support services.
- o. **MAJOR METER/MODULE FAILURE:** All major meter/module failures shall be handled in accordance with warranties outlined in Section A.4.j. above, and responsibility matrix.
- p. **COVERAGE COMMITMENT.**
  - i. Subject to the County's "backbone" system performing as required for the System to perform in accordance with the requirements of this Agreement, Contractor agrees to satisfy the Coverage Commitment as defined in **Exhibit "F"** for the duration of the Coverage Commitment Term as set forth in **Exhibit "F."**
- q. **METER/MODULE REPLACEMENT FOR ZERO CONSUMPTION AND NON-ASSOCIATING METERS.** Shall be handled in accordance with warranties outlined in Section A.4.j. above, and responsibility matrix.
- r. **ZERO CONSUMPTION (ZERO USAGE) METERS.** Shall be handled in accordance with warranties outlined in Section A.4.j. above, and responsibility matrix.
- s. **NON-ASSOCIATING METERS.** Shall be handled in accordance with warranties outlined in Section A.4.j. above, and responsibility matrix.
- t. **TESTS AND INSPECTIONS.** The AMI Equipment furnished pursuant to the Specifications shall be in compliance with all of the standard commercial inspections and tests normally performed by Contractor and its subcontractors or other contractors. Contractor shall furnish County with such certified information and test certificates as are normally made available to customers of Contractor's AMI division and other manufacturers of equipment specified within. County or its supplier has the right to witness all factory and/or site tests and inspections. County shall not be required to accept any AMI Equipment until the equipment has undergone and successfully met such tests and inspections.
- u. **SYSTEM ACCEPTANCE TEST.** The term "Final System Acceptance" means County has, within nine (9) months of installation, accepted the Services provided by Contractor after County has performed a System Acceptance Test.

Contractor and County shall complete a System Acceptance Test ("SAT") to validate the successful completion of the initial deployment of System by Contractor, in accordance with the requirements specified in this Agreement and the Functional Testing and System Acceptance Testing Criteria set forth in the attached **Exhibit "G."**

If all testing meets the "pass" criteria as set forth in **Exhibit "G,"** the SAT will be considered successful. Final System Acceptance, as that term is used herein, shall occur on the date County indicates in writing its acceptance of satisfactory completion of the SAT, which acceptance shall be provided within ten (10) days of the successful completion of the SAT.

In the event pass criteria cannot be met or a defined functionality requirement cannot be remedied as part of the testing, Contractor shall notify County in writing as soon as is practicable and suggest alternate remedies to resolve the problem without further costs to County.

For purposes of testing load control functionality, Contractor shall make load control software available at no cost to County for a minimum of six (6) months following Phase I deployment.

**SECTION B. TERM:** The term of this Agreement shall commence on the Effective Date of the Agreement and shall continue for four (4) years from the Effective Date, unless sooner terminated, as provided herein. The Agreement may be renewed by written mutual agreement for up to three (3) consecutive one-year periods.

**SECTION C. COMPENSATION:**

1. **Amount of Compensation.** County agrees to purchase the listed AMI Equipment, Software and Services as set forth in **Exhibit "B"** from Contractor upon submittal of detailed Project invoices and **in the amount not to exceed** FOUR MILLION NINE HUNDRED SEVENTY-FOUR THOUSAND SEVEN HUNDRED SEVENTEEN DOLLARS (\$4,974,717.00), which amount does not include applicable New Mexico gross receipts taxes ("NMGRT"). Compensation shall be paid in accordance with the rate schedule set out in **Exhibit "B,"** attached hereto and made a part hereof for all purposes.
2. **Invoices.** Where applicable, Contractor shall submit itemized invoices to County's Project Manager showing amount of compensation due, amount of any NMGRT, and total amount payable. Payment of undisputed amounts shall be due and payable thirty (30) days after County's receipt of the invoice.
3. **Sub-Contractor Compensation.** Contractor is solely responsible for payment of all sub-contractors, and vendors.
4. **Additional Payment Terms and Conditions.** Contractor shall issue invoices to County for all amounts owed to Contractor hereunder. Invoices: (i) for Services shall be issued upon completion of the Services included on the invoice; and (ii) for the AMI Equipment and Software shall be issued upon shipment.
  - a. Invoicing and payment shall be commensurate with retainage as shown in the table below provided, however, that Contractor may provide a bond in lieu of retainage. Written authorization shall be required from County before Services commence. The "Milestone Description" as stated below in the Milestone Schedule is provided as a summary only; this entire Agreement provides the detail of what comprises deliverables for each Milestone.

**Table 1. Milestone Payment Schedule**

<b>Milestone</b>	<b>Description</b>	<b>Payment</b>
Phase I*	Initial Deployment Area	75% of all monthly invoices for items related to Phase I* deployment area. (County shall exercise a 25% retainage on all invoices)
SAT	Successful completion of the System Acceptance Test (SAT) for the Phase I Initial deployment area.	Payment of retainage withheld to date.
Phase II	Full Deployment	After successful completion of the SAT for Phase I, and starting with the Phase II full deployment, Contractor may invoice 100% of the proposed cost on a monthly basis for all equipment and



		items associated with the Phase II deployment area according to a mutually accepted schedule. County shall not exercise withholding during Phase II.
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\*Phase I shall include, but not be limited to:

- i. Project design meeting; receipt of standard System documentation and training manuals covering the scope of this Agreement; review and approval of County's coverage area and design drawings for the initial deployment area; receipt of proof of insurance.
  - ii. Configuration of System server and hardware components and delivery of configured Software and hardware to County; training on use of the System.
  - iii. Delivery of Phase I base stations, collectors, repeaters, load management end devices, gateways, electric meters and/or modules as determined prior to Agreement signing.
  - iv. Completion of onsite support and training covering equipment installation, meter/module, inspection of work and training installation, System training including support on report generation.
- b. County shall pay Contractor no later than thirty (30) days from receipt of each accurate statement with a late fee of one and one-half percent (1.5%) of the invoiced amount if not paid within the thirty (30) day period.
  - c. After delivery and inspection at destination, County shall be responsible for any loss, theft, physical damage, or abuse that affects the operation of the System and occurs while System is in the control of County.
  - d. Notwithstanding any other provision in this Agreement to the contrary, County may withhold any or all payment or payments for Services provided it reasonably believes is necessary to protect County against loss on account of: 1) Defective workmanship and materials that is not remedied by Contractor within the timeframe set forth in Section A.4.j. above, or 2) Failure of Contractor to make payments promptly to subcontractors or contractors for AMI Equipment, Software, or Services.
  - e. Unless otherwise provided for in this Agreement, all prices for Work and Equipment are firm and fixed.

**SECTION D. TAXES:** Contractor shall be solely responsible for timely and correctly billing, collecting and remitting all NMGRT levied on the amounts payable under this Agreement. Any tax or other governmental charge upon the provision of Services, or the production, sale, shipment, transfer, consumption, or use of the AMI Equipment or Software, which Contractor is required to pay or collect from County shall be paid by County to Contractor at the time of invoice payment, unless County furnishes Contractor with exemption certificates acceptable to taxing authorities.

**SECTION E. STATUS OF CONTRACTOR, STAFF, AND PERSONNEL:** This Agreement calls for the performance of Services by Contractor as an independent contractor. Contractor is not a supplier or employee of County and will not be considered an employee of County for any purpose. Contractor, its suppliers or employees shall make no representation that they are County employees, nor shall they create the appearance of being employees by using a job or position title on a name plate, business cards, or in any other manner, bearing the County's name or logo. Neither Contractor nor any employee of Contractor shall be entitled to any benefits or

compensation other than the compensation specified herein. Contractor shall have no authority to bind County to any agreement, contract, duty or obligation. Contractor shall make no representations that are intended to, or create the appearance of, binding County to any agreement, contract, duty, or obligation. Contractor shall have full power to continue any outside employment or business, to employ and discharge its employees or associates as it deems appropriate without interference from County; provided, however, that Contractor shall at all times during the term of this Agreement maintain the ability to perform the obligations in a professional, timely and reliable manner.

**SECTION F. STANDARD OF PERFORMANCE:** Contractor agrees and represents that it has and will maintain the personnel, experience and knowledge necessary to qualify it for the particular duties to be performed under this Agreement. Contractor shall perform the Services described herein in accordance with a standard that meets the industry standard of care for performance of the Services.

**SECTION G. DELIVERABLES AND USE OF DOCUMENTS:** All deliverables procured or produced specifically for County under this Agreement and identified in writing as “works for hire” by Contractor prior to delivery to County, including material, products, reports, policies, procedures, software improvements, databases, and any other products and processes, whether in written or electronic form, shall become the exclusive property of and shall inure to the benefit of County as works for hire; Contractor shall not use, sell, disclose, or obtain any other compensation for such works for hire. In addition, Contractor may not, with regard to all work, work product, deliverables or works for hire required by this Agreement, apply for, in its name or otherwise, any copyright, patent or other property right and acknowledges that any such property right created or developed remains the exclusive right of County. Contractor shall not use deliverables in any manner for any other purpose without the express written consent of the County.

**SECTION H. EMPLOYEES AND SUB-CONTRACTORS:** Contractor shall be solely responsible for payment of wages, salary or benefits to any and all employees or contractors retained by Contractor in the performance of the Services. Contractor agrees to indemnify, defend and hold harmless County for any and all claims that may arise from Contractor's relationship to its employees and subcontractors.

**SECTION I. INSURANCE:** Contractor shall obtain and maintain insurance of the types and in the amounts set out below throughout the term of this Agreement with an insurer having an A.M. Best rating of A- VII or better. Contractor shall assure that any subcontractors providing Services maintain like insurance. Compliance with the terms and conditions of this Section is a condition precedent to County's obligation to pay compensation for the Services and Contractor shall not provide any Services under this Agreement unless and until Contractor has met the requirements of this Section. County requires Certificates of Insurance or other evidence acceptable to County that Contractor has met its obligation to obtain and maintain insurance and to assure that subcontractors maintain like insurance. General Liability Insurance and Automobile Liability Insurance shall include County as an additional insured.

1. **General Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00) per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) aggregate.
2. **Workers' Compensation:** In an amount as may be required by law. County may immediately terminate this Agreement if Contractor fails to comply with the Worker's Compensation Act and applicable rules when required to do so.

- 3. Automobile Liability Insurance for Contractor and its Employees:** An amount equal to the minimum required by state law on any owned, and/or non-owned motor vehicles used in performing Services under this Agreement.
- 4. Professional Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00) per claim or per occurrence.

Prior to any Work under this Agreement, Contractor shall provide a copy of a Certificate of Insurance evidencing the insurance coverage required herein. Failure of County to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of County to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance. County does not represent that insurance coverage and limits established in this Agreement necessarily will be adequate to protect Contractor or its suppliers. The insurance and insurance limits required herein shall also not be deemed as a limitation on Contractor's liability under the indemnities granted to County in the Contract Documents.

**SECTION J. RECORDS:** Contractor shall maintain, throughout the term of this Agreement and for a period of three (3) years thereafter, records that indicate the date, time, and nature of the Services rendered. With thirty (30) days prior written notice, Contractor shall make available, for inspection by County, all records, books of account, memoranda, and other documents pertaining to County and required to confirm Contractor's compliance with this Agreement.

**SECTION K. APPLICABLE LAW:** Contractor shall abide by all applicable federal, state and local laws, regulations, and policies and shall perform the Services in accordance with all applicable laws, regulations, and policies during the term of this Agreement. In any lawsuit or legal dispute arising from the operation of this Agreement, Contractor agrees that the laws of the State of New Mexico shall govern. Venue shall be in the First Judicial District Court of New Mexico in Los Alamos County, New Mexico.

**SECTION L. NON-DISCRIMINATION:** During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of the obligations of Contractor under this Agreement, with regard to race, color, religion, sex, age, ethnicity, national origin, sexual orientation or gender identity, disability or veteran status.

**SECTION M. INDEMNITY AND LIMITATION OF LIABILITY:** Contractor shall indemnify, hold harmless and defend County, its Council members, employees, agents and representatives, from and against all third party liabilities, damages, claims, demands, actions (legal or equitable), and costs and expenses, including without limitation reasonable attorneys' fees, of any kind or nature, to the extent arising from Contractor's negligent performance or willful misconduct hereunder or breach hereof and the performance of Contractor's employees, agents, representatives and subcontractors.

**SECTION N. NON-ASSIGNMENT:** Neither Party may assign this Agreement or any privileges or obligations herein without the prior written consent of the other Party, which will not be unreasonably withheld, conditioned, or delayed.

**SECTION O. LICENSES:** Contractor shall maintain all required licenses including, without limitation, all necessary professional and business licenses, throughout the term of this Agreement. Contractor shall require and shall assure that all of Contractor's employees and

subcontractors maintain all required licenses including, without limitation, all necessary professional and business licenses.

**SECTION P. PROHIBITED INTERESTS:** Contractor agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contractor further agrees that it will not knowingly employ any person having such an interest to perform services under this Agreement. No County Council member or other elected official of County, or manager or employee of County shall solicit, demand, accept or agree to accept a gratuity or offer of employment contrary to Section 31-282 of the Los Alamos County Code.

**SECTION Q. TERMINATION:**

1. **Generally.** In addition to any other provision herein, County may terminate this Agreement without cause upon sixty (60) days prior written notice to Contractor. Upon receipt of such notice, Contractor, shall use commercially reasonable efforts to stop all Services hereunder and shall promptly take steps to cancel existing orders, contracts and subcontracts relating to the Services. Upon such termination, Contractor, shall be paid for:
  - a. the contract price due Contractor for the Services performed and the AMI Equipment and Software delivered;
  - b. the contract price for AMI Equipment manufactured but not delivered prior to the effective date of termination if such AMI Equipment are non-cancelable non-returnable or any and all cancellation and similar charges incurred by Contractor if the orders are cancelable; and
  - c. Contractor shall render a final report of the Services performed to the date of termination and shall turn over to County originals of all materials prepared or parts already purchased but not installed pursuant to this Agreement.
2. **Funding.** This Agreement shall terminate without further action by County on the first day of any County fiscal year for which funds to pay compensation hereunder are not appropriated by the County Council. County shall make reasonable efforts to give Contractor at least ninety (90) days advance notice that funds have not been and are not expected to be appropriated for that purpose.

**SECTION R. NOTICE:** Any notices required under this Agreement shall be made in writing, postage prepaid to the following addresses, and shall be deemed given upon hand delivery, verified delivery by telecopy (followed by copy sent by United States Mail), or three (3) days after deposit in the United States Mail:

County:  
Deputy Utility Manager-Administration  
Incorporated County of Los Alamos  
1000 Central Avenue, Suite 130  
Los Alamos, New Mexico 87544

With a copy to:  
Incorporated County of Los Alamos  
County Attorney's Office  
1000 Central Avenue, Suite 350  
Los Alamos, New Mexico 87544

Contractor:  
Scott Ockerhausen  
Anixter Inc.  
915 Maple Grove Drive, Suite 200  
Fredericksburg, Virginia 22407

With a copy to:  
Anixter Inc.  
2301 Patriot Blvd  
Glenview, IL 60062  
Attn: Legal Dept.

**SECTION S. INVALIDITY OF PRIOR AGREEMENTS:** This Agreement supersedes all prior contracts or agreements, either oral or written, that may exist between the Parties with reference to the services described herein and expresses the entire agreement and understanding between the Parties with reference to said services. It cannot be modified or changed by any oral promise made by any person, officer, or employee, nor shall any written modification of it be binding on County until approved in writing by both County and Contractor.

**SECTION T. CAMPAIGN CONTRIBUTION DISCLOSURE FORM:** A Campaign Contribution Disclosure Form was submitted as part of the Contractor's Response and is incorporated herein by reference for all purposes. This Section acknowledges compliance with Chapter 81 of the Laws of 2006 of the State of New Mexico.

**IN WITNESS WHEREOF,** the Parties have executed this Agreement on the date(s) set forth opposite the signatures of their authorized representatives to be effective for all purposes on the date first written above.

**ATTEST**

**INCORPORATED COUNTY OF LOS ALAMOS**

\_\_\_\_\_  
**NAOMI D. MAESTAS**  
**COUNTY CLERK**

BY: \_\_\_\_\_  
**TIMOTHY A. GLASCO, PE** **DATE**  
**UTILITIES MANAGER**

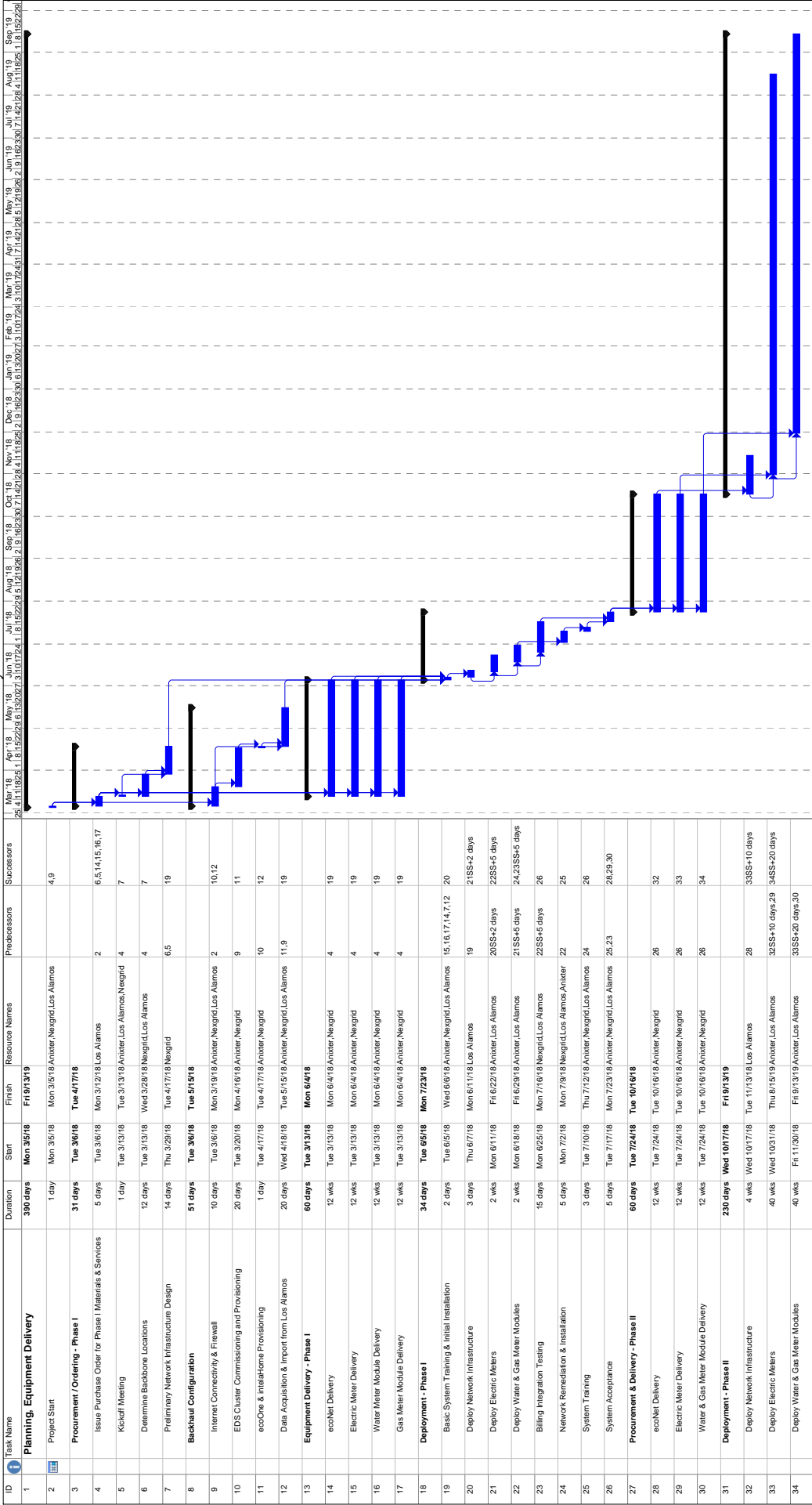
**Approved as to form:**

\_\_\_\_\_  
**J. ALVIN LEAPHART**  
**COUNTY ATTORNEY**

**ANIXTER INC. A DELAWARE CORPORATION**

BY: \_\_\_\_\_  
**SCOTT OCKERHAUSEN** **DATE**  
**VICE PRESIDENT, SMART GRID METERING &**  
**SERVICES**

Exhibit A: Los Alamos Project Plan




The schedule contained herein shall be considered a “target schedule” for reference purposes, that can be modified based on the actual status of the project.

Task	Summary

## EXHIBIT B. ANIXTER SUPPLIED PARTS AND COSTS [AMI EQUIPMENT]

### INCORPORATED COUNTY OF LOS ALAMOS SERVICES AGREEMENT

Between Anixter Inc. and the Incorporated County of Los Alamos

	<b>Exhibit B</b> Materials & Services, Quantities, Prices, and Notes
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#### Pricing: Los Alamos County Phase 1 and Full Deployment

##### 1. General Pricing Notes Applicable to All Sections

**Note 1:** Customer is responsible for all shipping and receiving charges from POO Fredericksburg, VA, not to exceed \$1,700.00 for Phase I and \$38,470.00 for Phase II full deployment.

**Note 2:** Service hours and customary expenses will be billed as incurred on a monthly basis.

**Note 3:** All Nexgrid products include a 10 year limited warranty, all other hardware carries manufacturer's standard warranty.

**Note 3:** The prices quoted below are applicable only to a firm, non-cancelable Purchase Order received within the Effective Period for the Products.

**Note 4:** All Engineering and Design Services are included in the price.

**Note 5:** Customer shall be responsible for all standard and customary travel related expenses and per Diem, not to exceed \$12,000.00.

**Note 6:** Contractor will be responsible for invoicing all applicable taxes and fees to Customer, and remitting same with proper filings to taxing or regulatory authorities.

**Note 7:** Pricing for Monthly and Annually recurring fees assumes a 7-year term.

##### 2. AMI Software / Servers and Hosting Fees

AMI Software / Servers and Hosting Fees					
Description	Cat #	Qty	Unit Price	Total (\$USD)	Billing Schedule / Notes
Annual Hosting Fee <sup>1</sup>	N/A	203,938	\$1.00	\$203,938.00	\$1.00 per Managed Device per year Invoiced monthly on a pro-rated basis for 2018, and annually thereafter Quantity listed is forecasted total over 7 years
EDOS Server License	EDOS	1	\$20,000.00	\$20,000.00	Billed 50% upon successful installation of servers, and 50% upon commencement of Phase II
EDS Database Server License	EDDB	1	\$20,000.00	\$20,000.00	Billed 50% upon successful installation of servers, and 50% upon commencement of Phase II
VPN Router Gateway	ECOLINK	1	\$1,000.00	\$1,000.00	Billed upon delivery
Professional Services and Support Agreement Annual Fee <sup>1,2</sup>	PSSA	174,804	\$2.50	\$437,010.00	\$2.50 per Managed Device per year Quantity listed is forecasted total over 7 years (2018 is included in Setup fee)
Project Management	N/A	1	\$25,000.00	\$25,000.00	Billed upon initiation of work
Setup: ecoOne/Intelehome Activation	N/A	1	\$22,500.00	\$22,500.00	Billed upon successful installation of servers
System Training	N/A	32	\$150.00	\$4,800.00	Billed upon completion of training
MDM and Customer Portal Software	N/A	1	\$0.00	\$0.00	Included at no charge.
<b>Total:</b>				<b>\$734,248.00</b>	

**Note 1:** PSSA & Hosting Fees will be charged directly from Nexgrid to Los Alamos County.

**Note 2:** PSSA Fee will not be charged until December 2018 for 2019.

### 3. Equipment Phase I

Meters and Communications Modules				
Item	Cat #	Qty	Price / Unit (\$USD)	Total (\$USD)
<b>Electric Meters and Modules</b>				
I210+ 2S CL200 No RD 240V O V2 AMI-ready includes Nexgrid MIM	TBD	315	\$107.00	\$33,705.00
<b>Water Communication Modules</b>				
Intelameter Water Pan Lid Mountable Communication Module (Water Meter not included)	intelaMeter H20	315	\$95.00	\$29,925.00
<b>Gas Communication Modules</b>				
intelaMeterGas Communication Module (Gas Meter not included)	intelaMeter GAS	315	\$98.00	\$30,870.00
Riotronics (Pulse Counter and new Gas register index)	TBD	315	\$45.00	\$14,175.00
<b>Total</b>				<b>\$108,675.00</b>

Network Infrastructure Equipment & Tools				
Item	Cat #	Qty	Price / Unit (\$USD)	Total (\$USD)
Cellular ecoNet Gateways	TBD	1	\$1,250.00	\$1,250.00
Annual Cellular Service Fee <sup>1</sup>	N/A	7	\$150.00	\$1050.00
ecoSwitch SL	TBD	16	\$136.00	\$2,176.00
ecoNet SL Mounting Kit	TBD	16	\$49.00	\$784.00
ecoOne Mobile Handheld Device with Bar Code Scanner, GPS and Software	ecoOne Handheld	1	\$6,000	\$6,000.00
<b>Total</b>				<b>\$11,260.00</b>

**Note 1:** Cellular Service Fee Pricing is valid for Phase I equipment only and only if determined needed.

### 4. Equipment Phase II Full Deployment

Meters and Communications Modules				
Item	Cat #	Qty	Price / Unit (\$USD)	Total (\$USD)
I210+ 1S CL100 No RD 240V O V2 AMI-ready includes Nexgrid MIM	TBD	32	\$147.00	\$4,704.00
I210+ 2S CL200 No RD O V2 AMI-ready includes Nexgrid MIM	TBD	9,555	\$107.00	\$1,022,385.00
I210+ 2S CL320 O V2 AMI-ready includes Nexgrid MIM	TBD	5	\$147.00	\$735.00
I210+ 3S CL20 240V O V2 AMI-ready includes Nexgrid MIM	TBD	32	\$147.00	\$4,704.00
I210+ 4S CL20 240V O V2 AMI-ready includes Nexgrid MIM	TBD	32	\$147.00	\$4,704.00
KV2c EPS 45S CL20 120-480V AMI-ready includes Nexgrid MIM	TBD	5	\$270.00	\$1,350.00



Meters and Communications Modules				
Item	Cat #	Qty	Price / Unit (\$USD)	Total (\$USD)
KV2c EPS 9S CL20 120-480V AMI-ready includes Nexgrid MIM	TBD	120	\$240.00	\$28,800.00
KV2c EPS 12S CL200 120-480V AMI-ready includes Nexgrid MIM	TBD	322	\$240.00	\$77,280.00
KV2c EPS 16S CL200 120-480V AMI-ready includes Nexgrid MIM	TBD	223	\$240.00	\$53,520.00
Remote Disconnect adder (I210+ 1S and 2S CL200 Only) <sup>(1)</sup>	N/A	300	\$54.00	\$16,200.00
Single Phase demand and TOU adder	TBD	130	\$30.00	\$3,900.00
Polyphase demand and TOU adder	TBD	644	\$28.00	\$18,032.00
Polyphase reactive metering adder	TBD	644	\$68.00	\$43,792.00
Water Communication Modules				
Intelameter Water Pan Lid Mountable Communication Module	intelaMeter H2O	7361	\$95.00	\$699,295.00
Gas Communication Modules				
intelaMeterGas Communication Module (Gas Meter not included)	intelaMeter GAS	7862	\$98.00	\$770,476.00
Riotronics (Pulse Counter and new Gas register index)	TBD	7862	\$45.00	\$353,790.00
<b>Total</b>				<b>\$3,103,667.00</b>

**Note 1:** Remote disconnect adder is \$54.00/unit for quantities 1 – 300 or all quantities over 50% deployment; \$59.00/unit for quantities 301 units up to 50% deployment.

Network Infrastructure Equipment & Tools				
Item	Cat #	Qty	Price / Unit (\$USD)	Total (\$USD)
ecoNet SL Communication Gateway	ecoNet SL	263	\$420.00	\$110,460.00
ecoSwitch SL	ecoSwitch	79	\$128.00	\$10,112.00
Point to Multi-Point Wireless Cluster	N/A	3	\$2,800.00	\$8,400.00
Wireless Directional Radio	N/A	26	\$340.00	\$8,840.00
ecoNet SL Mounting Kit	ENSLMK	42	\$49.00	\$2,058.00
ecoNet SL High Gain Antenna	HGA	84	\$57.00	\$4,788.00
ecoNet SL High Gain Antenna Bracket	HGAB	84	\$47.00	\$3,948.00
ecoOne Mobile Handheld Device with Bar Code Scanner, GPS and Software	ecoOne Handheld	5	\$6,000	\$30,000.00
<b>Total</b>				<b>\$178,606.00</b>

5. Services

Anixter Installation Services <sup>1</sup>				
Item	Catalog Number	Qty	Price / Unit (\$USD)	Total (\$USD)
Installation of Single Phase Meters with Nexgrid Modules	N/A	9,652	\$15.25	\$147,193.00
Installation of residential gas modules	N/A	7,581	\$32.50	\$246,382.50
Installation of commercial gas modules	N/A	281	\$32.50	\$9,132.50
Installation of residential water modules	N/A	6408	\$39.20	\$251,193.60
Installation of commercial water modules	N/A	952	\$39.20	\$37,318.40
<b>Total</b>				<b>\$691,220.00</b>

**Grand Total: \$4,827,676.00**

**Subtotal Year 1: \$4,215,862.00**

**Annual Subtotal Years 2 – 7: \$101,969.00**  
**(quantity 29,134 @ \$2.50 + \$1.00 each. See section 2)**

### Exhibit C: Responsibility Matrix

The following table was submitted as Attachment VII: Responsibility Matrix, as a part of Anixter's Response to Los Alamos RFP NO: 17-32, and is incorporated to the agreement herein as Exhibit C, modified from the original submission as mutually agreed by the parties.

This table shows the division of responsibilities between Los Alamos County Department of Public Utilities and Anixter (Supplier). For all tasks, it shall be assumed that the responsible party will lead, while the other party will assist or support.

#	Description	Supplier Responsibility	Los Alamos	Comply		Supplier Comments
				Yes	No	
1	Configure, install, and test the AMI hardware and software (the "Master System") and deliver the combined hardware and software to the Purchaser's office.	X		X		
2	Provide meters, modules, and metering transport equipment for deployment. Ship equipment to Purchaser's designated locations.	X		X		
3	Train Purchaser's personnel and Contractors on how to properly install the equipment and use and navigate the Master System for all defined software functionality.	X		X		
4	Install all Electric Residential Meters and Gas Modules.	X		X		Any required repairs or replacements of Meter Bases shall be the responsibility of Los Alamos. Any maintenance or repairs required of gas meters and cans shall be the responsibility of County.
5	Install meters/modules and/or retrofit designated three-phase meters with Supplier's provided AMI transponders in the field.		X	X		
6	Install meters/modules and/or retrofit designated water services with Supplier's provided AMI transponders in the field.	X	X	X		Any maintenance or repairs required of water meters and pits/cans shall be the responsibility of County.
7	Provide training and education to Purchaser personnel or designated representatives, for installation of all hardware and operation of Supplier's System.	X		X		
8	Provide ongoing project and technical support as mutually agreed in future discussions and as set forth in Contract documents.	X		X		
9	Complete System Acceptance Testing (SAT) at Purchaser's site.	X	X	X		
10	Ensure that all defined AMI system functionality performs according to compliance statements provided in Supplier's RFP response, including submitted product brochures, requirements documents, critical questions and other information presented by the Supplier RFP, and that said functionality is tested as part of the SAT.	X		X		
11	Install collectors, repeaters, base station equipment or other AMI transport equipment for Phase I (Initial Deployment Area) ( <i>Please clarify per equipment type in "Supplier Comments" Column I.</i> )		X	X		Los Alamos to install per discussions. Any electrical work required to energize Nexgrid network equipment (e.g. transformer, cable drop) shall be the responsibility of Los Alamos.

The following table was submitted as Attachment VII: Responsibility Matrix, as a part of Anixter's Response to Los Alamos RFP NO: 17-32, and is incorporated to the agreement herein as Exhibit C, modified from the original submission as mutually agreed by the parties.

This table shows the division of responsibilities between Los Alamos County Department of Public Utilities and Anixter (Supplier). For all tasks, it shall be assumed that the responsible party will lead, while the other party will assist or support.

#	Description	Supplier Responsibility	Los Alamos	Comply		Supplier Comments
				Yes	No	
12	Complete detailed wireless collector system design and install Supplier-provided AMI transport equipment.	X	X	X		Anixter to provide AMI transport equipment system design; Los Alamos to provide install. Any electrical work required to energize Nexgrid network equipment (e.g. transformer, cable drop) shall be the responsibility of Los Alamos.
13	Meet Coverage Commitment for five (5) years from the date that 95% of electric AMI meters are installed and have associated with the AMI master system.	X		X		
14	For the tower based AMI vendors, provide towers or poles and install cabling and install antennas to the tower/pole structure.		X			N/A: System does not require tower-based assets.
15	Transport (and cost of transport) for any AMI collector, antenna, cabinets, or other collector/base station equipment to the field location where the installation will be completed.		X	X		Anixter will ship equipment to the address specified by Los Alamos. Los Alamos to transport equipment to field location when ready for install.
16	Connect Master System in Purchaser's main office to the third-party communications system.		X	X		
17	Provision an adequate communication circuit between each AMI take-out point containing Supplier-provided equipment to Purchaser's data center where Supplier-provided Master System is located.		X	X		
18	Provide support to the Purchaser upon request as the AMI Master System is integrated to the Purchaser's software systems as listed in the RFP (e.g. CIS, OMS, MDMS) including support for MultiSpeak Use Cases and Methods lists in the RFP and attachments as well as direct ODBC connectivity to Supplier's databases as required.	X		X		This item includes supporting MultiSpeak or flat-file exchange for billing purposes; and MultiSpeak for all other integrations unless otherwise negotiated.
19	Provide software integration services between the AMI and other systems. Please comment on assumed vendor responsibilities for integration to systems such as an OMS, CIS, etc.	X	X	X		
20	Support MultiSpeak methods and web service communications as defined in the RFP.	X		X		

**EXHIBIT D-1**  
**NEXGRID SOFTWARE LICENSE AND SUPPORT AGREEMENT**  
**SOFTWARE LICENSE AGREEMENT**

THIS AGREEMENT made this the \_\_\_\_\_ day of January, 2018 by and between **Nexgrid, LLC**, a Virginia corporation ("Nexgrid"), with an address of 915 Maple Grove Drive, Suite 200, Fredericksburg, Virginia 22407, and the **Incorporated County of Los Alamos**, an incorporated corporate political subdivision of the State of New Mexico, ("**LICENSEE**"), with an address of 1000 Central Avenue, Los Alamos, New Mexico 87544.

PURPOSE: THIS SOFTWARE LICENSE AGREEMENT ("AGREEMENT") GOVERNS THE PURCHASE AND ONGOING USE OF NEXGRID'S SOFTWARE PRODUCTS. THIS AGREEMENT SUPERSEDES ANY ONLINE NEXGRID TERMS OF USE, WARRANTY, AND/OR PRIVACY POLICY REQUIRED TO USE THE PRODUCT. IN CASE OF CONFLICT BETWEEN THIS AND ANY NEXGRID ONLINE NEXGRID USE AGREEMENT OR USE POLICY, THE PARTIES HEREIN SPECIFICALLY AGREE THIS AGREEMENT SHALL CONTROL.

## **1. DEFINITIONS**

**"Affiliate"** means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of interests of the subject entity.

**"EDS"** means Energy Data Server. A server responsible for the management and operation of Nexgrid's smart grid devices. Additionally, the EDS includes a database component that stores all energy read and communication data.

**"Managed Devices"** means all communicating devices installed on the network that can be managed and/or monitored using the Nexgrid ecoOne or intelaHome portals. Examples include but are not limited to electric, water and gas modules, thermostats, street light sensors, load control switches, capacitor bank controllers, ecoNet Gateways, and repeaters.

**"Malicious Code"** means viruses, worms, time bombs, Trojan horses and other harmful code, files, scripts, agents or programs.

**"Professional Services and Support Agreement"** means the agreement You entered into with Us governing the services and support of the Software.

**"Software"** means the Nexgrid Software and all online web-based applications and platforms provided by Us via <http://www.myecoone.com> and/or <http://intelaHome.com>, including associated offline components but excluding Third Party Applications. Software licensed to Licensee shall include but not be limited to Managed Device firmware, ecoOne, and intelaHome including any and all programs, code, system software, applications to make functional Nexgrid or related products such as, but not limited to, ecoNet SL, ecoOne, ecoStat, ecoSwitch, EDS Server and Firewall, intelaHome, intelaMeters Electric,

intelaMeters Water, and other related and system integral parts.

**"System"** means all communicating devices, servers and cloud based portals that make up the metering network and system. Components include ecoNets, intelaMeters, ecoSwitches, ecoStats, Energy Data Server, ecoOne, and intelaHome.

**"Third-Party Applications"** means online, web-based applications and offline software products that are provided by third parties, interoperate with the Software, and are identified as third- party applications.

**"User Guide"** means the online user guide for the Software, accessible via <http://www.myeconoone.com> under the customer support section as updated from time to time .

**"Users"** means individuals who are authorized by You to use the Software, for whom subscriptions have been purchased, and who have been supplied user identifications and passwords by You (or by Us at Your request). Users may include but are not limited to Your customers, employees, consultants, contractors and agents; or third parties with which You transact business.

**"We," "Us" or "Our"** means Nexgrid, LLC the company with whom you are contracting.

**"You" or "Your"** means the Licensee company or other legal entity for which you are accepting this Agreement and Affiliates of that company or entity. **"Your Data"** means all electronic data or information submitted by You to the Software.

## 2. COMPETITION

You may not access the Software if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Software for purposes of monitoring the availability, performance or functionality, or for any other benchmarking or competitive purposes.

## 3. GRANT OF LICENSE

**3.1 GRANT OF LICENSE.** We grant You the following non-exclusive, non-assignable and non-transferable rights provided You agree to and comply with all terms and conditions of this Agreement and conditions below:

- a. **Use.** You may use the Software on your computer (or computers if the Software is sold to you for use on multiple computers). You do not have the right to distribute the Software. You agree to only use the Software as expressly permitted herein.
- b. **Reservation of Rights.** The Software is licensed, not sold, to you by Us. Nexgrid owns all right, title and interest in and to the Software and reserves all rights not expressly granted to you in this Agreement.

**3.2. License Key.** The Software requires a license key that is issued at the issuance of the License. The License Key shall remain valid while the License remains valid under this agreement. We will issue to Licensee a valid Energy Data Server (EDS) license key unique to any purchased EDS.

## 4. USE OF THE SOFTWARE

**4.1. Your Responsibilities.** You shall (i) be responsible for Users' compliance with this Agreement, (ii) be solely responsible for the accuracy, quality, integrity and legality of Your Data and of the means by which You acquired Your Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Software, and notify Us promptly of any such unauthorized access or use, and (iv) use the Software only in accordance with the User Guide and applicable laws and government regulations. You shall not (a) make the Software available to anyone other than Users, (b) sell, resell, rent or lease the Software, (c) knowingly use the Software to store or transmit infringing, libelous, or otherwise unlawful or tortuous material, or to store or transmit material in violation of third-party privacy rights, (d) knowingly use the Software to store or transmit Malicious Code, (e) knowingly interfere with or disrupt the integrity or performance of the Software or third-party data contained therein, or (f) knowingly attempt to gain unauthorized access to the Software or their related systems or networks.

**4.2. Usage Limitations.** Software may be subject to usage limitations, such as, for example, limits on disk storage space, on the number of API calls You are permitted to make against Our application programming interface. Any such limitations are specified in Nexgrid's API User Guide. Licensee shall use all best efforts to comply with Nexgrid's usage limitation. Nexgrid must notify Licensee of any usage concerns and the specific limitation or usage allowance to which Licensee is exceeding. The Parties will attempt to resolve any usage concern within 30 days. If usage concerns are not adequately resolved between Nexgrid and/or Licensee, the Parties may mutually Terminate this agreement.

**4.3 Upgrades.** To use a Software identified by Us as an upgrade, you must first be licensed for the original Software identified by Us as eligible for the upgrade. After upgrading, you may no longer use the original Software that formed the basis for your upgrade eligibility and the upgraded software shall be deemed the "Software ". If upgrades cause material unknown or undetermined system errors, conflicts, or problems, as determined by Nexgrid, Licensee may elect, where reasonably possible, to revert to the prior Software version until Licensee and Nexgrid, or their agent, can mutually resolve any installation conflicts, errors, or problems.

**4.4 Additional Software.** This Agreement applies to updates or supplements to the original Software provided by Us unless We provide other terms along with the update or supplement. Licensee shall be able to review and approve any terms or conditions that materially change or alter this agreement. If the parties are unable to agree on any change to the terms or conditions of this agreement, the parties may then elect to continue under the prior terms and conditions or unilaterally cancel the agreement – ending the License.

## 5. THIRD-PARTY PROVIDERS

**5.1. Third-Party Products and Software.** Notwithstanding the terms and conditions of this Agreement, all Third-Party Applications, are licensed to you subject to the terms and conditions of the software license agreement accompanying such Third-Party Applications whether in the form of a discrete agreement, shrink wrap license or electronic license terms accepted at time of download. Use of the Third-Party Applications by you shall be governed entirely by the terms and conditions of such license.

**5.2 Third-Party Applications and Your Data.** If You install or enable Third-Party Applications for use with Software, You acknowledge that We may allow providers of those Third-Party Applications to access Your Data as required for the interoperation of such Third-Party Applications with the Software. We shall not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by Third-Party Application providers unless the Third-party application was required to be installed by Nexgrid. The Software shall allow You to restrict such access by restricting Users from installing or enabling such Third-Party Applications for use with the Software.

## **6. CUSTOM INTEGRATION OR MODIFICATION**

**6.1.** If you elect to have any customized integration or modification using the Nexgrid Web Services API, MultiSpeak, Flat File or XML; Nexgrid will maintain exclusive rights to all intellectual property including but not limited to end user documentation and modifications to Software.

## **7. PROPRIETARY RIGHTS**

**7.1. Reservation of Rights.** Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the Software, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

**7.2. Restrictions.** You shall not (i) knowingly permit any third party to access the Software except as permitted herein, (ii) create derivative works based on the Software, (iii) copy, frame or mirror any part or content of the Software, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes, (iv) reverse engineer the Software, or (v) access the Software in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Software. Unauthorized knowingly copying of the Software or failure to comply with the restrictions in this Agreement (or other breach of the license herein) will result in automatic termination of this Agreement.

**7.3. Ownership of Your Data.** As between Us and You, You exclusively own all rights, title and interest in and to all of Your Data.

**7.4. Federal Government End Use Provisions.** We provide the Software, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Software include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Us to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.



## 8. CONFIDENTIALITY

**8.1. Definition of Confidential Information.** As used herein, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include Your Data; Our Confidential Information shall include the Software and associated documentation. However, Confidential Information (other than Your Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

**8.2. Protection of Confidential Information.** Nexgrid understands and agrees that Licensee is a local government public body and is subject to the New Mexico Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 through 14-2-12 ("Records Act"). As such, Licensee is required to disclose non-protected public documents when requested. Pursuant to the Records Act, Licensee's only duty under this agreement is to provide reasonable notice to Nexgrid of any properly submitted public information request for non-protected Confidential records. Nexgrid, is solely responsible for taking any further action to limit, protect, or halt Licensee's required disclosure. Nexgrid understands that such action to protect its confidential information must be taken within the Record Act's required response period of 15-days from the date of the request.

**8.3.** Except as otherwise provided herein, the Disclosing Party and the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own Confidential Information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement.

**8.4. Protection of Your Data.** Without limiting the above, We shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data. We shall not (a) modify Your Data, (b) disclose Your Data except as compelled by law in accordance with Section 8.4 (Compelled Disclosure) or as expressly permitted in writing by You or as provided herein, or (c) access Your Data except to provide the Software or prevent or address service or technical problems, or at Your request in connection with customer support matters.

**8.5. Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice, where timely possible, of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

## **9. WARRANTIES AND DISCLAIMERS**

**9.1. Our Warranties.** We warrant that (i) the Software shall perform materially in accordance with the product User Guides and the functionality of the Software will not be materially changed, decreased, or altered during the term of the License. In the event of a claim by You under this warranty, Nexgrid shall have the option to either repair or replace the Software. In the event that Nexgrid fails to repair or replace the Software within a reasonable period, Your exclusive remedy shall be as provided in Section 12.2 (Termination for Cause).

**9.2. Mutual Warranties.** Each party represents and warrants that (i) it has the legal power to enter into this Agreement, and (ii) it will not intentionally, knowingly, or willfully transmit to the other party any Malicious Code (except for Malicious Code previously transmitted to the warranting party by the other party).

**9.3. Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## **10. INDEMNIFICATION**

**10.1. Indemnification by Us.** We shall defend You against any claim, demand, suit, or proceeding ("Claim") made or brought against You by a third party alleging that the use of the Software as permitted hereunder infringes or misappropriates the intellectual property rights of a third party, and shall indemnify You for any damages finally awarded against, and for reasonable attorney's fees incurred by You in connection with any such Claim; provided, that You (a) promptly give Us written notice of the Claim; (b) give Us sole control of the defense and settlement of the Claim (provided that We may not settle any Claim unless the settlement unconditionally releases You of all liability); and (c) provide to Us all reasonable assistance, at Our expense.

## **11. LIMITATION OF LIABILITY**

**11.1. Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY YOU UNDER THE PROFESSIONAL SERVICES AND SUPPORT AGREEMENT OR, WITH RESPECT TO ANY SINGLE INCIDENT, THE LESSER OF \$500,000 OR THE AMOUNT PAID BY YOU UNDER THE PROFESSIONAL SERVICES AND SUPPORT AGREEMENT IN THE 12 MONTHS PRECEDING THE INCIDENT.

**11.2. Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER

IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## **12. TERM AND TERMINATION**

**12.1. Term.** This License Agreement is effective unless terminated pursuant to this Section. This Agreement will also co-terminate with termination of the Professional Services and Support Agreement.

**12.2. Termination for Cause.** You or Us may terminate this Agreement for the following: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors; (iii) Licensee may cancel this Agreement at any time with or without cause, with thirty-days' notice but shall pay to Nexgrid any amounts then due under the Software License Agreement or Professional Support Services Agreement; or (iv) failure of Licensee to obtain continuing funding from the governing body.

**12.3. Return of Your Data.** Upon request by You made within 180-days after the effective date of termination of the License, We will provide to You for download a file of Your Data in comma separated value (.csv) format along with attachments in their native format. After such 180-day period, We shall have no obligation to maintain or provide any of Your Data and shall thereafter, unless legally prohibited, delete all of Your Data in Our systems or otherwise in Our possession or under Our control.

**12.4. Surviving Provisions.** 7 (Proprietary Rights), 8 (Confidentiality), 9.3 (Disclaimer), 10 (Mutual Indemnification), 11 (Limitation of Liability), 12.3 (Return of Your Data), 13 (Governing Law and Jurisdiction) and 14 (General Provisions) shall survive any termination or expiration of this Agreement.

## **13. GOVERNING LAW AND JURISDICTION**

**13.1. General.** The English language version of this Agreement, if it shall have been translated into any other language, shall be the controlling version of this Agreement. This Agreement shall be governed by and constituted in accordance with the laws of the Commonwealth of Virginia. In cases brought by Nexgrid, each of the parties hereto, to the extent permitted by law, hereby consents to the personal jurisdiction of the state and federal courts located in Spotsylvania County, Commonwealth of Virginia, and to the use of the English language, for the adjudication of any claim or controversy arising under this Agreement. In cases brought by the Licensee, the customer, each of the parties hereto, to the extent permitted by law, hereby consents to the personal jurisdiction of the state and federal courts in New Mexico with venue to be in the First Judicial District Court, Los Alamos, and to the use of the English language, for the adjudication of any claim or controversy arising under this Agreement.

**13.2. Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day

after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Notices to You shall be addressed to the system administrator designated by You for Your Software account.

**13.3. Agreement to Governing Law and Jurisdiction.** Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

**13.4. Waiver of Jury Trial.** Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

## **14. GENERAL PROVISIONS**

**14.1. Export Compliance.** Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Software. Without limiting the foregoing, (i) each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) You shall not permit Users to access or use Software in violation of any U.S. export embargo, prohibition or restriction.

**14.2. Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

**14.3. No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement, however Nexgrid agrees that Anixter, Inc. is the contracting agent to the County for installation and operation of the advanced metering infrastructure project.

**14.4. Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**14.5. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

**14.6. Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety, without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written

notice to the assigning party Subject to the foregoing. This Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**14.7. Entire Agreement.** This Software License Agreement, including all exhibits and addenda hereto, constitutes the entire license agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter including but not limited to any Nexgrid online Terms and Use Conditions, Privacy Policy, or Warranty provisions. No modification, amendment, or waiver of any provision of this Agreement shall be effective, unless in writing, and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto, the terms of such exhibit or addendum shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in your purchase order, use of any online system, or other order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

This Agreement and its exhibits contain the entire understanding and agreement between the parties respecting the subject matter hereof. This Agreement may not be supplemented, modified, amended, released or discharged except by an instrument in writing signed by each party's duly authorized representative. All captions and headings in this Agreement are for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. Any waiver by either party of any default or breach hereunder shall not constitute a waiver of any provision of this Agreement or of any subsequent default or breach of the same or a different kind.

#### **Nexgrid, LLC**

By: \_ Name \_\_\_\_\_  
Title: \_ Date: \_\_\_\_\_

#### **Licensee**

By: \_ Name \_\_\_\_\_  
Title: \_ Date: \_\_\_\_\_

**EXHIBIT D-2**  
**NEXGRID PROFESSIONAL SERVICES AND SUPPORT AGREEMENT**  
**PROFESSIONAL SERVICES AND SUPPORT AGREEMENT**

This Professional Services and Support Agreement ("Agreement") is made as of the \_\_\_\_ day of January, 2018 by and between **Nexgrid, LLC**, a Virginia corporation "Nexgrid", with an address of 915 Maple Grove Dr., Suite 200, Fredericksburg, VA 22407, and the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("Customer").

**PREAMBLE**

THIS PROFESSIONAL SERVICES AND SUPPORT AGREEMENT ("AGREEMENT") GOVERNS THE ONGOING SERVICE AND SUPPORT OF NEXGRID'S SOFTWARE PRODUCTS AS PROPOSED BY NEXGRID AND ANIXTER IN RESPONSE TO A REQUEST FOR PROPOSALS (RFP) AND ANIXTER AND NEXGRID'S MUTUAL PROPOSAL FOR SERVICES (PROPOSAL) TO CUSTOMER. NEXGRID HAS PARTNERED WITH ANIXTER, INC. FOR INSTALLATION OF NEXGRID PRODUCTS AND SOFTWARE ON COUNTY INFRASTRUCTURE AND SYSTEMS. ANIXTER, INC. AND NEXGRID (TOGETHER "CONTRACTORS") MUTUALLY AGREED AND WARRANTED THAT NEXGRID'S PRODUCTS AND SOFTWARE INSTALLED BY ANIXTER, INC. WOULD COMPLY WITH THE COUNTY'S RFP. SYSTEM AND PROJECT REQUIREMENTS. THE RFP AND CONTRACTOR'S PROPOSAL IS HEREBY INCLUDED BY REFERENCE.

**1. DEFINITIONS**

"**Affiliate**" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of interests of the subject entity.

"**EDS**" means Energy Data Server. A Linux based server responsible for the management and operation of Nexgrid's smart grid devices. Additionally, the EDS includes a database component that stores all energy read and communication data.

"**Managed Devices**" means all communicating devices installed on the network that can be managed and/or monitored using the Nexgrid ecoOne or intelaHome portals. Examples include but are not limited to electric, water and gas modules, thermostats, street light sensors, load control switches, capacitor bank controllers, ecoNet Gateways, and repeaters.

**"Order Form"** means the ordering documents for purchases hereunder, including addenda thereto, that are entered into between You and Us from time to time. Order Forms shall be deemed incorporated herein by reference.

**"Software"** means the Nexgrid Software and all online web-based applications and platforms provided by Us via <http://www.myeconoone.com> and/or <http://intelaHome.com>, including associated offline components but excluding Third Party Applications. Software licensed to Licensee shall include but not be limited to Managed Device firmware, ecoOne, and intelaHome including any and all programs, code, system software, applications to make functional Nexgrid or related products such as, but not limited to, ecoNet SL, ecoOne, ecoStat, ecoSwitch, EDS Server and Firewall, intelaHome, intelaMeters Electric, intelaMeters Water, and other related and system integral parts.

**"Software License Agreement"** means the agreement You entered into with Us governing the use of Nexgrid's Software products.

**"System"** means all communicating devices, servers and cloud based portals that make up the metering network and system. Components include ecoNets, intelaMeters, ecoSwitches, ecoStats, Energy Data Server, ecoOne, and intelaHome.

**"Third-Party Applications"** means online, web-based applications and offline software products that are provided by third parties, interoperate with the Software, and are identified as third-party applications.

**"User Guide"** means the online user guide for the Software, accessible via <http://www.myeconoone.com> under the customer support section as updated from time to time.

**"Users"** means individuals who are authorized by You to use the Software, for whom subscriptions have been purchased, and who have been supplied user identifications and passwords by You (or by Us at Your request). Users may include but are not limited to Your customers, employees, consultants, contractors and agents; or third parties with which You transact business.

**"We," "Us" or "Our"** means Nexgrid, LLC the company who you are contracting with.

"You" or "Your" means the Customer or other legal entity for which you are accepting this Agreement and Affiliates of that company or entity. "Your Data" means all electronic data or information submitted by You to the Software.

## **2. USE OF THE SOFTWARE**

**2.1. Our Responsibilities.** During the Term of this Agreement, we shall: (i) provide to You and your Users support for the System at no additional charge, (ii) use commercially reasonable efforts to make the System available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which We shall give at least 8 hours notice via the Software and which We shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Eastern Standard Time Friday to 3:00 a.m. Eastern Standard Time Monday), or (b) any unavailability caused by circumstances beyond Our reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Our employees), or Internet Service Provider failures or delays, and (iii) provide the Software only in accordance with applicable laws and government regulations.

**2.2. Coverage Commitment.** We shall provide the coverage commitment as outlined in Appendix A of this agreement.

## **3. SUPPORT**

### **3.1. TECHNICAL SUPPORT**

**(a) Access to Toll-Free Telephone Technical Support.** Provided You have a current license and paid the applicable fees, Nexgrid will during its normal business hours of 8:00 a.m. to 6:00 p.m., Eastern Standard Time, Monday through Friday (except holidays) make a member of its technical support staff available by telephone to Your system administrator to assist You in the standard business use of the Software. Your system administrator will be responsible for the daily maintenance of the Software



per the User Guide, and will provide the first line technical support of the Software to Your customers. Telephone Technical Support includes assistance relating to any fixes and workarounds as well as minor modifications to reports available from ecoOne or EDS software.

**(b) Support for Network and Managed Devices.** Support services shall also cover support to any Project related network parts and system managed devices including but not limited to ecoNet Multi-Mesh network part, intelaMeters, ecoSwitches, ecoStats, Energy Data Server, ecoOne, intelaHome, or related parts, components, firmware, or software for the term of this Agreement. Support for non-project related networked Customer devices such as, but not limited to, thermostats, street light sensors, load control switches, or capacitor bank controllers or other item not installed as part of the project shall be outside Contractor support services, however the Parties may agree to additional support service(s) through an additional agreement or purchase order.

**3.2. Remote monitoring.** We will provide: (i) high level monitoring during normal business hours of 8:00 a.m. to 6:00 p.m., Eastern Standard Time, Monday through Friday (except holidays) including the performance of ecoOne and intelaHome cloud based servers and their connectivity to the Energy Data Server(s), (ii) quarterly status reports, and (iii) recommendations and adjustments to You to improve the performance of the System. Remote monitoring requires a network connection between the EDS servers and ecoOne cloud servers.

**3.3. On-Site Support.** We will provide, when necessary, on-site support of the System. On-site support shall be provided at a discounted rate which is stipulated in Appendix B. You would be responsible for all travel fees and standard per diem expenses to be based on the General Services Administration published rates.

**3.4. Nexgrid Product Support.** All Nexgrid products supported by this PSSA are warranted in accordance with the terms and provisions of the attached Warranty.

#### **4. FEES AND PAYMENTS**

**4.1. Annual Subscription Fee.** The annual System support fee is provided in Appendix C and will be invoiced annually in advance. The fee is based on the number of Managed Devices at the end of each calendar year with an annual minimal fee of \$5,000.00 US. Quarterly prorated invoices will be sent to reflect any new Managed Devices added to the system beyond the annual renewal. Any additional ordered and agreed upon in writing custom integration services, which are not included in the annual fee, will be charged on a current account basis. If this Agreement is cancelled or terminated at any time during the Term, any unused portion (defined as fees and charges for any services past the Termination date) shall be returned to County within 90 days of the Termination.

Nexgrid is entitled to adjust the support fees and annual subscription fee at the annual renewal period of each year, but shall not exceed the combined Consumer Price Index yearly increase. Nexgrid shall provide 30-day advance notice of its intent to increase the annual fee(s) for the next annual Term. If selected, the extended term option provides a guaranteed Managed Device rate for a period of 3, 5, or 10 years. Any fees paid for the Extended Terms shall be made pursuant to Section 14 of this Agreement.

You shall pay all fees specified in this Agreement and any later authorized and issued Order Forms hereunder. Except as otherwise specified herein or in an Order Form, (i) fees are quoted and payable in United States dollars (ii) fees are based on System purchased and not actual usage. Managed Device totals are based on quarterly periods that end on the last day of March, June, September, and December Months and the annual renewal ends on December 31 unless otherwise specified in this agreement.

**4.2. Invoicing and Payment.** You agree to pay Us for the initial subscription term and any renewal subscription term(s) as set forth in Section 9.2 (Term of Subscriptions). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in this Agreement. We will invoice You in advance unless otherwise stated in the Order Form, invoiced charges are due net 30 days from the invoice date. You are responsible for maintaining complete and accurate billing and contact information in the Software.

**4.3. Overdue Charges.** If any charges are not received from You by the due date, then at Our discretion, (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) We may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 5.2 (Invoicing and Payment).

**4.4. Suspension of Service.** If any amount owing by You under this or any other agreement for the subscription is 60 or more days overdue, We may, without limiting Our other rights and remedies, suspend all services and access to the Software until such amounts are paid in full.

**4.5. Payment Disputes.** We shall not exercise Our rights under Section 5.3 (Overdue Charges) or 5.4 (Suspension of Service) if the applicable charges are under reasonable and good-faith dispute and You are cooperating diligently to resolve the dispute. The parties agree to work together in good faith to resolve any disputes.

**4.6. Taxes.** Unless otherwise stated, Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, " Taxes"). We are responsible for paying all Taxes

associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property and employees.

## **5. SYSTEM & PROFESSIONAL SUPPORT SERVICE EXCLUSIONS**

**5.1.** Unless otherwise agreed to in writing by Nexgrid, this Agreement does not cover or include the following:

- (a)** Support of a Managed Device which has been modified or repaired other than by Nexgrid except those authorized by Nexgrid;
- (b)** Making specification changes or performing services connected with the relocation of a Managed Device unless specified by Us;
- (c)** Modification or replacement of a Managed Device, repair of damage, or increase in service time caused by failure to continually provide a suitable operational environment with all facilities prescribed by the applicable documentation; including, but not limited to, the failure to provide or the failure of adequate electrical power or temperature environment;
- (d)** Modification or replacement of a Managed Device, repair of damage, or increase in service time caused by the use of the Managed Device for other than the purposes for which it is authorized or not in accordance with the Materials operating guidelines;
- (e)** Modification or replacement of a Managed Device, repair of damage, or increase in service time caused by:
  - accident

- natural or man-made disaster which shall include but not be limited to fire, water, wind, and lightning
  - shipping and/or receiving
  - neglect or misuse
  - integration and/or support of any third-party hardware or software not authorized or allowed by Us.
- (f) Modification or replacement of a Managed Device, or increase in service time caused by the use of the Managed Device in combination with other products or materials not furnished by Nexgrid or in combination with other Managed Device or materials furnished by, but not combined by, Nexgrid;
- (g) Backing up or restoring programs and/or data;
- (h) Keying, importing, converting or manipulation of data; and
- (i) Installation of the Managed Device unless installed by authorized entity such as Anixter, Inc. or their designated sub-contractor.

**5.2.** At Your request and in Nexgrid's sole discretion, Nexgrid may perform any of the foregoing services on a billable Special Service basis or as part of a separate professional services agreement. You agree that any services rendered pursuant to Your request for service which is determined by Nexgrid to have been caused by a problem set forth above will be considered a "Special Service".

## **6. WARRANTIES AND DISCLAIMERS**

**6.1. Our Warranties.** We warrant We have and will maintain the personnel, experience and knowledge necessary to qualify US for the particular support services to be performed under this Agreement. We shall perform the Services described herein in accordance with a standard that meets the industry standard of care for performance of the Services. The warranty for the Support Services shall be for 1 year from the date the services are rendered and shall be materially in accordance with this Agreement, the

RFP, and Proposal. Your exclusive remedy, unless otherwise provided or allowed by law, shall be as provided in Section 9.3 (Termination for Cause) and/or Section 9.4 (Refund or Payment upon Termination) below.

**6.2. Mutual Warranties.** Each party represents and warrants that (i) it has the legal power to enter into this Agreement, and (ii) it will not transmit to the other party any Malicious Code (except for Malicious Code previously transmitted to the warranting party by the other party).

**6.3. Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## **7. LIMITATION OF LIABILITY**

**7.1. Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER OR, WITH RESPECT TO ANY SINGLE INCIDENT, THE LESSER OF \$500,000 OR THE AMOUNT PAID BY YOU HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT. THE FOREGOING SHALL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 5 (FEES AND PAYMENT FOR SOFTWARE).

**7.2. Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE

POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## **8. TERM AND TERMINATION**

**8.1. Term of Agreement.** This Agreement commences on the date You accept it and continues until all annual subscriptions granted in accordance with this Agreement have expired or been terminated.

**8.2. Term of Purchased User Subscriptions.** Subscriptions purchased by You commence on the start date specified in the applicable Order Form and continue for the subscription term specified therein. Except as otherwise specified in the applicable Order Form, all annual subscriptions shall automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. The per-unit Managed Device pricing during any such renewal term shall be the same as that during the prior term unless We have given You written notice of a pricing increase at least 30 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter.

**8.3. Termination for Cause.** You or Us may terminate this Agreement for the following: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors; (iii) Licensee may cancel this Agreement at any time with or without for convenience with thirty-days' notice but shall pay to Nexgrid any amounts then due under the Software License Agreement or Professional Support Services Agreement; or (iv) failure of Licensee to obtain continuing funding from the governing body. A party may terminate this

Agreement for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

**8.4. Refund or Payment upon Termination.** Upon any termination for cause by You, We shall refund You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by Us, You shall pay any unpaid fees covering the remainder of the term of all Order Forms after the effective date of termination, if allowed by State of New Mexico law. In no event shall any termination relieve You of the obligation to pay any fees payable to Us for the period prior to the effective date of termination.

**8.5. Surviving Provisions.** Section 5 (Fees and Payment for Software), 7.3 (Disclaimer), 8 (Limitation of Liability), 9.4 (Refund or Payment upon Termination), 10 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction) and 11 (General Provisions) shall survive any termination or expiration of this Agreement.

## **9. GOVERNING LAW AND JURISDICTION**

**9.1. General.** The English language version of this Agreement, if it shall have been translated into any other language, shall be the controlling version of this Agreement. This Agreement shall be governed by and constituted in accordance with the laws of the State of New Mexico. Each of the parties hereto hereby consents to the personal jurisdiction of the state and federal courts located in New Mexico with the venue to be in the First Judicial District Court, Los Alamos and to the use of the English language, for the adjudication of any claim or controversy arising under this Agreement.



**9.2. Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Notices to You shall be addressed to the system administrator designated by You for Your relevant Software account, and in the case of billing-related notices, to the relevant billing contact designated by You.

**9.3. Agreement to Governing Law and Jurisdiction.** Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

**9.4. Waiver of Jury Trial.** Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

## **10. GENERAL PROVISIONS**

**10.1. Export Compliance.** Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Software. Without limiting the foregoing, (i) each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) You shall not permit Users to access or use Software in violation of any U.S. export embargo, prohibition or restriction.

**10.2. Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

- 10.3. No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
- 10.4. Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
- 10.5. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- 10.6. Attorney Fees.** Attorney fees due to either party in any action arising from this Agreement shall be in accordance with State or federal law.
- 10.7. Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. In the event of such a termination, We shall refund to You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of

termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**10.8. Entire Agreement.** This Professional Services and Support Agreement (PSSA), including all exhibits and addenda hereto, constitutes the entire PSSA between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter including but not limited to any Nexgrid online Terms and Use Conditions, Privacy Policy, or Warranty provisions. No modification, amendment, or waiver of any provision of this Agreement shall be effective, unless in writing, and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto, the terms of such exhibit or addendum shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in your purchase order, use of any online system, or other order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void..

This Agreement may not be supplemented, modified, amended, released or discharged except by an instrument in writing signed by each party's duly authorized representative. All captions and headings in this Agreement are for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. Any waiver by either party of any default or breach hereunder shall not constitute a waiver of any provision of this Agreement or of any subsequent default or breach of the same or a different kind.

## **11. EXTENDED TERM**

**11.1. Extended Term Option.** Selecting an extended term option guarantees a fixed Annual Managed Device rate for the overall term of the Agreement. The Managed

Device fee is guaranteed not to escalate during the selected term. If no extended term is selected, this agreement will default to the standard annual renewal.

**11.2. Extended Term Early Termination.** If you have selected an extended term option and this agreement is terminated prior to the selected term as defined in section 9, you will be charged the difference between the current standard annual subscription fee on the date of termination minus the extended term option rate paid.

**11.3. Extended term subscriptions (fixed fee).**

- ☐ 3-year Extended Term Licensing
- ☐ 5-year Extended Term Licensing
- ☒ 7-year Extended Term Licensing
- ☐ 10-year Extended Term Licensing

**IN WITNESS WHEREOF**, the parties have caused their duly authorized representatives to execute this agreement.

**Nexgrid, LLC**

By: _____	Name _____
Title: _____	Date: _____

**The Incorporated County of Los Alamos**

By: _____	Name _____
Title: Timothy Glasco, Utility Director _____	Date: _____

## **APPENDIX A**

### **COVERAGE COMMITMENT.**

- i. Subject to the availability of the County's "backbone" system Nexgrid agrees to satisfy this Coverage Commitment.
- ii. Nexgrid agrees to satisfy the Coverage Commitment as defined herein for the duration of the Coverage Commitment Term. Coverage Commitment shall mean reaching ninety-nine and one-half percent (99.5%) of the installed base of active electric meters via on-request read twenty four (24) hours per day and seven (7) days a week in all weather conditions, excluding non-reporting meter/modules found to be in failure due to County-side problems (such as meter tampering, a damaged meter, a damaged transformer, or other County-related or non-AMI related problem), and except for a Force Majeure event. One hundred percent (100%) of meters must be read within a three (3) day billing cycle. Coverage Commitment Term shall mean five (5) years from the date that ninety-five percent (95%) of electric automated meters and modules are installed and have associated with the automated master system.
- iii. In the event the Coverage Commitment is not met, the costs of the additional equipment including additional ecoNet Gateways, ecoSwitch SL repeaters and associated brackets and mounting kits will be the responsibility of Nexgrid

## **APPENDIX B**

### **Maintenance and Support Fees:**

<b>Managed Device Annual Fee</b>	<b>\$2.50 per managed device or a minimum \$5,000.00 (the greater of the two)</b>
<b>Software Developer</b>	<b>\$150. Hour</b>
<b>On-Site Support Engineer</b>	<b>\$150. Hour</b>

**Last updated: January 4, 2018**

## APPENDIX C

### Limited Product Warranty Agreement and Notices

#### *Nexgrid, LLC*

**CAREFULLY READ THE TERMS AND CONDITIONS OF THIS AGREEMENT BEFORE INSTALLING ANY PRODUCT. THE USE OF ANY NEXGRID PRODUCTS INDICATES YOUR ACCEPTANCE OF THESE TERMS AND CONDITIONS. IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, PROMPTLY RETURN THE PRODUCT UNOPENED TO NEXGRID.**

**Warranty.** For a period of ten (10) years from the date of the authorized purchase of the Products from Nexgrid by Customer, as defined below, Nexgrid warrants to Customer only that Product(s), as defined below, shipped under this Agreement, will: (i) be newly manufactured or warranted as equivalent to new, and (ii) be free from defects in material and workmanship. For the purpose of this Agreement, "Customer" is defined as the authorized purchaser of the Products from Nexgrid, which is and includes the Incorporated County of Los Alamos, and the term does not include any assignee or subsequent purchaser from an authorized Customer, or any other third party. For the purposes of this Agreement, "Product(s)" is defined as the hardware shipped to Customer by Nexgrid, including the software components of the hardware. For the purposes of this Agreement, "Products" shall not include the intelaHome and ecoOne applications. "Products" shall not include third party solutions including but not limited to electric meters, water meters, gas meters and thermostats.

**Exclusions from Warranty.** Nexgrid shall have no obligation under this Warranty or otherwise for correcting, curing, or otherwise remedying any nonconformity or defect with respect to the condition or operation of any system of which the Product was a part including but not limited to, the effective non-compliance of all or part of any system of which the Product was a part under applicable FCC or other governmental regulations.

**No License; Intellectual Property of Nexgrid and Others.** Except as expressly provided, nothing within any of the Products shall be construed as conferring any license under any of the Nexgrid's or any third party's intellectual property rights, whether by estoppel, implication, waiver, or otherwise. Without limiting the generality of the foregoing, you acknowledge and agree that the Products provided are protected by copyright, trademark, patent, or other proprietary rights of Nexgrid and its affiliates, licensors, and service providers. Except as expressly provided to the contrary, you agree not to modify, alter, or deface any of the trademarks, service marks, or other intellectual property made available by Nexgrid in connection with the Products. You agree not to hold yourself out as in any way sponsored by, affiliated with, or endorsed by Nexgrid, any of Nexgrid's' affiliates, or any of Nexgrid's' service providers. You agree not to use any of the trademarks or service marks or other content accessible from Nexgrid of any purpose other than the purpose for which such content is made available to Customers of Nexgrid. You agree not to adapt, translate, modify, decompile, disassemble, or reverse engineer the Products and services or any software or programs used in connection with the Nexgrid Products.

**Remedy.** For a period of ten years (10) from the date of the authorized purchase by Customer, Nexgrid warrants Products to be free from defects in materials and workmanship. Specifically,

Nexgrid will repair or replace, at its discretion, qualified Nexgrid products at no cost during the first two (2) years of the Warranty, and at prorated price discounts during the last eight (8) years of the Warranty. Nexgrid will apply these prorated price discounts to Product list prices in effect at the time of Product return and according to the following prorated price discount schedule:

Years 3 through 4: 50% discount straight line proration

Years 5 through 6: 35% discount straight line proration

Years 7 through 10: 25% discount straight line proration

Customer's exclusive remedy, for any breach of the Warranty, including any cause of action arising in contract, tort, strict liability or otherwise, or for any defect or nonconformity of a Product shall be the replacement by Nexgrid of any defective Product returned to Nexgrid by Customer with identical or comparable Product or components, or at the option of Nexgrid the repair and return of the defective Product to Customer within 30 days of receipt of the defective Product by Nexgrid; provided however that Customer returns the defective Product with a Return Material Authorization (RMA) questionnaire and obtains an RMA number from Nexgrid; and further provided that all returns shall be properly packaged for shipping purposes. Any Product returned to Nexgrid without prior authorization for its return or proper packaging may be refused at the option of Nexgrid. For products under warranty, Nexgrid shall pay all shipping cost to return the Product to Nexgrid. Any Product returned to Nexgrid that upon inspection by Nexgrid is deemed to be functioning properly (e.g., not under Warranty) will be returned to the Customer who will be charged a diagnostic fee of \$30.00 for each Product plus the costs of shipping. The Customer will also be charged a return shipping and handling fee of \$9.00 for each non-defective Product returned to the Customer.

**Replacement.** In the event a returned Product cannot be repaired or is no longer commercially available Nexgrid shall apply a credit to the available replacement product equal to the prorated price discounts to the replacement Product list prices in effect at the time of Product return. The credits are listed below:

Years 1 through 2: 100% credit

Years 3 through 4: 50% credit straight line proration

Years 5 through 6: 35% credit straight line proration

Years 7 through 10: 25% credit straight line proration

**Exclusions from Warranty.** Nexgrid shall have no obligation under this Warranty or otherwise for correcting, curing, or otherwise remedying any nonconformity or defect with respect to the condition or operation of any system of which the Product was a part.

**Supervision.** Except as otherwise expressly provided herein, or as may be otherwise agreed upon through a separate Professional Services and Support Agreement (PSSA), Nexgrid shall not be responsible for technical support of users other than the Customer.

**Limitations of Warranty.** THE FOREGOING WARRANTY AND REMEDIES ARE EXCLUSIVE AND MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED OR OTHERWISE, INCLUDING WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE (INCLUDING BANDWIDTH PERFORMANCE). NEXGRID DOES NOT ASSUME OR AUTHORIZE ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH ITS PRODUCTS.

**Disclaimer.** EXCEPT AS SETFORTH ABOVE, NEXGRID DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS, AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, MERCHANTABILITY AND FITNESS FOR USE WITH RESPECT TO



THE PRODUCTS. BY WAY OF ILLUSTRATION THIS EXCLUSION INCLUDES BUT IS NOT LIMITED TO CONDITION, LATENT AND HIDDEN DEFECTS, AND ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR USE (INCLUDING BANDWIDTH PERFORMANCE) AND WITH RESPECT TO THE NATURE AND QUALITY OF ANY OTHER PERFORMANCE BY NEXGRID HEREUNDER. DUE TO ABSENCE OF CERTAIN APPLICABLE REGULATORY STANDARDS OR GUIDELINES (COLLECTIVELY "REGULATORY STANDARDS"), THERE CAN BE NO ASSURANCE THAT SUCH REGULATORY STANDARDS WILL BE DEFINED OR ENACTED OR IN THE EVENT ANY REGULATORY STANDARDS ARE ENACTED, THE PRODUCT WILL BE FOUND COMPLIANT THEREWITH OR THAT THE PRODUCT'S PERFORMANCE WILL NOT BE ADVERSELY AFFECTED.

IN NO EVENT SHALL NEXGRID BE LIABLE TO CUSTOMER AND/OR END USERS FOR ANY INCIDENTAL, SPECIAL, INDIRECT, EXEMPLARY, OR CONSEQUENTIAL LOSS OR DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF BUSINESS, MANPOWER, LABOR COSTS, PROFIT, REVENUE AND/OR DATA WHETHER ARISING FROM BREACH OF CONTRACT, TORT STRICT LIABILITY OR OTHERWISE OR ANY CLAIMS OR DEMANDS BROUGHT AGAINST ONE PARTY BY ANY OTHER PARTY OR OTHERWISE, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIMS OR DEMANDS.

**Limited License.** Nexgrid grants Customer the right to use Nexgrid Software included with the hardware so long as Customer uses the program together with the hardware, or servicing such hardware and are authorized to do so by Nexgrid; provided, however, that distribution of the Nexgrid Software and all encryption programs and feature activation software supplied to Customer (collectively, the "Software"), and other printed materials accompanying the Software ("Documentation") shall be accomplished per this Agreement or by separate License Agreement with Nexgrid.

Software is owned by Nexgrid and its suppliers and is protected by United States and international copyright laws and international trade provisions. Customer must treat the Software like any other copyrighted material. Customer acknowledges that no title to the intellectual property in the Software is transferred to Customer, and Customer will not acquire any rights to the Software except as expressly set forth herein.

Customer agrees not to attempt, and to use reasonable efforts to prevent Customer's employees and contractors from attempting to copy, modify, distribute, reverse engineer, disassemble, decompile, or make any attempt to discover the source code of the Software, including encryption programs and feature activation software, except to the extent that such prohibition is restricted by applicable law.

THE WARRANTIES PROVIDED HEREIN ARE PROVIDED BY NEXGRID AND NOT NEXGRID'S SUPPLIERS. CUSTOMER ACKNOWLEDGES THAT THE NEXGRID PRODUCTS MAY INCLUDE ENCRYPTION TECHNOLOGY, FOR WHICH EXPORT CONTROLS HAVE BEEN IMPOSED BY THE UNITED STATES AND FOREIGN GOVERNMENT ENTITIES.

In exercising its rights under this Agreement, Customer shall not export or re-export the Nexgrid Products in violation of export control, law or regulation imposed on the Nexgrid Products by the United States or any other country or organization or nations within whose jurisdiction Customer operates or does business.

If this Software is to be acquired by the U.S. Government, the Software and related Documentation is commercial computer software and commercial computer software

documentation developed exclusively at private expense, and (i) if acquired by or on behalf of a civilian agency, shall be subject to the terms of this computer software license as specified in 48 C.F.R. 12.212 of the Federal Acquisition Regulations and its successors; and (ii) if acquired by or on behalf of Products of the Department of Defense ("DOD") shall be subject to the terms of this commercial computer software license as specified in 48 C.F.R. 227.7202-2, DOD FAR Supplement.

**Termination.** This Agreement is effective until terminated. Customer may terminate this warranty at any time. This Agreement also will terminate if Customer does not comply with any terms or conditions of this Agreement. This Agreement will also terminate with the termination of the Nexgrid Professional Services and Support Agreement.

**Federal Communication Commission (FCC).** This device complies with Part 15 of the FCC Rules and Regulations. Operation is subject to the following two conditions: (1) This device may not cause harmful interference, and (2) This device must accept any interference received, including interference that may cause undesired operation.

This equipment has been tested and found to comply with the limits pursuant to Part 15 of the FCC Rules. These limits are designed to provide reasonable protection against harmful interference. This equipment generates, uses, and can radiate radio-frequency energy and may cause harmful interference to radio communications. If this equipment does cause harmful interference, which can be determined by turning the equipment on and off, the user/operator is encouraged to correct the interference by one or more of the following measures:

- Increase the separation between the affected equipment and the Product;
- Enable the notch protocol;
- Decrease the Product power level;
- Remove or turn-off the Product.

**Important Notes:**

1. Intentional or unintentional changes or modifications must not be made unless under the express consent of the party responsible for compliance. Any such modifications could void the user's authority to operate the equipment and will void the manufacturer's warranty.
2. If the operator chooses to operate the Product above the maximum setting recommended for reasonable assurance of compliance with Part 15 emissions limits, it is recommended that the operator perform emissions testing to demonstrate the Product in-situ remains in compliance at the higher power level.
3. Nexgrid makes no guarantee that the system will operate at lower power levels, with or without frequency notches, if upon reducing power levels and or implementing notch schemes the system is unstable we recommend that network design be modified to include additional repeaters, reduce cell coverage area among other strategies.

**EXHIBIT E-1**  
**NEXGRID WARRANTY**

**Limited Product Warranty Agreement and Notices**

***Nexgrid, LLC***

**CAREFULLY READ THE TERMS AND CONDITIONS OF THIS AGREEMENT BEFORE INSTALLING ANY PRODUCT. THE USE OF ANY NEXGRID PRODUCTS INDICATES YOUR ACCEPTANCE OF THESE TERMS AND CONDITIONS. IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, PROMPTLY RETURN THE PRODUCT UNOPENED TO NEXGRID.**

**Warranty.** For a period of ten (10) years from the date of the authorized purchase of the Products from Nexgrid by Customer, as defined below, Nexgrid warrants to Customer only that Product(s), as defined below, shipped under this Agreement, will: (i) be newly manufactured or warranted as equivalent to new, and (ii) be free from defects in material and workmanship. For the purpose of this Agreement, "Customer" is defined as the authorized purchaser of the Products from Nexgrid, which is and includes the Incorporated County of Los Alamos, and the term does not include any assignee or subsequent purchaser from an authorized Customer, or any other third party. For the purposes of this Agreement, "Product(s)" is defined as the hardware shipped to Customer by Nexgrid, including the software components of the hardware. For the purposes of this Agreement, "Products" shall not include the intelaHome and ecoOne applications. "Products" shall not include third party solutions including but not limited to electric meters, water meters, gas meters and thermostats.

**Exclusions from Warranty.** Nexgrid shall have no obligation under this Warranty or otherwise for correcting, curing, or otherwise remedying any nonconformity or defect with respect to the condition or operation of any system of which the Product was a part including but not limited to, the effective non-compliance of all or part of any system of which the Product was a part under applicable FCC or other governmental regulations.

**No License; Intellectual Property of Nexgrid and Others.** Except as expressly provided, nothing within any of the Products shall be construed as conferring any license under any of the Nexgrid's or any third party's intellectual property rights, whether by estoppel, implication, waiver, or otherwise. Without limiting the generality of the foregoing, you acknowledge and agree that the Products provided are protected by copyright, trademark, patent, or other proprietary rights of Nexgrid and its affiliates, licensors, and service providers. Except as expressly provided to the contrary, you agree not to modify, alter, or deface any of the trademarks, service marks, or other intellectual property made available by Nexgrid in connection with the Products. You agree not to hold yourself out as in any way sponsored by, affiliated with, or endorsed by Nexgrid, any of Nexgrid's' affiliates, or any of Nexgrid's' service providers. You agree not to use any of the trademarks or service marks or other content accessible from Nexgrid of any purpose other than the purpose for which such content is made available to Customers of Nexgrid. You agree not to adapt, translate, modify, decompile, disassemble, or reverse engineer the Products and services or any software or programs used in connection with the Nexgrid Products.

**Remedy.** For a period of ten years (10) from the date of the authorized purchase by Customer, Nexgrid warrants Products to be free from defects in materials and workmanship. Specifically, Nexgrid will repair or replace, at its discretion, qualified Nexgrid products at no cost during the first two (2) years of the Warranty, and at prorated price discounts during the last eight (8) years of the Warranty. Nexgrid will apply these prorated price discounts to Product list prices in effect at the time of Product return and according to the following prorated price discount schedule:

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Customer's exclusive remedy, for any breach of the Warranty, including any cause of action arising in contract, tort, strict liability or otherwise, or for any defect or nonconformity of a Product shall be the replacement by Nexgrid of any defective Product returned to Nexgrid by Customer with identical or comparable Product or components, or at the option of Nexgrid the repair and return of the defective Product to Customer within 30 days of receipt of the defective Product by Nexgrid; provided however that Customer returns the defective Product with a Return Material Authorization (RMA) questionnaire and obtains an RMA number from Nexgrid; and further provided that all returns shall be properly packaged for shipping purposes. Any Product returned to Nexgrid without prior authorization for its return or proper packaging may be refused at the option of Nexgrid. For products under warranty, Nexgrid shall pay all shipping cost to return the Product to Nexgrid. Any Product returned to Nexgrid that upon inspection by Nexgrid is deemed to be functioning properly (e.g., not under Warranty) will be returned to the Customer who will be charged a diagnostic fee of \$30.00 for each Product plus the costs of shipping. The Customer will also be charged a return shipping and handling fee of \$9.00 for each non-defective Product returned to the Customer.

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Years 1 through 2: 100% credit  
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**Supervision.** Except as otherwise expressly provided herein, or as may be otherwise agreed upon through a separate Professional Services and Support Agreement (PSSA), Nexgrid shall not be responsible for technical support of users other than the Customer.

**Limitations of Warranty.** THE FOREGOING WARRANTY AND REMEDIES ARE EXCLUSIVE AND MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED OR OTHERWISE, INCLUDING WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE (INCLUDING BANDWIDTH PERFORMANCE). NEXGRID DOES NOT ASSUME OR AUTHORIZE ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH ITS PRODUCTS.

**Disclaimer.** EXCEPT AS SETFORTH ABOVE, NEXGRID DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS, AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, MERCHANTABILITY AND FITNESS FOR USE WITH RESPECT TO THE PRODUCTS. BY WAY OF ILLUSTRATION THIS EXCLUSION INCLUDES BUT IS NOT LIMITED TO CONDITION, LATENT AND HIDDEN DEFECTS, AND ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR USE (INCLUDING BANDWIDTH PERFORMANCE) AND WITH RESPECT TO THE NATURE AND QUALITY OF ANY OTHER PERFORMANCE BY NEXGRID HEREUNDER. DUE TO ABSENCE OF CERTAIN APPLICABLE REGULATORY STANDARDS OR GUIDELINES (COLLECTIVELY "REGULATORY STANDARDS"), THERE CAN BE NO ASSURANCE THAT SUCH REGULATORY STANDARDS WILL BE DEFINED OR ENACTED OR IN THE EVENT ANY REGULATORY STANDARDS ARE ENACTED, THE

PRODUCT WILL BE FOUND COMPLIANT THEREWITH OR THAT THE PRODUCT'S PERFORMANCE WILL NOT BE ADVERSELY AFFECTED.

IN NO EVENT SHALL NEXGRID BE LIABLE TO CUSTOMER AND/OR END USERS FOR ANY INCIDENTAL, SPECIAL, INDIRECT, EXEMPLARY, OR CONSEQUENTIAL LOSS OR DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF BUSINESS, MANPOWER, LABOR COSTS, PROFIT, REVENUE AND/OR DATA WHETHER ARISING FROM BREACH OF CONTRACT, TORT STRICT LIABILITY OR OTHERWISE OR ANY CLAIMS OR DEMANDS BROUGHT AGAINST ONE PARTY BY ANY OTHER PARTY OR OTHERWISE, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIMS OR DEMANDS.

**Limited License.** Nexgrid grants Customer the right to use Nexgrid Software included with the hardware so long as Customer uses the program together with the hardware, or servicing such hardware and are authorized to do so by Nexgrid; provided, however, that distribution of the Nexgrid Software and all encryption programs and feature activation software supplied to Customer (collectively, the "Software"), and other printed materials accompanying the Software ("Documentation") shall be accomplished per this Agreement or by separate License Agreement with Nexgrid.

Software is owned by Nexgrid and its suppliers and is protected by United States and international copyright laws and international trade provisions. Customer must treat the Software like any other copyrighted material. Customer acknowledges that no title to the intellectual property in the Software is transferred to Customer, and Customer will not acquire any rights to the Software except as expressly set forth herein.

Customer agrees not to attempt, and to use reasonable efforts to prevent Customer's employees and contractors from attempting to copy, modify, distribute, reverse engineer, disassemble, decompile, or make any attempt to discover the source code of the Software, including encryption programs and feature activation software, except to the extent that such prohibition is restricted by applicable law.

THE WARRANTIES PROVIDED HEREIN ARE PROVIDED BY NEXGRID AND NOT NEXGRID'S SUPPLIERS. CUSTOMER ACKNOWLEDGES THAT THE NEXGRID PRODUCTS MAY INCLUDE ENCRYPTION TECHNOLOGY, FOR WHICH EXPORT CONTROLS HAVE BEEN IMPOSED BY THE UNITED STATES AND FOREIGN GOVERNMENT ENTITIES.

In exercising its rights under this Agreement, Customer shall not export or re-export the Nexgrid Products in violation of export control, law or regulation imposed on the Nexgrid Products by the United States or any other country or organization or nations within whose jurisdiction Customer operates or does business.

If this Software is to be acquired by the U.S. Government, the Software and related Documentation is commercial computer software and commercial computer software documentation developed exclusively at private expense, and (i) if acquired by or on behalf of a civilian agency, shall be subject to the terms of this computer software license as specified in 48 C.F.R. 12.212 of the Federal Acquisition Regulations and its successors; and (ii) if acquired by or on behalf of Products of the Department of Defense ("DOD") shall be subject to the terms of this commercial computer software license as specified in 48 C.F.R. 227.7202-2, DOD FAR Supplement.

**Termination.** This Agreement is effective until terminated. Customer may terminate this warranty at any time. This Agreement also will terminate if Customer does not comply with any terms or conditions of this Agreement. This Agreement will also terminate with the termination of the Nexgrid Professional Services and Support Agreement.

**Federal Communication Commission (FCC).** This device complies with Part 15 of the FCC Rules and Regulations. Operation is subject to the following two conditions: (1) This device may not cause harmful interference, and (2) This device must accept any interference received, including interference that may cause undesired operation.

This equipment has been tested and found to comply with the limits pursuant to Part 15 of the FCC Rules. These limits are designed to provide reasonable protection against harmful interference. This equipment generates, uses, and can radiate radio-frequency energy and may cause harmful interference to radio communications. If this equipment does cause harmful interference, which can be determined by turning the equipment on and off, the user/operator is encouraged to correct the interference by one or more of the following measures:

- Increase the separation between the affected equipment and the Product;
- Enable the notch protocol;
- Decrease the Product power level;
- Remove or turn-off the Product.

**Important Notes:**

1. Intentional or unintentional changes or modifications must not be made unless under the express consent of the party responsible for compliance. Any such modifications could void the user's authority to operate the equipment and will void the manufacturer's warranty.
2. If the operator chooses to operate the Product above the maximum setting recommended for reasonable assurance of compliance with Part 15 emissions limits, it is recommended that the operator perform emissions testing to demonstrate the Product in-situ remains in compliance at the higher power level.
3. Nexgrid makes no guarantee that the system will operate at lower power levels, with or without frequency notches, if upon reducing power levels and or implementing notch schemes the system is unstable we recommend that network design be modified to include additional repeaters, reduce cell coverage area among other strategies.

**EXHIBIT E-2**  
**ACLARA WARRANTIES**

## **Aclara Hardware Warranties**

- Aclara Meters Equipment Warranty



## Aclara Meters LLC (Aclara Meters) Equipment Warranty

Seller warrants that Products shall be delivered free from defects in material, workmanship and title and that Services shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications.

The warranty for Products shall expire one (1) year from first use or eighteen (18) months from delivery, whichever occurs first, except that software is warranted for ninety (90) days from delivery. The warranty for Services shall expire one (1) year after performance of the Service, except that software-related Services are warranted for ninety (90) days.

If Products or Services do not meet the above warranties, Buyer shall promptly notify Seller in writing prior to expiration of the warranty period. Seller shall (i) at its option, repair or replace defective Products and (ii) re-perform defective Services. If despite Seller's reasonable efforts, a non-conforming Product cannot be repaired or replaced, or non-conforming Services cannot be re-performed, Seller shall refund or credit monies paid by Buyer for such non-conforming Products and Services. Warranty repair, replacement or re-performance by Seller shall not extend or renew the applicable warranty period. Buyer shall obtain Seller's agreement on the specifications of any tests it plans to conduct to determine whether a non-conformance exists.

Buyer shall bear the costs of access for Seller's remedial warranty efforts (including removal and replacement of systems, structures or other parts of Buyer's facility), de-installation, decontamination, re-installation and transportation of defective Products to Seller and back to Buyer.

The warranties and remedies are conditioned upon (a) proper storage, installation, use, operation, and maintenance of Products, (b) Buyer keeping accurate and complete records of operation and maintenance during the warranty period and providing Seller access to those records, and (c) modification or repair of Products or Services only as authorized by Seller in writing. Failure to meet any such conditions renders the warranty null and void. Seller is not responsible for normal wear and tear.

This Article 5 provides the exclusive remedies for all claims based on failure of or defect in Products or Services, regardless of when the failure or defect arises, and whether a claim, however described, is based on contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability or otherwise. The warranties provided in this Article 5 are exclusive and are in lieu of all other warranties, conditions and guarantees whether written, oral, implied or statutory.

**NO IMPLIED OR STATUTORY WARRANTY, OR WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES.**



## **EXHIBIT F. COVERAGE COMMITMENT**

Subject to the availability of the County's "backbone" system Contractor agrees to satisfy this Coverage Commitment.

Contractor agrees to satisfy the Coverage Commitment as defined herein for the duration of the Coverage Commitment Term. Coverage Commitment shall mean reaching ninety-nine and one-half percent (99.5%) of the installed base of active electric meters via on-request read twenty four (24) hours per day and seven (7) days a week in all weather conditions, excluding non-reporting meter/modules found to be in failure due to County-side problems (such as meter tampering, a damaged meter, a damaged transformer, or other County-related or non-AMI related problem), and except for a Force Majeure event. One hundred percent (100%) of meters must be read within a three (3) day billing cycle. Coverage Commitment Term shall mean five (5) years from the date that ninety-five percent (95%) of electric automated meters and modules are installed and have associated with the automated master system.

In the event the Coverage Commitment is not met, the costs of the additional equipment including additional ecoNet Gateways, ecoSwitch SL repeaters and associated brackets and mounting kits will be the responsibility of Contractor.

## **EXHIBIT G. SYSTEM AND FINAL ACCEPTANCE TESTING**

### **The following has been submitted to Nexgrid**

- ☐ Hard or soft copy maps marked with existing backbone locations
- ☐ Hard or soft copy maps marked with designated smart grid end devices areas
- ☐ Secured static public IP address
- ☐ Sample billing file and documentation
- ☐ Fully completed Questionnaire

### **Nexgrid Has Submitted**

- ☐ Initial Map with Gateways (ecoNets) Locations

### **Phase 1-2 SignOff**

- ☐ Phase 1 summary call has been conducted
- ☐ Project plan has been submitted and signed off
- ☐ Kick Off Meeting has been conducted

### **Delivery & Deployment**

#### **EDS & ecoOne**

- ☐ EDS Cluster has been installed
- ☐ Utility administrator users has been setup in ecoOne
- ☐ Network monitor and control is accessible on ecoOne

#### **Hardware Delivery**

- ☐ Agreed upon Hardware Quantities for project phase has been delivered

#### **Installation, Read & Control**

- ☐ Access Points (backboned ecoNets) has been installed
- ☐ Access Points (backboned ecoNets) are visible and controllable via ecoOne
- ☐ Option: (if exists in design) Repeaters have been installed
- ☐ Option: (if exists in design) Repeaters are visible and controllable via ecoOne
- ☐ Over \_\_\_\_% of end devices agreed to be installed at this phase have been installed
- ☐ Over \_\_\_\_% of the installed end devices are visible via ecoOne
- ☐ Over \_\_\_\_% of the installed end device meter reads are available in ecoOne reports
- ☐ Option: over \_\_\_\_% of installed Street Lights are functioning according to their set schedule
- ☐ Option: over \_\_\_\_% of installed Load Control devices are functioning according to their set schedule

## Data & Billing

- ☐ Billing Process is working well and signed off
- ☐ Option: (if exists) ecoOne has completely synced assets data from 3rd party system
- ☐ Option: continues pre-defined schedule sync process is running for data integrity

## Signatures

Nexgrid

Customer