SMARTPHONE METER READING (SPMR) SUBSCRIPTION AGREEMENT

This SPMR Subscription Agreement ("Agreement") is made by and between SmartPhone Meter Reading, L.L.C., a Texas limited liability corporation, located at 840 F Avenue, Suite 100, Plano, Texas 75074 (hereinafter "SPMR"), and Incorporated County of Los Alamos doing business at 1000 Central Ave, #130, Los Alamos, NM 87544 ("Subscriber").

RECITALS

A. WHEREAS SPMR licenses, in object form only, proprietary computer software ("Software") as an application for smart phones, or similar devices, to record utility meter data and to communicate such data to its remote server ("Application");

B. WHEREAS SPMR hosts the utility meter data on its remote server for retrieval by Subscriber ("Hosting") and collectively, the Application, Hosting and any other services such as training or set-up shall constitute "Services"; and

C. WHEREAS Subscriber desires to use the Services;

IN CONSIDERATION of the terms and conditions of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 - GENERAL TERMS

1. ENTIRE AGREEMENT. It is agreed that this Agreement and any EXHIBIT(S) attached hereto and made a part hereby embody the entire agreement of the parties in relation to the subject matter hereunder, and that there is no other oral or written agreement or understanding between the parties at the time of execution pertaining to the subject matter of this Agreement. This Agreement shall not be modified except by the written agreement of all parties hereto.

2. GOVERNING LAW AND CHOICE OF VENUE. This agreement shall be construed, interpreted and enforced under the laws and statutes of the State of Texas without regard for any of said state's conflicts of law provisions. Any legal actions relating to this Agreement shall be brought in either a state court in Collin County, Texas or in a Federal court in the Northern District of Texas, Dallas Division.

3. TAXES. Subscriber shall pay all taxes arising out of this Agreement, except for taxes levied upon the net income of SPMR. Subscriber agrees to provide an exemption certificate with this contract if Subscriber is an exempt organization for state sales and use tax purposes. SPMR agrees to report New Mexico Gross Receipts Taxes, collect and remit such taxes to the State. Subscriber agrees to pay SPMR the Gross Receipts Taxes with each invoice.

ARTICLE 2 – PAYMENTS

1. APPLICATION AND OTHER SERVICES. Subscriber shall pay SPMR for the fees described in EXHIBIT 1 for the Services. Payment shall be made as follows:

A. Subscriber will have access to Services when Services are activated ("Activation Date"). The initial payment of service fees shall be made within ten (10) business days of the Activation Date and if the Activation Date is not on the first day of the month, a prorated fee shall be included in the initial payment of service fees for Services provided from the Activation Date through the last day of that month. Subsequent payments shall be made according to the following payment interval options:

i. If the monthly pre-payment option is used, subsequent monthly payments shall be made on the first day of each calendar month thereafter until the Agreement is terminated.

ii. If the annual pre-payment option is used, the subsequent annual payments shall be for an entire annual period and shall be made on the first day of the month following the month in which the Activation Date falls and on each subsequent anniversary of the start of each annual year period invoiced until the Agreement is terminated.

B. Subscriber shall pay SPMR for any support or training at SPMR's quoted price thirty (30) days after the invoice date.

C. SPMR ongoing fees are subject to change on the first and subsequent anniversaries of the Activation Date, but in no event shall the increases exceed ten (10) percent.

2. Subscriber's rights to use the Application or Hosting are expressly conditioned on the timely prepayment of the fees described in EXHIBIT 1 and Subscriber's rights to use the Application and Hosting will terminate effective the date any prepayment was due if not paid.

ARTICLE 3 – SOFTWARE

1. SPMR SOFTWARE LICENSE GRANT. SPMR hereby grants to Subscriber a nontransferable and nonexclusive license for the use and possession of the SPMR Software in object code form only. Said license is granted under the terms and conditions set forth herein.

2. Subscriber agrees that SPMR retains ownership rights to the Software, and that Subscriber acquires no title to the Software, nor any other interest in the Software, other than the right to use and possess the Software in accordance with the terms and conditions of this Agreement. All rights not explicitly granted to Subscriber are retained by SPMR.

3. Subscriber may not copy, decompile, reverse-engineer, disassemble, attempt to derive the source code of, modify or create derivative works of the

Application or any part thereof.

4.   Subscriber agrees that it shall not attempt to or actually sell, give, lend, lease, convey, transfer, license, sublease, provide, or in any other manner transfer any of its rights in the Software, whether or not modified.

ARTICLE 4 – SERVICES

1.   SPMR shall provide Subscriber with the Services described on the attached EXHIBIT(S).

2.   Services include those specifically described on the attached EXHIBIT(S) and Subscriber agrees that any services not described such as supplemental training or consulting and any related travel and living expenses are not included and Subscriber agrees to pay such charges and expenses within thirty (30) days of SPMR's invoice.

ARTICLE 5 - WARRANTIES

1.   SPMR warrants that the System shall operate substantially in accordance with the on-line User Manual. The exclusive remedy for any valid warranty claim shall be the provision of conforming software.
2.   DISCLAIMER OF WARRANTY AND LIMITATIONS OF REMEDIES. TO THE EXTENT ALLOWED BY LAW, SUBSCRIBER UNDERSTANDS AND AGREES AS FOLLOWS:

    A.   THE EXPRESS WARRANTIES AS SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH OTHER WARRANTIES ARE HEREBY DISCLAIMED AND EXCLUDED BY SPMR.

    B.   SPMR SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY DELAY IN FURNISHING SOFTWARE, SERVICES OR ANY OTHER PERFORMANCE UNDER OR PURSUANT TO THIS AGREEMENT.

    C.   SPMR DOES NOT WARRANT THE OPERATION OF SOFTWARE OR SERVICES INCLUDED IN THE SYSTEM TO BE ERROR FREE.

    D.   THE SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF ANY AND ALL WARRANTIES AND THE SOLE REMEDIES FOR SPMR'S LIABILITY OF ANY KIND (INCLUDING LIABILITY FOR NEGLIGENCE) WITH RESPECT TO THE SOFTWARE OR SERVICES COVERED BY THIS AGREEMENT OR ANY PERFORMANCE BY SPMR UNDER OR PURSUANT TO THIS AGREEMENT, WILL BE LIMITED TO THE REMEDIES SET FORTH IN THIS ARTICLE AND IN NO EVENT SHALL EXCEED THE AGGREGATE CONSIDERATION PAID BY SUBSCRIBER FOR THE SERVICES.

    E.   IN NO EVENT SHALL SPMR'S LIABILITY OF ANY KIND INCLUDE ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, EVEN IF SPMR SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.

ARTICLE 6 – TERM AND TERMINATION

1.   The initial term of this Agreement ("Subscription Year") shall be from the Activation Date through the one-year anniversary of that date, except that if the Activation Date is not on the first day of a calendar month, then the first anniversary and all subsequent anniversaries of the Activation Date shall be the first day of the following month. This Agreement shall automatically renew each Subscription year, for no more than six (6) renewal years, unless the Subscriber provides SPMR with written notice of termination at least sixty (60) days prior to the beginning of the upcoming Subscription Year.
2.   If Subscriber defaults on any obligation in accordance with the terms and conditions of this Agreement and SPMR notifies Subscriber in writing of the details of said failure of performance, then SPMR may, at its option, terminate this Agreement without notice to Subscriber.
3.   In the event either party terminates this Agreement or the license of Software, or should Subscriber fail to timely make any payment for the services, all licenses granted under this Agreement shall be terminated, and Subscriber shall, immediately, on the termination date, erase the Software in whatever form retained, and return or destroy any copies of Software documentation. Subscriber shall certify in writing to SPMR that Subscriber has so returned and/or destroyed the Software and SPMR Documentation.

SMARTPHONE METER READING, L.L.C.   **INCORPORATED COUNTY OF LOS ALAMOS**

Signature: _____   Signature: _____

Print Name: _____   Print Name: _____

Title: _____   Title: _____

Date: _____   Date: _____

Exhibit 1 – SPMR™ Services Schedule

Description	Effective Rate per Month		Qty	Cost Extended Annual Pre-Pay	
SPMR SmartPhone: License and Support	$	107.10	4	$	5,140.80
SPMR SmartPhone: Data Hosting	$	26.10	4	$	1,252.80
SPMR WEB: License and Support, 1st Seat	$	224.10	1	$	2,689.20
SPMR SmartPhone: Warm Backup	$	71.10	1	$	853.20
			Totals	$	9,936.00
			*Plus Gross Receipts Tax		
Other User Fees and One-Time Service Fees	Cost				
Setup - Web Server, Web Seat(s), Phone(s), Users	$	719.00			
Training - SPMR WEB, SPMR SmartPhone	$	1,349.00			
	*Plus Gross Receipts Tax				

Subscriber hereby chooses the ☐ Monthly or ☒ Annual Pre-Pay Option Listed Above.