



Network Infrastructure Maintenance Agreement

IN WITNESS WHEREOF, the parties have caused this Network Infrastructure Maintenance Agreement ("Agreement") to be executed by their duly authorized representatives as of the date written below. The date of the last party to sign is the "Execution Date."

Master Meter, Inc. ("Master Meter")

City of _____ ("Customer")

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Powered by



NETWORK INFRASTRUCTURE MAINTENANCE AGREEMENT

Purchase of Equipment. Customer shall purchase all Equipment from Master Meter, Inc. or Master Meter's authorized distributor pursuant to the terms and conditions (including any warranties on such Equipment) agreed by Customer and Master Meter's authorized distributor. This Agreement shall not affect any terms and conditions, including any warranty terms, agreed to by Customer and Master Meter's authorized distributor. If Customer elects to purchase any equipment or services directly from Master Meter, or if Customer pays any fees or other costs to Master Meter, then Master Meter's Terms of Sale shall apply. The "Terms of Sale" are available by calling 1-800-928-6388 or may be found online at the Master Meter website.

Purchase of Coverage. Maintenance Coverage for RF Field Equipment may be purchased anytime for equipment, so long as, at the time Maintenance Coverage is purchased, such equipment is covered under Master Meter's written Consolidated Warranty. The terms of this Agreement become effective upon payment by the Customer for Maintenance Coverage, the "Effective Date". Customer will be invoiced for Maintenance Coverage for RF Field Equipment 30 days prior to the expiration of the one-year standard warranty as covered by Master Meter's written Consolidated Warranty.

- A. Maintenance Coverage for RF Field Equipment may be purchased on a per-unit basis as follows:

Resource Number	Annual Fee	Coverage Provided
RHS-ALL-F-BS-SS	\$5000	One (1) Allegro Base Station
RHS-ALL-F-BS-ALCSS	\$350	One (1) Standard/Solar Repeater
RHS-ALL-F-BS-ALCPC	\$100	One (1) Photocell Repeater

- B. **Equipment Maintenance.**

1. **Preventive and Corrective Maintenance.** For RF Field Equipment for which Customer has purchased coverage under the Agreement ("Covered Equipment"), Master Meter shall (1) perform the preventive Maintenance Services that it determines is reasonably necessary to maintain such equipment in Operational Condition (defined below), and (2) diagnose and correct any failure in such equipment as necessary to meet Operational Condition (excluding minor cosmetic deficiencies such as blemishes, dents or scratches) in accordance with its written warranty procedures. The term "Operating Condition" means capable of performance in accordance with Master Meter's published specifications.

For Covered Equipment, Master Meter will perform the preventive Maintenance Services below:

- Every two (2) years, inspection of the site and the "Covered Equipment;"
 - System wide network health performance check, from the remote central office location; and,
 - Limited technical support, limited AMI system integration support, and AMI network troubleshooting.
2. **Customer Preventive and Corrective Maintenance Responsibilities.** Customer shall keep accurate records of Equipment serial numbers, locations, and maintenance activity as outlined in Exhibit A of the Allegro Troubleshooting and Maintenance Guide to assist Master Meter with the maintenance services. Customer shall provide reasonable assistance during remote troubleshooting activities.
3. **Exclusions.** The services described herein do not include repairs related to:
- damage due to external causes, including accident, abuse, misuse, problems with electrical power, acts of God, usage not in accordance with product instructions or in a configuration not approved by Master Meter;
 - services (including installation or de-installation) not performed or authorized by Master Meter; or,
 - use of parts, configurations or repair depots not certified by Master Meter.
 - Customer's failure to perform troubleshooting and maintenance responsibilities in accordance with this Agreement and as outlined in Exhibit A.
 - Products for which Master Meter has discontinued Maintenance Services. For any discontinued product, Master Meter will take commercially reasonable efforts to make available suitable replacement product.

4. **Restoring Covered Equipment to Maintenance Agreement.** If Customer discontinues or fails to purchase coverage after the end of the original warranty period, discontinues maintenance for any Covered Equipment or has equipment serviced or repaired by a third party that is not Master Meter certified, and thereafter wishes to add such equipment as Covered Equipment, Master Meter reserves the right to (1) inspect such equipment to determine whether it is in Operating Condition and/or (2) charge its current recertification fee, in addition to any fees associated with infrastructure maintenance coverage, prior to such equipment being included as Covered Equipment. Master Meter reserves the right to, at its sole discretion, reject inspected RF Field Equipment for inclusion as Covered Equipment under this Agreement.
5. **Replacement Equipment.** For RF Field Equipment for which Customer has purchased coverage under the Agreement ("Covered Equipment"), Master Meter shall provide & install refurbished equipment that has been previously repaired & certified by Master Meter at no additional cost to Customer. Upon shipment date of refurbished equipment, which establishes the Anniversary Date, the Customer will have 90 days to return failed covered equipment, with shipping costs covered by Master Meter. Failed equipment then becomes the property of Master Meter upon receipt. In the event that 90 day return deadline is not met, Customer will be billed for replacement equipment at current list price. In the event of an RF Field Equipment failure covered under Master Meter written consolidated warranty terms ("Covered Equipment") Master Meter shall provide & install new equipment.

General Terms and Conditions

- A. **Effective Date.** The term of this Agreement will commence on the Effective Date (which shall be the date of the last Party to sign this Agreement and continue for a period of 1 (one) year "**Initial Term**").
- B. **Renewal** Upon expiration of the Initial Term, this Agreement may be renewed for four (4) additional one-year terms unless Customer provides written notice of nonrenewal at least 60 days prior to the end of the current term (each a "**Renewal Term**" and together with the Initial Term, the "**Term**"). Master Meter agrees that the pricing of Maintenance Coverage (as set forth in Paragraph A of this Agreement) will remain fixed for up to five (5) years. If the Term is renewed for any Renewal Term pursuant to this Section, the terms and conditions of this Agreement during such Renewal Term shall be the same as the terms and conditions in effect immediately prior to such renewal, subject to any change in the fees payable hereunder by Customer during the applicable Renewal Term. If either Party provides timely notice of its intent not to renew this Agreement, then, unless otherwise sooner terminated in accordance with its terms, this Agreement shall terminate on the expiration of the then-current Term.
- C. **Limitation of Liability. Maximum Liability.** EXCEPT AS OTHERWISE PROVIDED IN NO EVENT SHALL MASTER METER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO MASTER METER PURSUANT TO THIS AGREEMENT. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE CUSTOMER'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE. THIS LIMITATION OF LIABILITY SETS FORTH MASTER METER'S SOLE LIABILITY AND ENTIRE OBLIGATION AND THE CUSTOMER'S EXCLUSIVE REMEDY FOR ANY ACTION THAT IS BROUGHT AGAINST MASTER METER.

No Consequential or Indirect Damages. EXCEPT AS OTHERWISE PROVIDED, IN NO EVENT SHALL MASTER METER OR ANY OF ITS BUSINESS PARTNERS BE LIABLE TO THE CUSTOMER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING ANY DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF USE, DATA, REVENUE OR PROFIT, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, DOWNTIME COSTS, ANY IN/OUT COSTS, MANUAL METER READ COSTS AND EXPENSES, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT MASTER METER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- D. **Termination.** Either party may terminate this Agreement prior to the expiration of the Term if the other party commits a material breach of this Agreement and such material breach is not cured within sixty (60) days of written notice by the other party. Upon any expiration or termination of this Agreement, Master Meter's and Customer's obligations hereunder shall cease.

- E. **Force Majeure.** No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, earthquake, explosion, or any other natural or manmade disaster or catastrophe; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) enactment, issuance, or operation of any municipal, county, state, or federal law, ordinance or executive, administrative, or judicial regulation, order or decree; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency. The party suffering a Force Majeure Event shall give notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized.
- F. **Confidentiality.** Both parties shall (and shall cause their employees and contractors to) keep all Confidential Information strictly confidential and shall not disclose it to any third party, except to the extent reasonably required to perform and enforce this Agreement or as required under applicable law, court order or regulation. The Confidential Information may be transmitted orally, in writing, electronically or otherwise observed by either party. Notwithstanding the foregoing, "Confidential Information" shall not include; (i) any information that is in the public domain other than due to Recipient's breach of this Agreement; (ii) any information in the possession of the Recipient without restriction prior to disclosure by the Discloser; or (iii) any information independently developed by the Recipient without reliance on the information disclosed hereunder by the Discloser. "Discloser" means either party that discloses Confidential Information, and "Recipient" means either party that receives it.
- G. **Non-Waiver of Rights.** No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- H. **Assignment and Sub-contracting.** Either party may assign, transfer or delegate this Agreement without requiring the other party's consent; (i) to an Affiliate; (ii) as part of a merger; or (iii) to a purchaser of all or substantially all of its assets. Apart from the foregoing, neither party may assign, transfer or delegate this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld. Furthermore, Customer acknowledges Master Meter may use subcontractors to perform RF Field Equipment installation, the systems integration work (if applicable), or project management (if applicable), without requiring Customer's consent.
- I. **Amendments.** No alteration, amendment, or other modification shall be binding unless in writing and signed by both Customer and by a vice president (or higher) of Master Meter.

J. **Governing Law and Dispute Resolution.**

Governing Law and Venue. ALL DISPUTES ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE GOVERNED BY TEXAS LAW, EXCLUDING ITS CHOICE OF LAW RULES.

Any dispute arising out of or in connection with the Agreement, including any question regarding its existence, validity or termination, will be resolved in accordance with this Section and will be settled, if possible, by negotiation of the Parties. Either Party may, by giving written notice, refer the dispute to a meeting of appropriate representatives of each Party, to be held within twenty (20) business days after giving notice. If the dispute is not resolved within thirty (30) business days after the date of the meeting of the Parties, or any later date to which the Parties may agree, either Party may submit the dispute to any mutually agreed mediation service for mediation by providing to the mediation service a joint, written request for mediation, setting forth the subject of the dispute and the relief requested. The parties shall cooperate with the mediation service and with one another in selecting a neutral mediator and in scheduling the mediation proceedings. The parties covenant that they will use commercially reasonable efforts in participating in the mediation. The parties agree that the mediator's fees and expenses and the costs incidental to the mediation will be shared equally between the parties.

These dispute resolution procedures are not intended to be used for disputes concerning actual, alleged or threatened breaches of a Party's confidentiality obligations or infringement of a Party's Intellectual Property Rights where the remedy being sought is injunctive or other equitable relief, and the Parties may immediately bring an action therefore seeking injunctive or other equitable relief. Any claims seeking monetary damages shall be disputed by arbitration as provided below, provided that such arbitration shall not preclude a Party's right to bring an action for injunctive or other equitable relief for breach of the confidentiality obligations or infringement of intellectual property rights, whether brought contemporaneously or otherwise.

In the event that the Parties are unable to resolve a dispute through mediation, then all disputes arising out of or in connection with this Agreement, which shall include, but are not limited to, all contracts entered into between the Parties, or the validity, enforceability or scope of this arbitration provision, shall be finally settled under the Rules of Arbitration of the American Arbitration Association by three arbitrators appointed in accordance with said Rules. Such arbitrators shall each have not less than 10 years' experience in arbitration of commercial contracting disputes. The place of arbitration shall be Fort Worth, Texas. The Parties agree that the United States Federal Arbitration Act shall govern the interpretation, enforcement, and proceedings pursuant to the arbitration clause in this agreement. The arbitration shall be conducted in the English language. The arbitrators shall award to the prevailing party, if any, as determined by the arbitrators, all of its costs and fees. "Costs and fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative expenses, travel expenses, out of pocket expenses such as copying and telephone, court costs, witness fees, and attorney's fees.

- K. **Survival.** The provisions of this Agreement that are applicable to circumstances arising after its termination or expiration shall survive such termination or expiration.
- L. **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

M. Warranties/Disclaimers

DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, ALL SERVICES AND PROVIDER MATERIALS ARE PROVIDED "AS IS" AND MASTER METER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, MASTER METER MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR MASTER METER MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, EXCEPT IF AND TO THE EXTENT EXPRESSLY SET FORTH IN THE SPECIFICATIONS, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

Definitions

- A. **"Affiliate"** of a party means any other entity controlling, controlled by, or under common control with such party, where "control" of an entity means the ownership, directly or indirectly, of 50% or more of either; (1) the shares or other equity in such entity; or (2) the voting rights in such entity.
- B. **"Allegro Base Station"** identifies the Master Meter manufactured device consisting of one transceiver, to be located on a tower that receives readings from the Allegro RF Endpoints (either directly or via an Allegro Repeater) by radio frequency and passes those readings to the Head End Communication Server by TCP/IP backhaul communication.
- C. **"Allegro RF Endpoints"** identifies the Master Meter transmission devices installed on devices such as meters, distribution automation equipment and demand/response devices located at Customer's End Users' premises that take the readings of the meters and transmit those readings by radio frequency to the relevant Allegro Base Station or Allegro Repeater.
- D. **"Allegro Repeater"** identifies the Master Meter manufactured device consisting of one transceiver, located on utility poles which relay a single transmission between the Allegro RF Endpoints and the Allegro Base Station.
- E. **"AMI System"** identifies the Master Meter Allegro Advanced Meter Infrastructure (AMI) System comprised of the Allegro RF Endpoints, the RF Field Equipment, software licenses, FCC licenses, and other equipment provided to Customer hereunder. The AMI System only includes the foregoing, as provided by Master Meter. The AMI System does not include goods, equipment, software, licenses or rights provided by a third party or parties to this Agreement.
- F. **"Confidential Information"** means any and all non-public information of either party, including the terms of this agreement, all technical information about either party's products or services, pricing information, marketing and marketing plans, Customer's End Users' data, AMI System performance, AMI System architecture and design, AMI System software, other business and financial information of either party, and all trade secrets of either party.
- G. **"End User"** means any end user of water that pays Customer for the consumption of water.
- H. **"Head End Communication Server"** identifies the communication server consisting of software used to gather, store, and report data collected by the Allegro Base Stations from the Allegro RF Endpoints.

- I. **“Intellectual Property”** means patents and patent applications, inventions (whether patentable or not), trademarks, service marks, trade dress, copyrights, trade secrets, know-how, data rights, specifications, drawings, designs, moral rights, author’s rights, and other intellectual property rights, including any derivations and/or derivative works, as may exist now or hereafter come into existence, and all renewals and extensions thereof, regardless of whether any of such rights arise under the laws of the United States or of any other state, country or jurisdiction, any registrations or applications thereof, and all goodwill pertinent thereto.

- J. **“RF Field Equipment”** means, collectively, Allegro Base Stations and Allegro Repeaters.

