



SOFTWARE LICENSE AND MAINTENANCE AGREEMENT

BY AND BETWEEN

EMETER CORPORATION

AND

**CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation**

DATED 08/18/09

SOFTWARE LICENSE AND SUPPORT AGREEMENT

ARTICLE 1: Effective Date

The effective date of this Software License and Maintenance Agreement ("SLMA") is August 18, 2009 ("Effective Date").

ARTICLE 2: PARTIES

- A. Licensee
The City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
- B. Licensor
eMeter
eMeter Corporation
One Twin Dolphin Drive
Redwood City, CA 94065

ARTICLE 3: INDUCEMENTS

WHEREAS Licensee has entered into an Agreement for Services with SIEMENS ENERGY, INC. ("Siemens") on August 18, 2009, under which Siemens will provide Licensee with various implementation services for a meter data management system (MDM) using the software provided by Licensor; and

WHEREAS Licensee desires to license certain of Licensor's products and receive maintenance and support for such products;

WHEREAS Siemens has issued a Purchase Order to Licensor under which Licensor has agreed to, among other things, provide to Licensee the license granted hereunder and to provide certain maintenance and support services in respect of the products licensed hereunder in consideration of certain payments to be made by Siemens to Licensor pursuant to the Purchase Order;

WHEREAS Licensee will make payment to Siemens in accordance with the Agreement for Services in consideration for the license granted hereunder by Licensor to Licensee,

NOW THEREFORE, in consideration of the inducements, mutual covenants and conditions contained herein, the parties agree as follows:

ARTICLE 4: DEFINITIONS

"**Scope of Work**" has the meaning given to it in the Scope of Work.

"**License Fee**" means the fee due for the license to use the Licensed Products, excluding any Support Services and the implementation and integration services and Deliverables that are the subject of the Scope of Work.

"Confidential Information" means any information (a) obtained from or through a party hereto by the other party; and/or (b) that relates to the Licensed Products, Deliverables, and/or services contemplated by this SLMA and/or the Scope of Work, that, in the case of (a) through (c), is not generally available to the public. Confidential Information excludes information that the Recipient demonstrates (a) is generally publicly-available other than as a result of a disclosure by Recipient in violation of this SLMA; (b) is in the lawful possession of Recipient prior to disclosure by or on behalf of the Discloser or any of Discloser's Representatives; or (c) was or becomes available to Recipient on a nonconfidential basis prior to its disclosure by or on behalf of Discloser from a third party that to Recipient's knowledge is not bound by a similar duty of confidentiality (contractual, legal, fiduciary, or other).

"Contract Administrator" means the representative identified in Exhibit A of this SLMA that is designated by each party to act in matters relating to the revision of contract language, the adjustment of compensation or time, and the resolution of issues regarding the meaning of contract language.

"Deliverables" has the meaning given to it in the Scope of Work.

"Discloser" means a party hereto whose Confidential Information is obtained or received by the other party.

"Documentation" means the most current version of the written and/or online manual generally made available to Licensor's customers with respect to the Licensed Product to which it refers.

"Extended Support Services" has the meaning given in [Section 9.2](#) below.

"Force Majeure" means an event outside a party's control that delays or prevents performance, such as a fire, flood, epidemic, earthquake, explosion or similar event

"Go Live Date" means the date on which the Licensee accepts the Licensed Products as configured and implemented on Licensee's systems by Siemens pursuant to the terms of the Scope of Work.

"Indemnified Party" means a party indemnified by the other party.

"Indemnifying Party" means a party indemnifying the other party.

"Initial Support Services" has the meaning given in [Section 9.1](#) below.

"License Termination Breach" means a breach by Licensee of Sections [6.2](#), [7.2](#), [7.3](#), or [16.2](#), [17.1](#), [17.4](#), [17.5](#), [17.6](#), or [Article 10](#) or [12](#), of this SLMA.

"Licensed Products" means the products listed on Exhibit A to this SLMA, as amended from time to time by mutual agreement between the Parties and Siemens.

"Licensee Works" means any software, documentation, information, technology or other item that is developed solely by Licensee (including permitted modifications to the Licensed Products and Deliverables).

"Release" means such modifications, improvements and enhancements, to (a) the Licensed Product that eMeter in its discretion incorporates into the Licensed Product and makes generally available to its then-current supported customers at no charge and that are delivered to Licensee by eMeter and (b) the Third Party Software that the Third Party Software manufacturer incorporates into its products and eMeter delivers to Licensee. Releases may include Updates that have been created or otherwise distributed by eMeter to Licensee in the period since the last Release. Releases are identified by the first digit of a two digit code following the name of the Licensed Product eMeter may, in its discretion, identify Releases by increasing the number on the left side of the decimal point in a Licensed Product version numbering (e.g., "Version X.Y"). A Release does not include a new product or module unless such product or module is a Licensed Product on the date hereof or added as a Licensed Product by amending Exhibit A hereto subsequent to the date hereof.

"Object Code" means the binary machine-readable version of computer software.

"Open Source" means any software code that (a) is distributed as free software, open source software, shareware (e.g., Linux), or under similar licensing or distribution models; or (b) is otherwise subject to a requirement that it be redistributed or a condition that software used with it be deemed freely distributable. Open Source includes, but is not limited to, software licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: (1) GNU's General Public License or Lesser/Library General Public License; (2) the Artistic License (e.g., PERL); (3) the Mozilla Public License(s); (4) the Netscape Public License; (5) the Berkeley Software Design License, including Free BSD or BSD-style license; (6) the Sun Community Source License; (7) an Open Source Foundation License (e.g., CDE and Motif UNIX user interfaces); (8) the Apache Server license; and (9) any other licenses listed at <www.opensource.org/licenses>.

"Organic Population Growth" means, with respect to any geographic region, a gradual increase in the population, or energy usage of such region, caused by an increase in new residential or commercial construction or similar development that is reasonably foreseeable, taking into account the characteristics and use of such region as of the Effective Date, which growth results in an increase in the meter count served by Licensee. Organic Population Growth does not include any significant construction program that results in an atypical, unanticipated energy increase for such region.

"Purchase Order" means the agreement between Licensor and Siemens under which Licensor will provide certain services to Siemens in association with this Agreement

"Third Party" means a party hereto that obtains or receives Confidential Information of the other party.

"Representatives" means, with respect to a party, its directors, officers, employees, and the agents, consultants, advisors, or other representatives specified in [Exhibit A](#) hereto.

"Service Levels" means the levels of responsiveness that Licensor provides generally to its customers and which current levels are described in [Exhibit B](#) to this SLMA.

"Source Code" means computer software in printed or electronic form that is human-readable.

"Source Code Escrow Package" means a copy of the Source Code and Object Code of the Licensed Product(s) and Documentation in the most current generally commercially-available version, to which Licensee has been granted a license hereunder.

"Escrow Agent" means the party designated in [Exhibit C](#) to hold the Source Code Escrow Package on behalf of Licensee.

"Escrow Agreement" means the agreement between Licensor and the Escrow Agent regarding the Source Code Escrow Package.

"Support Fees" means the fees for Support Services set forth in the Scope of Work.

"Support Services" means the maintenance and support services that Licensor and Siemens are to provide to Licensee under this SLMA in support of the Licensed Products as set forth in [Article 9](#) of this SLMA, and includes the right to receive then-current Releases and Updates, but excludes the implementation and integration services that are the subject of the Scope of Work.

"Third Party Software" means software owned by any third party.

"Tier 1 Customer Support" means support provided by Siemens to end user operators of the Licensed Product and handling basic user needs and questions such as logging in, performing simple functions, running reports, etc. Tier 1 Customer Support also includes support of customers' system administrators in debugging issues and in conducting general system operations.

"Tier 4 Customer Support" means support provided by Licensor to expert users of the Licensed Products who encounter new or different problems using the software; such support is provided by personnel whose primary responsibility is providing customer support.

"Tier 5 Customer Support" means support provided by Licensor for issues or situations that go beyond the expertise of Tier 4 support personnel and includes participation by product managers, developers, and other senior technical staff with in-depth product expertise. Tier 3 Customer Support also includes receipt, recording, and resolution of all software support issues covered by the software maintenance services in the Scope of Work.

"Update" means bug fixes, work-around solutions and other modifications to the Licensed Product delivered to Licensee by eMeter in accordance with eMeter's maintenance and support policy set forth herein. Updates are designated by the second digit of a two digit code following the name of the Licensed Product (e.g., "Version X.Y" is Update Y of Release X.)

ARTICLE 5: RESPONSIBILITIES OF THE PARTIES

5.1 Licensor. In addition to and accordance with its other responsibilities as set forth in this Agreement, Licensor agrees to provide the following: (i) the licensed software products, (ii) Tier 2 Customer Support, and (iii) Tier 3 Customer Support

5.2 Siemens. In accordance with the Scope of Work between Siemens and the Licensee, Siemens will provide the following and related services: (i) implementation professional services for the licensed software products to configure and install the licensed software products on and at the Licensee's facilities and (ii) Tier 1 Customer Support.

5.3 Licensee. In addition to and accordance with its other responsibilities as set forth in this Agreement, Licensee agrees to provide the following: (i) pay timely its financial obligations under the Scope of Work and (ii) generally reasonably cooperate in the implementation and maintenance of the licensed software products.

ARTICLE 6: LICENSE GRANTS AND LIMITATIONS

6.1 License Grants.

(a) Licensed Product(s). Subject to the provisions of this SLMA as well as the timely payment of all applicable license fees for the term of such license under the Scope of Work, Licensor grants Licensee and Licensee accepts, a limited, nonexclusive, nontransferable license to: (i) use and operate the Licensed Products, solely in Object Code, and solely for Licensee's internal use in the ordinary course of business; and (ii) to use the Documentation and Deliverables solely and as reasonably necessary to further Licensee's use of the Licensed Products as contemplated by this SLMA.

(b) Meter Count. The license in and to the Licensed Products granted in this Article 6 extends to and includes use of the Licensed Products by up to the total number of meters designated in [Exhibit A](#) (as amended from time to time (the "Meter Count")).

(c) Other Users. There is no limitation on the number of Licensee employees who may gain access to the Licensed Products via authorized third party software applications such as CIS or CSS.

(d) **Representatives.** The licenses granted hereunder do not include a right to sublicense. Notwithstanding the foregoing, Licensee shall have the right to allow the third party Representatives designated in [Exhibit A](#) (as amended from time to time by written agreement) to use the Licensed Products; provided that that Licensee will not be relieved of any duty or liability relating to such use.

(e) **Third Party GcZk UfY.** The Licensed Products contain Third Party Software (including certain Open Source software) that Licensor provides on a pass-through, sublicense or open source basis, which Third Party Software may be subject to separate license agreements, as set forth in the Documentation. Licensee agrees to be bound by the terms of any such third party license agreements set forth in the then-current version of the Documentation. The Documentation may be amended from time to time upon Licensor's prior written notice. Licensee may use the Third Party Software, as hereinafter defined, provided by Licensor hereunder pursuant to this SLMA only in conjunction with Licensor's Licensed Products and only in accordance with this SLMA and the Documentation.

(f) **Additional Licenses.** In the event that Licensee wishes to purchase additional licenses to be granted on the terms and conditions and pricing stated in this SLMA and the Scope of Work for meters in excess of the numbers designated in [Exhibit A](#), Licensee may so indicate in writing to Licensor, which additional licenses Licensor and Siemens will consider in good faith.

6.2 Restrictions and Limitations.

(a) **Downloads.** Except as otherwise provided herein, Licensee agrees not to download or otherwise create any more copies of the Licensed Products than are required to operate them by the Licensed Product for the Meter Count provided, however, that Licensee may download one copy of such Licensed Products for purposes of backup.

(b) **Excluded Uses.** Licensee may not (i) sublicense, distribute, pledge, rent, lease, or commercially share (including timeshare) the Licensed Products or Deliverables or provide subscription services to do so, or (ii) use the Licensed Products or Deliverables for purposes of providing a service bureau, including without limitation, providing third-party hosting, or third-party application integration or application service provider-type services, or for any similar services.

(c) **No Reverse Engineering.** Licensee shall not and shall not permit its authorized users or any third party to, translate, reverse engineer, decompile, recompile, disassemble, update, or modify all or any part of the Licensed Products or Deliverables, or merge the Licensed Products or Deliverables into any other software or system, except as contemplated by the Scope of Work.

(d) **No Export.** Licensee shall not export the Licensed Products outside of the United States without Licensor's prior written permission, which Licensor Licensor shall not unreasonably withhold or deny.

(e) **Open Source.** If either party uses Open Source in conjunction with the Licensed Products, such party shall ensure that its use of Open Source does not (i) create, or purport to create, obligations of use with respect to the other party's software; or (ii) grant, or purport to grant, to any third party any rights to such other party's intellectual property. Without limiting the generality of the foregoing, neither party shall combine the Licensed Products with

programs licensed under the GNU General Public License ("GPL") in any manner that could cause, or could be interpreted or asserted to cause, the Licensed Products or any Deliverables to become subject to the terms of the GPL.

(f) **Third Party Access.** The licenses Licensor grants to Licensee pursuant to this Article 6 are limited to use by Licensee's employees and permitted Representatives. Licensee shall not allow any third party except permitted third party Representatives to have access to the Licensed Products, Documentation or Deliverables without Licensor's prior written consent

(g) **Third Party Software.** Licensee must not publish the results of any benchmark study test that is run on the Third Party Software and shall have no right to bring claims directly against Third Part Software providers.

ARTICLE 7: OWNERSHIP; MARKINGS; GOVERNMENT CONTRACTS

7.1 Title and Retention of Rights. As between Licensor and Licensee, Licensor shall own all rights, title, and interest in the Licensed Products and Documentation. Other ownership rights regarding Licensee and Siemens are set forth in the Scope of Work. Neither party will have any right title, or interest in any Third Party Software, except to the extent granted to such party by the applicable third party or sublicensed to such party hereunder.

7.2 Proprietary Markings. Licensee shall preserve all Licensor and third party copyright notices and other proprietary markings any time it downloads or otherwise copies the Licensed Products and Documentation.

7.3 Government Contracts. Each Licensed Product and Deliverable and the Documentation constitute a "commercial item," "commercial computer software" and/or "commercial computer software documentation" as defined in FAR section 2.101, DFAR section 252.227-7014(a)(1) and DFAR section 252.227-7014(a)(5) or subsequent citation. Accordingly, in the event that Licensee acts as an agency of the US Government or uses a Licensed Product, the Deliverables or the Documentation on behalf of the US Government, then, consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, disclosure or distribution of such Licensed Product(s), Deliverables or the Documentation by or for the US Government will be governed solely by the terms of this SLMA and prohibited except to the extent expressly permitted by the terms of this SLMA.

ARTICLE 8: DELIVERY AND ACCEPTANCE

8.1 Delivery. Upon execution of this SLMA by the parties and payment in full to Siemens of all license fees due for the Licensed Products as set forth in the Scope of Work, Licensor will make the Licensed Products and Documentation available for the Licensee's download from Licensor's website.

8.2 Acceptance. The procedures for Licensee's Acceptance of the Licensed Products and Deliverables are as set forth in the Scope of Work.

ARTICLE 9: SUPPORT SERVICES

9.1 Initial Support Services. Commencing on the delivery date set forth in Section 8.1 above, Licensor will provide Support Services to Licensee for a period of 365 days (the "Initial Support Period"), subject to payment of the Support Fees to Siemens as set forth in the Scope of Work.

9.2 Extended Support Services. On the anniversary of the delivery date set forth in Section 8.1 above (i.e., upon expiration of the Initial Support Period), Support Services will automatically continue for subsequent 365-day periods (each such period, an "Extended Support Period") at an annual fee as set forth in the Scope of Work, unless Licensee notifies Siemens in writing of Licensee's intention not to continue Support Services no later than forty-five (45) days before any anniversary of the delivery date set forth in Section 8.1 above and/or fails to pay Siemens' invoice for such Extended Support Period within thirty (30) days of the date of such invoice.

9.3 Effect of Support Discontinuation. Licensee's license to use the Licensed Products, Deliverables and Documentation under this SLMA will not terminate merely because Licensee, at any time, discontinues Support Services, provided that Licensor shall have no obligations under this Article 9 upon such discontinuation.

9.4 Service Levels. The Service Levels shall be subject to change from time to time with reasonable advance notice to Licensee. Licensor's obligation to provide Support Services at its then-current Service Levels is subject to Licensee's providing 24x7 direct VPN access for Licensor support staff on Licensee's systems.

9.5 Scope of Support Services. Subject to the timely payment of all Support Fees to Siemens, Licensor will provide Support Services for the current and previous two Releases of the Licensed Product (for such previous Releases for Severity 1 and Severity 2 issues). Support is only provided for the most current Update for each Release. Upon payment by Licensee of the Support Fees, the most current Releases that are then generally available shall be deemed Licensed Products, and all references to Licensed Products in this SLMA and the Scope of Work shall be deemed to include the Release. Siemens will provide Tier 1 Customer Support Services, and Licensor will provided Tier 2 and Tier 3 Customer Support Services. These services are specified defined above and described in further detail in [Exhibit B](#), which may be changed by Licensor from time-to-time upon written notice to Licensee. Licensor and Siemens shall have no obligation to provide Support Services for adaptations or derivative works of the Licensed Product unless agreed in writing.

9.6 Content and Control of Support Services. Support Services include, subject to Licensor's then-current standard terms: (a) the right to receive all Releases and Updates at no additional cost; (b) a direct response (by email, telephone or otherwise, in Licensor's discretion) to Licensee's Contract Administrator with respect to inquiries concerning the performance, functionality, operation of or deficiencies in the Licensed Products; and (c) commercially reasonable efforts to resolve problems or performance deficiencies of the Licensed Products according to the Service Levels. Licensor will have the sole right to control and directly supervise the method, manner and details of the Support Services.

ARTICLE 10: RECORDS AND RIGHTS TO AUDIT

10.1 Periodic Accounting Reports. Within the first month following the end of each calendar quarter, Licensee shall generate a report that documents Licensee's Meter Count as of the last day of such quarter. Licensee shall furnish such report to Siemens upon request. If the Meter Count provided by the report is greater than the number covered by the then-current version of Exhibit A, then Licensee shall report the current count to Siemens, the parties shall execute an Exhibit A addendum as provided in Section 6.1(f) above, and Siemens will invoice Licensee for, and Licensee shall pay, the appropriate amount.

10.2 Audit of Books and Records. Licensee shall maintain at its principal place of business full, accurate, and complete books of account and records pertaining to this SLMA and the Scope of Work, reflecting the Meter Count, and such other sufficiently detailed information as may be reasonably required to permit the written reports provided for in this SLMA and the Scope of Work to be made and the additional license fees payable thereunder, if any, to be determined. Licensee shall make such books and records open to inspection and audit during usual business hours, from time to time, upon reasonable advance notice, by Licensor or Licensor's designated representatives or independent auditors, who shall be entitled to copy extracts therefrom. Licensor's right to audit includes any of Licensee's records reflecting information either provided to or maintained for any regulatory agencies or authorities or industry associations pertaining to the Licensed Products and/or Deliverables. Such books and records are to be maintained for at least three (3) years after the period to which they pertain or until any dispute to which they pertain is finally resolved, whichever period is longer. Licensee shall cause its appropriate employees and agents to cooperate with Licensor in connection with such audits.

10.3 Costs. In the event that Licensor requests an audit of Licensee's books and records, Licensor will bear all audit expenses; provided, however, that should such audit reveal a deficiency in the fees paid by Licensee of greater than five percent (5%) in any calendar quarter, then Licensee will bear the entire cost of the audit and shall promptly pay Siemens any amounts shown to be due.

10.4 Facilities Inspections. Licensor has the right at any time during normal business hours, upon reasonable advance notice, to visit and inspect Licensee's facilities, and all operations by Licensee conducted in connection with this SLMA and/or the Scope of Work, and all equipment and materials (including but not limited to the Licensed Products and Deliverables) utilized by Licensee in so doing. Licensee shall cause its appropriate employees and agents to cooperate with Licensor and to provide reasonable assistance to Licensor in connection with such facilities inspections.

ARTICLE 11: LIABILITY

11.1 Disclaimer of Liability. NEITHER PARTY WILL BE LIABLE UNDER THIS SLMA FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, ARISING FROM OR RELATED TO A BREACH OF THIS SLMA OR THE OPERATION OR USE OF THE LICENSED PRODUCTS, DOCUMENTATION, SUPPORT SERVICES, OR DELIVERABLES, INCLUDING SUCH DAMAGES, WITHOUT LIMITATION. AS MAY ARISE FROM LOSS OF DATA OR PROGRAMMING, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS, AND DAMAGE TO EQUIPMENT, EVEN IF SUCH OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.2 Limitation of Liability NOTWITHSTANDING ANY OTHER PROVISION OF THIS SLMA, NEITHER PARTY'S LIABILITIES UNDER THIS SLMA, WHETHER UNDER CONTRACT LAW, TORT LAW, WARRANTY, OR OTHERWISE SHALL EXCEED DIRECT DAMAGES, IN THE CASE OF CLIENT, EQUAL TO THE AMOUNT DUE FROM CLIENT TO SIEMENS IN THE EIGHTEEN (18) MONTHS PRIOR TO THE DATE OF THE ACTION GIVING RISE TO THE CLAIM, AND, IN THE CASE OF EMETER, THE AMOUNT ACTUALLY PAID BY CLIENT TO SIEMENS IN THE EIGHTEEN (18) MONTHS PRIOR TO THE DATE OF THE ACTION GIVING RISE TO THE CLAIM. THE FOREGOING SENTENCE SHALL NOT APPLY WITH RESPECT TO LIABILITY ARISING OUT OF, RESULTING FROM OR RELATING TO EITHER PARTY'S OBLIGATIONS UNDER [ARTICLE 12](#) (CONFIDENTIALITY) AND [ARTICLE 16](#) (INDEMNIFICATION).

ARTICLE 12: CONFIDENTIALITY

12.1 Obligation to Maintain Confidentiality. During and after the term of this SLMA, Recipient shall, and shall cause each of its Representatives to, keep the Confidential Information confidential. Without limiting the generality of the previous sentence. Recipient shall not, and shall cause its Representatives not to (a) disclose any of the Confidential Information, except (i) with the prior written consent of Discloser's Contract Administrator or (ii) as otherwise expressly permitted by the terms of this SLMA or the Scope of Work; or (b) use any of the Confidential Information in any way detrimental to Discloser. Licensee shall be responsible for any act or omission of its Representatives, and Licensor shall be responsible for any act or omission of its Subcontractors, in violation of this SLMA or the Scope of Work. If reasonably requested, Licensee agrees to require its Representatives who will have access to Licensor's Confidential Information, and Licensor agrees to require its Subcontractors who will have access to Licensee's information, to execute a nondisclosure agreement prior to gaining access to any Confidential Information.

12.2 Unauthorized Use. Recipient shall promptly notify Discloser in writing with respect to any unauthorized use or disclosure of the Confidential Information of which it becomes aware and shall assist Discloser in remedying such unauthorized use or disclosure. Any such assistance or acceptance of the assistance shall not constitute a waiver of any rights of Discloser to recover for a breach of this Article 12.

12.3 Permitted Disclosees. Recipient may disclose Confidential Information to only those of its Representatives who (a) require the Confidential Information (but to the extent practicable, only the part that is required) and (b) are informed in writing by Recipient of the confidential nature of the Confidential Information.

12.4 Compelled Disclosures. If Recipient or any of its Representatives becomes legally compelled or is required in any case by a governmental authority or law to make any disclosure of Confidential Information, Recipient shall: (a) notify Discloser in writing as soon as reasonably practicable; (b) consult with Discloser in its attempt to obtain an injunction or other appropriate remedy to prevent such disclosure; and (c) use its best efforts to make appropriate legal objections to the disclosure of Confidential Information and/or obtain a protective order or other reliable assurance that confidential treatment will be accorded to any Confidential Information that is disclosed. Subject to the foregoing. Recipient or the applicable Representative may furnish that portion (and only that portion) of the Confidential Information that Recipient or the Representative is legally compelled or otherwise required to disclose.

12.5 Injunctive Relief. Recipient acknowledges and agrees that, because an award of money damages is inadequate for any breach of this Article 12 by Recipient or any of its Representatives, and any such breach will cause Discloser irreparable harm, in the event of any such breach or threatened breach, Discloser is entitled to equitable relief, including injunctive relief and specific performance.

ARTICLE 13: TERM AND TERMINATION

13.1 Term.

(a) **Agreement Term.** This SLMA will become effective upon execution by the parties and will continue in effect thereafter unless and until terminated in accordance with this Article 13.

(b) **License(s) Term.** If Licensee has paid in full all license fees due under the Scope of Work, then the licenses granted hereunder will continue in effect regardless of any termination of this SLMA, except a termination for a License Termination Breach.

13.2 Termination for Breach. If a party materially breaches this SLMA and such breach remains uncured for thirty (30) days after receipt of written notice from the nonbreaching party requesting cure of the breach, the nonbreaching party may terminate this SLMA with immediate effect by written notice to the breaching party, provided that the license granted hereunder, and all surviving provisions, shall continue in effect except in the event of a License Termination Breach.

13.3 Other Terminations. If either party files a petition in bankruptcy (or is the subject of an involuntary petition in bankruptcy that is not dismissed within sixty (60) days after the effective filing date thereof); or is or becomes insolvent; or admits of a general inability to pay its debts as they become due; then the other party will have the right to terminate this SLMA effective upon notice from the other party. Notwithstanding the foregoing, in the event of Licensor's bankruptcy pursuant to the United States Bankruptcy Act ("USBA"), and an attendant rejection of this SLMA or any license or assignment granted hereunder or thereunder pursuant to USBA Section 365, the parties intend that the provisions of the USBA will apply, and Licensee will be entitled to retain possession of all "Embodiments of Intellectual Property" as defined by applicable law that Licensor delivers to Licensee under this SLMA, and, to the extent permitted by law, retain the license rights granted thereunder, subject to: (a) any payment obligations hereunder; and (b) Licensor's rights in the Licensed Products, Documentation, and Deliverables.

13.4 Effects of Termination. Upon termination or expiration of this SLMA for any reason: (a) the parties shall comply with their respective post-termination obligations, if any, as set forth herein and in the Scope of Work; and (b) in the event of a License Termination Breach, Licensee shall deliver to Licensor (or, at Licensee's option with Licensor's consent, destroy and provide Licensor with a certificate signed by an executive officer of Licensee attesting to the destruction of) all copies (including backup or archival copies) of the Licensed Products, Documentation, and Deliverables remaining in the possession of Licensee or any third party that acquired any such copy through Licensee. As set forth in [Section 9.3](#) above, an election by Licensee to terminate Support Services shall not constitute a termination of this SLMA or the Scope of Work. Licensee's right to use the Licensed Products and Deliverables will continue in perpetuity unless this SLMA or the Scope of Work is terminated for a License Termination Breach.

ARTICLE 14: SOURCE CODE ESCROW

14.1 Delivery of Source Code into Escrow. Concurrently with the execution of this SLMA and the Scope of Work, Licensor shall name and retain Licensee as a beneficiary under eMeter's established software escrow agreement, a copy of which is attached hereto as [Exhibit C](#) (the "Escrow Agreement"). ~~SIEMENS PLEASE PROVIDE THIS EXHIBIT IT IS MISSING~~

14.2 Delivery of New Source Code into Escrow. When and if, from time to time during a paid Support Period (Initial or Extended), Licensor provides Licensee with an Release to the Licensed Product(s), Licensor shall within a reasonable time thereafter deposit the Release. For the avoidance of doubt, eMeter shall not deliver into escrow any source code with respect to Third Party Software.

14.3 Escrow Fees. Licensee will bear all fees and expenses charged by the escrow agent with respect to Licensee's right to access the escrow account. Licensor will not be required to reimburse Licensee for any such fees, expenses, or other charges billed to Licensee by the escrow agent, except as may be otherwise expressly agreed in writing by Licensor.

14.4 Release Events for Source Code Escrow Package. The Source Code Escrow Package release events and procedures shall be as set forth in the Escrow Agreement.

ARTICLE 15: REPRESENTATIONS, WARRANTIES AND COVENANTS

15.1 Mutual Representations. Each party represents to the other that it: (a) has full right, power, and authority to enter into this SLMA; (b) has taken all necessary action to authorize this SLMA; (c) is a corporation or other entity duly organized and validly existing and in good standing under the laws of the jurisdiction of its incorporation or other formation; and (d) is duly qualified and authorized to do business wherever the nature of its activities or properties requires such qualification or authorization.

15.2 Licensor Representations and Warranties. Licensor further represents and warrants as follows:

(a) **Licensed Products Warranty.** Commencing on the Go Live Date , and for a period of ninety (90) days thereafter, the Licensed Products (when used in the operating environment specified in the Documentation) will perform substantially in accordance with the Specifications applicable thereto in all material respects. Commencing on the final Acceptance under the Scope of Work, and for a period of ninety (90) days thereafter, the Deliverables (when used in an operating environment specified in the Documentation) will perform substantially in accordance with the Specifications applicable thereto in all material respects. Licensor does not warrant that the performance of the Licensed Products or Deliverables will be uninterrupted or error free. Licensor shall make reasonable efforts to correct any reproducible errors in the Licensed Products or Deliverables that cause them to fail to perform substantially in accordance with this limited warranty provided that Licensee reports such errors in writing during the applicable warranty period. THE PROVISION OF SUCH CORRECTIONS BY EMETER IS LICENSEE'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY BREACH OF THE LIMITED WARRANTY STATED IN THIS SECTION 15.2(a).

(b) **Exceptions to Limited Warranty.** The limited warranty stated in Section 15.2(a) shall not apply to any error or deficiency in the Licensed Products or

Deliverables that Licensor reasonably determines was caused by (i) Licensee's or its contractor's modifications; (ii) operation of software other than the Licensed Products or Deliverables (for example, an operating system or database software or plug-ins provided by Licensee or provided by any third party to Licensee) or any hardware or other equipment used by Licensee; (iii) use of the Licensed Products or Deliverables in conjunction with Licensee data that does not conform with the format of data as specified in the Documentation; or (iv) Licensee misuse of the Licensed Products or Deliverables. In the event that Licensor provides error correction services and, in doing so, reasonably determines that the error was not caused by the Licensed Products or Deliverables, Licensor will be entitled to charge, and Licensee shall pay, for the time and materials expended at Licensor's then-standard commercial rates.

(c) **Licensor Services Limited Warranty.** Licensor warrants for ninety (90) days after the performance of any Support Services under this SLMA, that it will perform such services in a good and workmanlike manner, in accordance with generally-accepted industry standards. Licensor shall re-perform the relevant services or, in Licensor's sole discretion, refund to Licensee the pro rata portion of the fees paid by Licensee under the Scope of Work allocable to the nonconforming services, provided that Licensee reports the applicable non-conformity of the services during the applicable warranty period. SUCH RE-PERFORMANCE OR REFUND BY LICENSOR IS LICENSEE'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY BREACH OF THE LIMITED WARRANTY STATED IN THIS SECTION 15.2(c).

15.3 Third Party Software Warranty. Third Party Software is warranted on a pass-through basis in the same manner and for the same period and extent provided by the original software manufacturer.

15.4 Intellectual Property Representation.

(a) **Licensor's Intellectual Property.** Licensor represents and warrants that, as of the Effective Date (for the Licensed Products) and as of the Acceptance (for any Deliverables), neither the Licensed Products nor the Deliverables, nor the use thereof by Licensee, infringes or violates, in the United States, any third party's copyrights, patents, trademarks, trade secrets or other intellectual property rights.

(b) **Licensee's Intellectual Property.** Licensee represents and warrants that, as of the date it gives Licensor access to any Licensee Works, neither the Licensee Works nor the use thereof by Licensor infringes or violates, in the United States, any third party's copyrights, patents, trademarks, trade secrets or other intellectual property rights.

15.5 Disclaimers.

(a) **Provided As Is.** EXCEPT AS SPECIFIED IN THIS ARTICLE 15, THE LICENSED PRODUCTS, DOCUMENTATION, AND SUPPORT SERVICES PROVIDED UNDER THIS SLMA ARE PROVIDED "AS IS".

(b) **Excluded Warranties.** EXCEPT AS SPECIFIED IN THIS ARTICLE 15, ALL EXPRESS, IMPLIED, STATUTORY, OR OTHER REPRESENTATIONS AND WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. EXCEPT AS SPECIFIED IN THIS ARTICLE 15,

NO WARRANTY IS MADE (i) THAT THE LICENSED PRODUCT(S), SUPPORT SERVICES, AND THE DELIVERABLES WILL MEET LICENSEE'S REQUIREMENTS, OR (ii) THAT THE LICENSED PRODUCTS AND DELIVERABLES WILL OPERATE WITHOUT ERRORS OR INTERRUPTIONS.

(c) **No Licensee Changes.** Neither Licensee nor any of its representatives is authorized to make any modifications, extensions or additions to this warranty.

(d) **Third Party Services.** Licensor disclaims all warranties in respect of, and in no case will be liable for, any services provided by third party vendors, developers, or consultants except Subcontractors.

ARTICLE 16: INDEMNIFICATION

16.1 Indemnification. Licensor shall indemnify Licensee and defend at its own expense any action against Licensee brought by a third party to the extent that the action is based upon, arises out of, or relates to: (a) a breach of Licensor's representation and warranty set forth in Section 15.4(a); (b) an act or omission of any Subcontractor of Licensor. Licensor will pay all reasonable costs and damages finally awarded against Licensee in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action.

16.2 Licensee Indemnity. Licensee shall indemnify Licensor and defend at its own expense any action against Licensor brought by a third party to the extent that the action is based upon, arises out of, or relates to: (a) a breach of the representation and warranty set forth in Section 15.4(b); or (b) an act or omission of any third party Representative. Licensee will pay all reasonable costs and damages finally awarded against Licensor in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action.

16.3 Confidentiality Indemnity. Recipient shall indemnify and defend Discloser against all Losses arising out of or relating to any violation of Article 12 of this SLMA.

16.4 Conditions. The Indemnifying Party's obligations under this Article 16 are conditioned on (a) the Indemnified Party notifying the Indemnifying Party promptly (but in no event more than ten (10) days after the Indemnified Party becomes aware of an applicable action) in writing of such action, (b) the Indemnified Party giving the Indemnifying Party sole control of the defense thereof and any related settlement negotiations, and (c) the Indemnified Party cooperating with the Indemnifying Party in such defense (including, without limitation, by making available to the Indemnifying Party all documents and information in the Indemnified Party's possession or control that are relevant to the action, and by making the Indemnified Party's personnel available to testify or consult with the Indemnifying Party or the Indemnifying Party's attorneys in connection with such defense).

16.5 Infringement by Licensed Products or Deliverables. If a Licensed Product or Deliverable becomes or in Licensor's opinion is likely to become the subject of an infringement or misappropriation claim, Licensor may, at its option and expense, either (a) procure for Licensee the right to continue using the relevant Licensed Product or Deliverable, (b) replace or modify the relevant Licensed Product or Deliverable so that it becomes non-infringing, or (c) if neither (a) nor (b) is commercially feasible, terminate Licensee's right to use the relevant Licensed Product or Deliverable and give Licensee a refund

or credit for the license fees actually paid for the infringing component(s) thereof, less a reasonable allowance for the period of time Licensee has used that Licensed Product or Deliverable.

16.6 Exclusions.

(a) Limitation's on Licensor's Obligations. Notwithstanding Section 16.1, Licensor will have no indemnification obligation to the extent a claim is based upon (i) any use of a Licensed Product or Deliverable not in accordance with this SLMA or the Scope of Work, respectively; (ii) any use of a Licensed Product or Deliverable in combination with the Licensee Works or other products, equipment, software, or data not supplied by Licensor (iii) any use of any release of a Licensed Product other than the most current release made available to Licensee; (iv) any modification of a Licensed Product or Deliverable made by (A) any person other than Licensor, or (B) Licensor based upon, or to comply with, designs, specifications, or other information provided by or at the direction of Licensee or its providers; or (v) the willful misconduct or the negligent act or omission of Licensee.

(b) Limitations on Licensee's Obligations. Notwithstanding Section 16.2, Licensee will have no indemnification obligation to the extent a claim is based upon (a) any use of a Licensee Work not in accordance with this SLMA or the Scope of Work, respectively; (b) any use of a Licensee Work in combination with the Licensed Product or deliverables or other products, equipment, software, or data not supplied by Licensee; (c) any modification of a Licensee Work made by any person other than Licensee; or (e) the willful misconduct or the negligent act or omission of Licensor.

16.7 Entire Liability. This Article 16 states the Indemnifying Party's entire liability and the Indemnified Party's sole and exclusive remedy for infringement and misappropriation claims and actions.

16.8 Assumption of Defense. If the Indemnifying Party fails to assume the defense of any actual or threatened action covered by this Article 16 within the earlier of (a) any deadline established by a third party in a written demand or by a court, or (b) thirty (30) days after notice of the claim, the Indemnified Party may follow such course of action as it reasonably deems necessary to protect its interest and shall be indemnified for all costs reasonably incurred in such course of action; provided, however, that the Indemnified Party shall not settle a claim without the consent of the Indemnifying Party, which shall not be unreasonably withheld.

ARTICLE 17: GENERAL PROVISIONS

17.1 Covenant of Cooperation and Good Faith. The parties covenant to cooperate timely and diligently, with due consideration of the goals, objectives and purposes of this SLMA and all exhibits and attachments hereto, to facilitate the performance of their respective duties and obligations in a commercially-reasonable manner. Further, the parties agree to deal and negotiate with each other in good faith in the execution and implementation of their duties and obligations hereunder.

17.2 Independent Contractor Relationship. The parties will act as and be deemed to be independent contractors. Neither party nor any of its employees will act as, nor be deemed to be, an agent or employee of the other party.

17.3 Further Assurances. Licensee will render all customary and reasonable assistance to Licensor, at Licensor's expense, including, without limitation, execution and delivery of any documents reasonably requested by Licensor to secure, perfect, register and enforce all of Licensor's intellectual property rights in and to the Licensed Products, Documentation, and Deliverables, and to carry out the intent of this SLMA.

17.4 Assignment and Delegation.

(a) **Assignment.** Licensor may assign its rights under this SLMA to any purchaser of all or substantially all of Licensor's assets. Except as aforesaid, neither party shall assign, transfer or otherwise dispose of any of its rights, obligations or duties under this SLMA without the prior written approval of the other party, which shall not be unreasonably withheld or delayed. A change of control of Licensee will be deemed an assignment that is subject to this Section 17.4(a). Any other assignment or transfer made without the express consent of the nonassigning party will be null and void.

(b) **Delegation.** Licensor may subcontract for, or otherwise use third parties to perform any portion of, the Support Services under this SLMA, without the prior written approval of Licensee; provided, however, that Licensor will not be relieved of any duty or liability relating to such services by reason of such subcontracting.

17.5 Compliance with Laws. The parties will comply with federal, state, and local laws that may affect their respective performances under this SLMA. In the event that Licensor permits Licensee to export the Licensed Products pursuant to [Section 6.2\(d\)](#) of this SLMA, Licensee shall comply with all export control laws.

17.6 Safety and Security. Each party agrees, at all times while this SLMA remains in effect, to abide by all reasonable standards, guidelines, and procedures conveyed to such party in writing by the other party pertaining to the security and protection of software, information or computer systems or equipment

17.7 Governing Law and Venue. The laws of the State of California, excepting any conflicts of laws provisions that would require the application of another jurisdiction's laws, govern this SLMA and the Scope of Work and any disputes that arise out of or are related to this SLMA and/or the Scope of Work. The parties agree that neither this SLMA nor the Scope of Work are contracts for the sale of goods; therefore, this SLMA and the Scope of Work are not to be governed by any codification of Article 2 or 2A of the Uniform Commercial Code, or any codification of the Uniform Computer Information Technology Act, or any references to the United National Convention on Contracts for the International Sale of Goods. The parties hereby (a) submit to the exclusive jurisdiction of any state or federal court sitting (or having jurisdiction over any entity with a principal place of business) in Santa Clara County, California for the purpose of any action that arises out of or relates to this SLMA or the Scope of Work brought by any party hereto, and (b) irrevocably waive, and agree not to assert by way of motion, defense, or otherwise, in any such action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the action is brought in an inconvenient forum, that the venue of the action is improper, or that this SLMA or the Scope of Work may not be enforced in or by any of the courts identified herein.

17.8 Entire Agreement This SLMA (including all exhibits, attachments, addenda, and schedules to this SLMA) constitutes the entire agreement between the parties and all prior

statements, representations, writings, negotiations, undertakings, understandings and agreements between the parties relating to the subject matter of this SLMA are superseded hereby.

17.9 Force Majeure. Changes in the scope of any services, unforeseeable changing conditions of law, unforeseeable and unreasonable schedule delays, or other events beyond Licensor's reasonable control, including Force Majeure events, may require contract price and/or date of performance revisions to be agreed upon by both parties. Neither party shall be considered in default in the performance of its obligations hereunder to the extent that the performance of such obligation is prevented or delayed by any cause beyond the reasonable control of the affected party, including without limitation: (a) any Force Majeure; or (b) to the extent due to failure of any third party (other than Licensor's Subcontractors hereunder) to provide software or support that is needed to carry out any Services. The party affected by an event described in this Section 17.9 shall use its reasonable efforts to minimize the delays caused by such events. Each party shall notify the other in writing as promptly as practicable of the occurrence of a Force Majeure event hereunder.

17.10 Non-Waiver of Rights. Waiver by either party of any breach of this SLMA or the Scope of Work, or the failure of either party, at any time, to enforce any of the provisions of this SLMA or the Scope of Work, will not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance with the same or other articles or provisions.

17.11 Survival. No termination, cancellation or expiration of this SLMA or the Scope of Work, in whole or in part, will be deemed to relieve the parties of any obligations relating to this SLMA that, by their nature, survive, including, but not limited to, the provisions of Articles 6 (License Grants and Limitations), 7 (Ownership; Markings; Government Contracts), 11 (Liability), 12 (Confidentiality), 15 (Representations, Warranties and Covenants), 16 (Indemnification), and 17 (General Provisions).

17.12 Severability. In the event any provision of this SLMA is held to be void, unlawful or otherwise unenforceable, that provision is to be severed from the remainder of the SLMA and replaced automatically by a provision containing terms as nearly like the void, unlawful, or unenforceable provision as possible; and the SLMA, as so modified, will continue to be in full force and effect

17.13 Publicity. Licensor shall have the right to issue a press release regarding this SLMA upon the prior written approval of Licensee, which shall not be unreasonably withheld or delayed. No other information relative to this SLMA will be released for publication, advertising or any other purpose without the prior written approval of Licensee. Licensor is expressly prohibited from using Licensee's name in any publication or advertising without the prior approval of Licensee, which shall not be unreasonably withheld.

17.14 Binding on Successors and Assigns. This SLMA will inure to the benefit of and be binding upon the undersigned parties, and their respective legal representatives, and permitted successors and assigns.

17.15 Third Party Beneficiaries. Except as expressly provided herein, this SLMA is entered into solely between, and may be enforced only by, Licensor and Licensee. Except with respect to Oracle Corporation and Siemens, which shall be third party beneficiaries to this SLMA, this SLMA is not to be deemed to create any rights or causes of action in or on behalf of

any third parties, including without limitation, employees, vendors and customers of a party, or to create any obligations of a party to any such third parties.

17.16 Notices. All notices required by law or under the terms of this SLMA will be given writing by overnight courier, hand delivery, or registered or certified mail (return receipt requested), to the Contract Administrator of the other party at the address in [Exhibit A](#) of this SLMA. In the case of overnight courier or certified or registered mail, the receiving party shall consider such notices given when sent (shipping or postage prepaid). Either party may change its address or Contract Administrator by a notice to the other party in the manner set forth in this Section 17.16.

17.17 Headings. The headings of the various provisions of this SLMA are for convenience of reference only and will have no significance in the interpretation or construction of this SLMA.

17.18 Conflicting Terms. In the event of any conflict between the provisions of this SLMA and any other documents attached hereto and/or incorporated herein by reference, this SLMA (as amended from time to time) shall govern.

17.19 Amendments, Modifications, or Supplements. This SLMA may not be amended, modified, or supplemented, in whole or in part, except by a writing executed by duly authorized representatives of both parties.

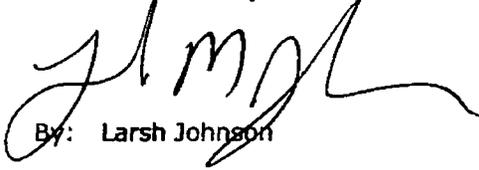
17.20 Duty to Mitigate. Each party has a duty to mitigate the damages that would otherwise be recoverable from the other party pursuant to this SLMA and all exhibits and attachments hereto and thereto by taking appropriate and reasonable actions to reduce or limit the amount of such damages.

17.21 No Construction against Drafter. The parties agree that any principle of construction or rule of law that provides that an agreement is to be construed against the drafter of the agreement in the event of any inconsistency or ambiguity in such agreement will not apply to the terms and conditions of this SLMA.

17.22 Counterparts. This SLMA (and, where appropriate, any other exhibit, attachment, addendum, or schedule hereto) may be executed simultaneously in two (2) or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument

The parties have signed this SLMA acknowledging their agreement to its provisions as of the Effective Date.

eMeter Corporation



By: Larsh Johnson

Title: President

"Licensor"

**CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation**

APPROVED AS TO FORM:



HELENE L. LEICHTER
City Attorney



JENNIFER SPARACINO
City Manager

ATTEST:



ROD DIRIDON, JR.
City Clerk

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax Number: (408) 241-6771

"Licensee"

EXHIBIT A
PRODUCT SCHEDULE

ORDERED PRODUCTS:

The following software programs shall be deemed Licensed Products under the SLMA and are included in the original software license purchase.

LICENSED PRODUCTS

<p>EnergyIP Core System</p> <p><u>Application Modules:</u> VEE Advanced Billing Aggregation Remote Disconnect/Connect</p> <p><u>Adapter and Importers:</u> Data Importer - Itron MVRS Data Importer - Itron MV90 AMI Adapter – to be determined</p>
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The Base Price includes the right to use the Licensed Products for 88,000 meters (plus any increase in the number of meters Licensee serves due to Organic Population Growth).

Authorized Third Party Representatives:

None

Contract Administrators:

CONTRACT ADMINISTRATOR FOR Licensee:

Larry Owens
1500 Warburton Avenue
Santa Clara, CA 94040
PHONE: (408) 615-6644
FAX: (408) 249-0217
EMAIL: lowens@svpower.com

CONTRACT ADMINISTRATOR FOR EMETER:

Elisa W. Smith
2215 Bridgepointe Parkway; Suite 300
San Mateo, CA 94404
PHONE: (650) 227-7770
FAX: (650) 227-7771
EMAIL: elisa@emeter.com

EXHIBIT B

MAINTENANCE SERVICE LEVELS

To provide timely response to support issues as well as a constructive resolution, eMeter has established the following support guidelines. These goals are not to be interpreted as a guarantee for response and/or resolution but should serve as a guideline for eMeter's working relationship.

Severity	Issue Impact/Description	Initial Contact	Target Response
1	Catastrophic Failure - all work has halted or a work stoppage is imminent. The application system is unavailable or unusable.	1 Hour	4 Hours
2	Application Inoperable/Data Corrupted - an application in the system is not working or has limited capability and the problem significantly impacts the customer. Or, data is being corrupted and work must be stopped to avoid further corruption/loss of data.	1 Hour	8 Hours
3	Feature not working as documented - application has issues that can impact customer but that do not stop customer from performing daily business. Or, issues for which there is a reasonable workaround.	8 Hours	1 week
4	Informational Question/Cosmetic Issue - problem/question with day-to-day operational issues, cosmetic problem with user interface, error in documentation	3 Business Days	10 Business Days
5	Enhancement Request - request from customer for new features or changes in the functionality of existing features.	10 Business Days	30 Business Days

Licensor tracks issues from the time reported to the time the issue is resolved with priority response given to the highest severity issues. Licensee may also request high priority attention to an issue if it seriously impacts Licensee's business or if eMeter's response time is not satisfactory.

All issues are closed when a resolution or fix is available to eMeter's customers. If Licensee is not satisfied with the resolution, Licensee may request that the issue be re-opened.

EXHIBIT C

ESCROW AGREEMENT



IS2ns

Software Source Code Escrow Agreement

This Agreement is between the Depositor and InnovaSafe.
Licensees are enrolled as a Beneficiary.

Use This Agreement if:

- Multiple Licensees will be added and management of single or multiple deposits are needed.
- Beneficiaries is not required to sign the agreement when enrolled, but they are required to sign when a release request is made.
- Beneficiary specific terms and conditions may be required.
- Modifiable Agreement is required
- Services include:
 - o Complete client service
 - o Dual Vaulting - 2nd Vault Location For all Deposits
 - o SafeAccess- 24/7 Account Access
 - o FullAccess (Private Web Access 4+B)
 - o SafeFTP- 24/7 Internet Deposits
 - o Limited Deposit Verification
 - o Quarterly Account Status Reports
 - o Toll Free Telephone Support (800) 239-3989

Questions? Please call (800) 239-3989 or
Live Online Support at www.innovasafe.com

This Software Source Code Escrow Agreement ("Agreement"), Agreement number 2630, effective as of the date signed by the Depositor ("Effective Date"), is made and entered into by InnovaSafe, Inc. ("InnovaSafe"), a California corporation, located at 28502 Constellation Road, Valencia, California, 91355 and eMeter Corporation ("Depositor"), located at 2215 Bridgepointe Parkway, Suite 300, San Mateo, California, 94404 and each additional person or entity subscribed hereto as a beneficiary in accordance with the requirements of this Agreement (each a "Beneficiary" and collectively the "Beneficiaries"). In consideration of the covenants, conditions, warranties and restrictions contained in this Agreement, the parties agree as follows:

1. DEFINITIONS

For purposes of this Agreement, the following capitalized terms shall have the meanings set forth below, unless expressly defined otherwise in this Agreement:

"Beneficiary Enrollment Form" means the form used by InnovaSafe for the addition of a Beneficiary or Beneficiaries to this Agreement in accordance with the requirements of Paragraph 3 hereof, as such form may be modified or replaced by InnovaSafe in its sole discretion from time to time during the term of this Agreement. A copy of the current Beneficiary Enrollment Form is attached hereto as [Exhibit B-NS](#) and incorporated herein.

"Description of Escrow Deposit" means a general description of the Software and the Escrow Deposit as set forth on [Exhibit A](#) attached hereto and incorporated herein.

"Escrow Deposit" or *"Deposit"* means the copies of the Source Code deposited with InnovaSafe by the Depositor, or otherwise held by InnovaSafe pursuant to the terms of this Agreement.

"Form of Acknowledgement" means the form used by InnovaSafe and pursuant to which a Beneficiary may agree to be bound by the terms of this Agreement both as a covenant and as a condition to the making by such Beneficiary of a release request in accordance with the terms hereof, as such form may be modified or replaced by InnovaSafe in its sole discretion from time to time during the term of this Agreement. A copy of the current Form of Acknowledgement is attached hereto as [Exhibit B](#) and incorporated herein.

"License Agreement" means the agreement pursuant to which Depositor licenses the Software to a Beneficiary in object code form.

"Replacement" means a Deposit relating to any complete change, modification, enhancement or alteration of the Source Code since the last Deposit which completely replaces all of the previous Deposits.

"Software" means the software that as of the date hereof is licensed by the Depositor to a Beneficiary pursuant to the License Agreement, and which is generally described in the Description of Escrow Deposit.

"Source Code" means the Software in source code form, including all documentation and instructions necessary to maintain, duplicate, compile, interpret and install the source code for the Software.

"Update" means any modification, update or revision of any Software that is subject of the Escrow Deposits currently being held by InnovaSafe.

2. ESCROW DEPOSIT PROCEDURES

2.1 Instructions to InnovaSafe: This Agreement shall constitute instructions to InnovaSafe as escrow agent. In addition, Depositor and each Beneficiary agrees to execute, deliver and be bound by any supplemental or general policies or procedures of InnovaSafe or such other instruments or may be reasonably required by InnovaSafe in order to perform its obligations as contemplated by this Agreement. In the event of any conflict or any inconsistency between such policies or procedures and any provision of this Agreement, the provision of this Agreement shall control.

2.2 Initial, Additional, Duplicate Escrow Deposits : (a) Within thirty (30) days of the Effective Date of this Agreement, Depositor agrees to deposit with InnovaSafe, copies of the Source Code for the version of the Software as licensed under the License Agreement. With such delivery, Depositor agrees to provide InnovaSafe with a completed Description of Deposit (Exhibit A), (b) Depositor also agrees to deposit with InnovaSafe the Source Code for each Replacement within sixty (60) days after its release, distribution, or other publication by Depositor in the ordinary course of business. With each such delivery, Depositor agrees to provide InnovaSafe with a completed Description of Deposit (Exhibit A), (c) Depositor shall deliver a duplicate Escrow Deposit (including all Updates) within five (5) days of Receipt of a written request from an authorized representative of InnovaSafe. Without limiting the foregoing, Depositor shall deliver a duplicate Escrow Deposit (including all Updates) to replace any previous Escrow Deposit that is impaired due to a defect in or natural degeneration of the recorded medium. All duplicate Escrow Deposits may not be encrypted, except for an Update or Replacement Source Code that is transmitted to InnovaSafe in accordance with Paragraph 2.3. (d) Notwithstanding any other provision of this Agreement, InnovaSafe shall have no obligation to return to Depositor any Escrow Deposit.

2.3 Encrypted Electronic Deliveries: Subject to the prior agreement of InnovaSafe and Depositor regarding delivery and decryption protocols, Depositor shall have the option but not the obligation to encrypt and transmit the encrypted Escrow Deposit for each Update or Replacement Deposit over the Internet to InnovaSafe's File Transfer Protocol site ("FTP Site"). InnovaSafe shall not be liable to Depositor or Beneficiary for any encrypted Source Code, or any part thereof that is transmitted over the Internet to InnovaSafe's FTP Site, but is not received in whole or in part, or for which no notification of receipt is given by InnovaSafe pursuant to Paragraph 2.4 below.

2.4 Deposit Receipt Notification and Deposit Tracking: (a) For each Deposit, InnovaSafe will issue a receipt to Depositor, accompanied by a general list or description of the materials deposited. InnovaSafe shall notify Depositor and Beneficiary of receipt of each Deposit by electronic mail ("email") to the email address described in Paragraph 12 of this Agreement or the Depositor Enrollment Form, as applicable, within a reasonable time following receipt by InnovaSafe of the Deposit. Deposit notification will also be promptly posted to a page at InnovaSafe's web site, and InnovaSafe will provide Depositor and Beneficiary with a user identification name and password in order to access the InnovaSafe page upon which Deposit notifications are posted, (b) InnovaSafe shall provide a written reminder notification to Depositor semi-annually of Depositor's obligation to make update or replacement deposits. Within thirty (30) days of receipt of each such notice, Depositor shall provide written notice certifying to InnovaSafe that (i) it has made the update or replacement deposits as required; or (ii) there has not been a release of a new version of the product since the last deposit. After thirty (30) days of receipt of notice, InnovaSafe shall notify Beneficiary that InnovaSafe has received (iii) an update or replacement deposit from Depositor; (b) a statement from Depositor advising there has not been a release of a new version of the product since the last deposit; or (c) no response from Depositor.

2.5 Technical Verification of Escrow Deposit: Promptly following the receipt by InnovaSafe of an Deposit required hereunder, InnovaSafe shall perform, if and to the extent possible, the checks for Limited Deposit Verification ("LDV") of each Deposit that are included in the then published InnovaSafe Verification Information Chart. All charges and expenses incurred by InnovaSafe in performing an LDV are included in the standard escrow fees paid hereunder. InnovaSafe shall provide an electronic copy of the LDV report to the parties to this Agreement. Any party may request that InnovaSafe perform a Comprehensive Deposit Verification ("CDV") of the Escrow Deposit. Any charges and expenses incurred by InnovaSafe in carrying out a CDV will be paid by the party requesting the CDV, unless otherwise agreed to in writing.

2.6 Authorization to Copy: Depositor authorizes InnovaSafe to use and copy the Escrow Deposit as determined by InnovaSafe in its sole discretion as necessary for the performance of its obligations hereunder, including but not limited to, performing any Escrow Deposit verification testing as authorized hereunder, provided, however, that the foregoing authorization does not grant, sell, assign or otherwise transfer to InnovaSafe any title to or ownership of any part of the Escrow Deposit or Software, or related documentation, or any other property of Licensor, except for the media upon which the Escrow Deposit is recorded, title to and ownership of which shall pass to InnovaSafe as provided herein

2.7 Failed Deliveries: InnovaSafe will not be responsible for procuring the delivery of any Escrow Deposit, and InnovaSafe shall have no obligation to determine the physical condition, accuracy, completeness, functionality, performance or non-performance of any Escrow Deposit or whether the Escrow Deposit contains Source Code, unless otherwise required in connection with the performance by InnovaSafe of an CDV or another technical verification that has been requested and agreed to by the parties in accordance with this Agreement. InnovaSafe shall perform all of the duties required by this Agreement diligently and in good faith. Except as expressly set forth in this Paragraph 2, InnovaSafe has no duty of care, inquiry or disclosure, whether express or implied.

3. BENEFICIARY ENROLLMENT PROCEDURES

3.1 Enrollment of Beneficiaries: Depositor may designate Beneficiaries to this Agreement at any time and from time to time, in its sole and absolute discretion, provided that (a) at the time of entering into this Agreement the Depositor and the proposed Beneficiary are parties to a License Agreement; (b) Depositor is not in breach of this Agreement; and (c) all fees and costs have been paid to InnovaSafe.

3.2 Beneficiary Enrollment Form and Conditions: One or more Beneficiaries may be designated by Depositor under this Agreement upon written execution and delivery by the Depositor of the [Exhibit "B-NS"](#), Beneficiary Enrollment Form. Promptly following receipt of the [Exhibit B-NS](#) InnovaSafe shall send to the Beneficiary an enrollment letter, a copy of the Agreement and any other applicable document required hereunder. All rights and interests established hereunder for the benefit of Beneficiary are entirely conditioned upon the complete and continuous satisfaction of each of the following ("Beneficiary Release Conditions"): (a) execution of the form of acknowledgement attached hereto as [Exhibit B](#) in which Beneficiary accept and agrees to be bound by the terms, conditions and obligations set forth in this Agreement, including, but not limited to, all obligations of Beneficiary set forth in paragraph 4.5, and all obligations of Beneficiary set forth in Sections 9, 10, 11, and 12 of this Agreement. No deposit shall be released to any Beneficiary until the Beneficiary accepts and agrees to be bound by the terms, conditions and obligations in accordance with the requirements of this Agreement, (b) the receipt by InnovaSafe of all fees, expenses and any other amounts due and owing under this Agreement; (c) the License Agreement between the Beneficiary and Depositor remains in full force and effect, Beneficiary is not in breach thereunder, and no event has occurred which, with the giving of notice or the passage of time, would constitute a breach by Beneficiary of the License Agreement; and (d) Without limiting the foregoing, all covenants of Beneficiary set forth in this Agreement are intended and shall be construed to be continuing conditions to any and all rights and interests of Beneficiary under this Agreement, and are also intended and shall be construed to be continuing conditions to any and all obligations of InnovaSafe arising hereunder and inuring to the benefit of Beneficiary.

3.3 No Other Beneficiaries: A person or entity that has not subscribed hereto as a Beneficiary in accordance with the requirements of this Agreement, including but not limited to, any other licensees of the Software, shall not have any rights hereunder and InnovaSafe shall have no duties to any such persons or entities.

4. ESCROW DEPOSIT RELEASE PROCEDURES

4.1 Conditions to Enforcement: A Beneficiary shall have the right to enforce the Source Code release procedures described in this Paragraph 4 only if at the time of the requested release: (a) the License Agreement between Depositor and Beneficiary is in full force and effect, and Beneficiary is not in breach thereof; (b) the Beneficiary is not in breach of this Agreement; (c) all fees and costs then due and owing to InnovaSafe shall have been paid in full; (d) InnovaSafe has received a fully executed [Exhibit B](#); and (e) the Beneficiary otherwise has met all Beneficiary Release Conditions set forth in paragraph 4.2

4.2 Release Conditions: The release by InnovaSafe of the Escrow Deposit to Beneficiary as further provided in this Paragraph 4, shall be subject to the occurrence of one or more of the following conditions (each a "Release Condition"): (a) Depositor requests in writing that InnovaSafe release the Escrow Deposit to beneficiary, or (b) Depositor takes any action under any state corporation or similar law

without limiting any other right or remedy to which InnovaSafe *may* be entitled, InnovaSafe shall have the right, in its sole discretion, to suspend the performance of any or all of its obligations hereunder for so long as any amount due hereunder remains unpaid in whole or in part.

6. TERM AND TERMINATION

6.1 Term: This Agreement shall have an initial term of three (3) years from the date hereof unless earlier terminated as provided herein. At the expiration of the initial term, this Agreement shall automatically renew from year to year thereafter until this Agreement is terminated in accordance with the terms hereof.

6.2 Termination for Cause: (a) Notwithstanding the foregoing, this Agreement shall terminate as to each specific Beneficiary immediately and automatically upon either the expiration of the applicable License Agreement between such Beneficiary and Depositor, or the earlier termination of the applicable License Agreement between such Beneficiary and Depositor, whichever is applicable, provided, however, that in the case of termination (as distinguished from the expiration) of the applicable License Agreement between such Beneficiary and Depositor, such termination has been effected by Depositor in accordance with the requirements of the applicable License Agreement, (b) Depositor shall have the right to terminate this Agreement as to a specific Beneficiary if such Beneficiary breaches any material term of this Agreement, provided, however, that written notice of such breach is given to InnovaSafe and the breaching Beneficiary, and the breaching Beneficiary fails to cure such breach to the reasonable satisfaction of Depositor within thirty (30) days of delivery of the notice, (c) Each Beneficiary shall have the right to terminate its status as a Beneficiary to this Agreement if Depositor breaches any material term of this Agreement, provided, however, that written notice of such breach is given to Depositor and InnovaSafe, and Depositor fails to cure such breach to the reasonable satisfaction of the noticing Beneficiary within thirty (30) days of delivery of the notice. InnovaSafe shall be obligated to provide written notice to Depositor of any notice of a material breach of this Agreement received by InnovaSafe from any Beneficiary. A Beneficiary shall not be obligated to provide notice of a material breach by any other Beneficiary, (d) InnovaSafe shall have the right to terminate this Agreement as to all parties or as to any Beneficiary, in the event of non-payment of any fees or other amounts due and payable to InnovaSafe or its designee, or if Depositor or any Beneficiary otherwise breaches any material term of this Agreement, provided, however, that written notice of such breach is given to all applicable parties. If Depositor or the applicable Beneficiary fails to cure such breach within five (5) business days of the date such notice is delivered, then InnovaSafe shall have the right to terminate this Agreement by sending written notice of termination to all parties, and further provided, however that if payment is due from a Beneficiary and not from Depositor, then InnovaSafe may terminate this Agreement only as to that Beneficiary. InnovaSafe shall have no obligation to perform any obligations under this Agreement so long as such breach remains uncured, including but not limited to, the receipt or release of any Escrow Deposit as requested under this Agreement. Any party may cure amounts past due, whether or not such party is obligated under this Agreement, (e) For purposes of this Agreement, a material breach of this Agreement shall occur, without limitation, if any party does any of the following: (i) ceases to conduct business in its normal course; (ii) makes an assignment for the benefit of creditors; (iii) is liquidated or otherwise dissolved, (iv) becomes insolvent or unable to pay its debts as they become due; (v) is adjudicated bankrupt; (vi) suffers the appointment of a receiver, custodian, examiner or a trustee for any of its property or assets, or (v) engages in any conduct or activity constituting unfair competition, unfair trade practices, or criminal or tortious conduct that directly or indirectly causes harm to another party.

6.3 Termination Without Cause: (a) After the expiration of the initial term of this Agreement, Depositor shall have the right to terminate this Agreement without cause, in its sole discretion, by giving each Beneficiary and InnovaSafe written notice of its intent to terminate this Agreement at least forty-five (45) business days prior to the expiration of the initial term or the next renewal term, whichever is applicable. (b) Notwithstanding any other provision hereof, at any time during the term of this Agreement, InnovaSafe shall have the right to terminate this Agreement without cause, in its sole discretion, by giving Depositor and each Beneficiary written notice of its intent to terminate this Agreement at least thirty (30) days prior to the date set for termination. During such 30 day period Depositor shall have the right to provide InnovaSafe with written instructions authorizing InnovaSafe to forward all

Escrow Deposits to a source code escrow company appointed by Depositor as the successor escrow agent, and if InnovaSafe does not receive such written instructions from Depositor within the foregoing 30 day period, then InnovaSafe shall return any Escrow Deposit in its possession to Depositor, or if InnovaSafe is not able to locate the Depositor after reasonable attempts, then InnovaSafe may destroy the Escrow Deposit. InnovaSafe shall continue to be entitled to payment at its then current fees and charges (notwithstanding the termination date specified in its notice) until the successor escrow agent accepts the escrow and receives the Escrow Deposits from InnovaSafe, or the Escrow Deposits are destroyed. (c) A Beneficiary may not terminate this Agreement, (d) This Agreement shall terminate automatically, in the event that copies of the Escrow Deposit are released to all qualified Beneficiaries as provided by this Agreement.

6.4 Consequences of Termination and Survival of Certain Obligations: (a) Upon the termination of this Agreement, the following shall apply (a) all amounts then due and owing to InnovaSafe hereunder shall be paid in full; and (b) if the termination is as to all Beneficiaries, then InnovaSafe shall immediately return any Escrow Deposit in its possession to Depositor, or if InnovaSafe is not able to locate Depositor after reasonable attempts, then InnovaSafe will destroy the Escrow Deposit (b) Upon the termination of this Agreement, all future and continuing rights and obligations established hereunder will terminate, except (a) the obligations of each party to maintain confidentiality, as defined herein, (b) the obligations of the parties which by their terms are intended to survive, (c) any claim or cause of action for breach of this Agreement, or for indemnity or contribution, existing as of the date of termination, which claim or cause of action will remain in full force and effect until such rights and obligations are fully discharged.

7. REPRESENTATIONS AND WARRANTIES OF DEPOSITOR

7.1 Ownership of Source Code: Depositor represents and warrants to each Beneficiary and to InnovaSafe that Depositor is the sole and exclusive owner of the Source Codes for the Software and all Escrow Deposits made pursuant to this Agreement, or otherwise has the right to grant to Beneficiary the rights granted hereunder and to deposit the Source Code with InnovaSafe pursuant to the terms of this Agreement, and the grant by Depositor to Beneficiary of the rights granted hereunder and the deposits of the Source Codes with InnovaSafe pursuant to the terms of the Agreement, do not and will not conflict with, violate or infringe upon any rights or interests of any person or entity not a party to this Agreement.

7.2 Correspondence With Software: Depositor represents and warrants to each Beneficiary and to InnovaSafe that the Source Code deposited with InnovaSafe will at all times be the source code version of the current release of the Software, as offered by Depositor to the Beneficiaries or other licensees in the ordinary course of business from time to time during the term of this Agreement.

7.3 Usability of Source Code: Depositor represents and warrants that: (a) the Source Code is and shall be understandable and useable by a reasonably skilled programmer or other professional to understand, maintain, and correct the Software without assistance of any other person, (b) that the Software does not involve any proprietary languages or programming components that such a skilled programmer, or other professional, could not reasonably be expected to understand, except to the extent that the Escrow Deposit contains sufficient documentation to enable such a skilled programmer or other professional to understand and use such languages or components, and (c) that the Source Code includes all the devices, programming, and documentation necessary for the maintenance of the Software by the Beneficiary upon release of the Escrow Deposit pursuant to this Agreement, except for devices, programming, and documentation commercially available to the Beneficiaries on reasonable terms through readily known sources other than the Depositor.

7.4 Compliance with Laws: Depositor represents and warrants that it is solely and exclusively responsible for compliance with all applicable laws, rules and regulations including but not limited to, customs laws, import, export, and re-export laws and government regulations of any country from or to which any Escrow Deposit may be delivered in accordance with the provisions of this Agreement.

7.5 Validity of Agreement: Depositor represents and warrants that: (a) all consents, approvals, resolutions, authorizations, actions or orders required of Depositor for the authorization, execution and delivery of this Agreement, and for the licenses and rights granted hereunder, have been obtained; (b) the execution and delivery of this Agreement, and the performance by Depositor of its obligations hereunder, does not and will not conflict with or violate any judicial or administrative order, award, judgment or decree of any state or country applicable to Depositor, or violate or conflict with any provisions of Depositor's organizing instruments, or violate or conflict with the terms of any express or implied contract between Depositor and any other person or entity; and (c) the performance by InnovaSafe of its obligations as required hereunder, does not and will not conflict with or violate any judicial or administrative order, award, judgment or decree of any state or country applicable to Depositor, or violate or conflict with any provisions of Depositor's organizing instruments, or violate or conflict with the terms of any express or implied contract between Depositor and any other person or entity.

8. RECORDS, REPORTS, ADMINISTRATION

8.1 Records of Escrow Deposits: InnovaSafe shall maintain written records of all Escrow Deposits made by Depositor pursuant to this Agreement. InnovaSafe shall be entitled to rely on the completeness and accuracy of all information, documents and materials provided to InnovaSafe by Depositor, Beneficiary or any other person or entity, in connection with this Agreement. Depositor shall be entitled at reasonable times during normal InnovaSafe business hours and upon reasonable notice to InnovaSafe to inspect the records of Escrow Deposits maintained by InnovaSafe pursuant to this Agreement. Beneficiary shall be entitled all reasonable times during normal InnovaSafe business hours and upon reasonable notice to both Depositor and InnovaSafe, to inspect the records of Escrow Deposits maintained by InnovaSafe pursuant to this Agreement, provided, however, the right of each Beneficiary to inspect such records of Escrow Deposit shall be limited to only those records that pertain to the requesting Beneficiary.

8.2 Reports: On a quarterly basis, InnovaSafe shall prepare and submit via email a deposit reminder notification to Depositor, and an account history report to each current Beneficiary. If a report is returned non-deliverable to InnovaSafe, InnovaSafe shall use reasonable efforts to determine the current email address for the contact person and resend the report. If InnovaSafe is not able to determine, after reasonable efforts, the current email address for the contact person, InnovaSafe will send a report using United States Mail, First Class, to the last contact address provided by the Depositor or Beneficiary as applicable.

8.3 Confidentiality and Storage of Escrow Deposits: (a) InnovaSafe shall protect the confidentiality of the Escrow Deposit and all proprietary information of Depositor incorporated therein. Except as otherwise required to carry out its duties under this Agreement, InnovaSafe shall not permit any unauthorized person access to the Escrow Deposit. If InnovaSafe receives any order from a court or other judicial or arbitral tribunal pertaining to the disclosure or release of the Escrow Deposit, InnovaSafe will immediately notify the parties to this Agreement unless prohibited by law. Challenge of any such disclosure or release order shall be the sole responsibility of Depositor and Beneficiary. InnovaSafe does not waive its rights to present its position with respect to any such order. No party has the right to require InnovaSafe to disobey any order from a court or other judicial or arbitral tribunal. (b) InnovaSafe shall implement measures to maintain the security of all Escrow Deposits including, but not limited to, the storage of all Escrow Deposits in secured locked facilities.

9. CONFLICTING DEMANDS AND INTERPLEADER

9.1 Reliance and Suspension of Performance: (a) InnovaSafe shall have no responsibility for determining the genuineness or validity of any instruction, document or other item given to or deposited with it, and in the performance of its obligations under this Agreement shall be entitled to rely upon any email or written notice, instruction or request furnished to InnovaSafe by any of the parties hereto if such instructions are believed in good faith by InnovaSafe to have been given by an officer or another authorized

representative of a party hereto. All employees of Depositor and any Beneficiary, respectively, are conclusively deemed to have proper authority to act on behalf of such party hereunder. InnovaSafe shall have no responsibility with respect to the Escrow Deposit other than to follow such instructions as may be provided herein, (b) If any controversy exists between or among the Depositor and any of the Beneficiaries hereto, or with any other person or entity with respect to the Escrow Deposit or the subject matter of this Agreement, InnovaSafe shall not be required to determine the same or take any action with respect thereto, but in addition to and without limiting any other right or remedy to which InnovaSafe may be entitled, InnovaSafe shall have the right, in its sole discretion, to suspend the performance of any or all of its obligations hereunder for so long as any such conflict or controversy may exist hereunder.

9.2 Interpleader: In the event conflicting demands are made or conflicting notices are served upon InnovaSafe with respect to this Agreement or any Escrow Deposit, including but not limited to, upon the receipt of Contrary Instructions from Depositor, the parties expressly agree that in addition to the right to suspend its performance as provided in Paragraph 9.1(b) hereunder, InnovaSafe shall have the absolute right, in its sole discretion, to file an action in interpleader requiring the Depositor and Beneficiary to answer and litigate their several claims and rights among themselves. InnovaSafe is hereby authorized to comply with the applicable interpleader statutes of the State of California in this regard, and Depositor on the one hand, and each Beneficiary, on the other hand, jointly and severally agree to pay all costs, expenses and reasonable attorneys' fees incurred by InnovaSafe in connection therewith, the amount thereof to be fixed and judgment thereon to be rendered by the court in such suit. Depositor and Beneficiary agree that InnovaSafe shall be obligated to act in accordance with an order or judgment of a court of competent jurisdiction directing InnovaSafe to act with regard to disposition of the Escrow Deposit, or the final decision of an arbitrator directing InnovaSafe to act with regard to disposition of the Escrow Deposit, and Depositor and Beneficiary hereby authorize and direct InnovaSafe to not in accordance with such order of a court or decision of an arbitrator.

9.3 Proceedings. InnovaSafe shall not be required or compelled to be a party to, assist in, or otherwise participate, whether as a witness or in any other capacity, in any investigation, audit, action or proceeding, whether judicial, arbitral or administrative, instituted by Depositor, Beneficiary, or any third party (collectively, a "Proceeding"), provided, however, that in the event that InnovaSafe is made a party to or is threatened to be made a party to, or otherwise becomes involved in, any such Proceeding, then in any such case Depositor and Beneficiary each agree to pay in advance, upon receipt of written demand therefor from InnovaSafe, any and all expenses that may be incurred by InnovaSafe in connection therewith, which shall include, without limitation, attorneys' fees, disbursements and retainers, court costs, transcript costs, fees of accountants, experts and witnesses, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, or being or preparing to be a witness or other participant in a Proceeding.

10. INDEMNIFICATION OF INNOVASAFE

Depositor, on the one hand, and each Beneficiary on the other hand, agrees jointly and severally to indemnify, defend and hold harmless InnovaSafe and its directors, officers, agents and employees (collectively "InnovaSafe") from and against any losses, claims, damages, judgments, assessments, costs and other liabilities (collectively "Liabilities"), and will reimburse InnovaSafe for all fees and expenses (including the reasonable fees and expenses of counsel) (collectively, "Expenses") as they are incurred in investigating, preparing, pursuing or defending any claim, action, proceeding or investigation, whether or not in connection with pending or threatened litigation or arbitration and whether or not InnovaSafe is a party (collectively, "Actions"), arising out of or in connection with the services rendered or to be rendered by InnovaSafe pursuant to this Agreement, or any actions or inactions of InnovaSafe in connection with any such services or this Agreement; provided that Depositor and Beneficiary will not be responsible for any Liabilities or Expenses of InnovaSafe that are determined by a judgment of a court of competent jurisdiction which is no longer subject to appeal or further review to have resulted solely from the gross negligence or willful misconduct of InnovaSafe in connection with any of the services, actions, or inactions referred to above.

11. CLAIMS AND DISPUTE RESOLUTION

11.1 Mediation and Arbitration: (a) In the event of any controversy, dispute or claim between InnovaSafe and any other party hereto that arises under or otherwise relates to this Agreement, the parties agree that the dispute shall be submitted to mediation facilitated by a mediator as mutually approved by the parties, which approval shall not be unreasonably withheld or delayed by either party ("Mediator"). The parties agree to participate in good faith in the mediation conferences. Each party shall bear one-half (or its proportionate share if there are more than two parties) of the costs of the mediation, including the Mediator's fees, (b) If the parties are unable to resolve the claim, controversy or dispute through mediation, then it shall be decided by arbitration in Los Angeles County, California, in front of a single retired judge through the Judicial Arbitration and Mediation Service or, in its absence, any similar organization providing the arbitration services of retired judges ("JAMS"). If for any reason within 30 days of an arbitration demand, any other party to the Agreement fails to state in writing that it will cooperate in selecting the sole arbitrator, then the remaining party shall select the arbitrator. If for any reason the sole arbitrator is not selected within 45 days of the written arbitration demand, then JAMS shall have sole authority to assign one of its retired judges as the arbitrator that has experience with intellectual property law. The parties shall be entitled to discovery to the full extent provided in civil actions pending in the Superior Court for Los Angeles County, with the arbitrator deciding any controversies arising during and with respect to discovery. The decision of the arbitrator with respect to any issues submitted for determination shall be final and binding on all of the parties to this Agreement, provided, however that the arbitrator shall not have the power to award punitive or exemplary damages. Not less than 21 days before the first scheduled session of the arbitration hearing, each party shall deliver to the other, (i) a complete list of the names of the witnesses that the party will call to testify at the hearing; and (ii) a complete and accurate copy of each document the party will offer in evidence at the hearing, excluding witnesses and documents that are used for impeachment.

11.2 Limitation of Claims and Liabilities: (a) No action or claim against InnovaSafe arising out of or in any way relating to this Agreement may be instituted more than one (1) year after the event giving rise to such action or claim, (b) InnovaSafe shall not be liable for any special, incidental, punitive, exemplary, or consequential damages (including loss of information, revenue and/or lost profits) arising out of or in any way relating to this Agreement whether foreseeable or unforeseeable or even if InnovaSafe has been apprised of the possibility of such damages. The total collective liability of InnovaSafe to Depositor and Beneficiary, and to all of their respective affiliates, representatives, agents and contractors, arising out of or in any way relating to this Agreement, regardless of whether such liability is based in contract or in tort (including breach of warranty, negligence and strict liability in tort) shall be limited to the total amount of services fees paid by Depositor to InnovaSafe pursuant to this Agreement, provided, however, that the foregoing limitation does not apply to damages (excluding damage to the Escrow Deposit media) that are determined by a judgment of a court of competent jurisdiction which is no longer subject to appeal or further review to have resulted solely from the gross negligence or willful misconduct of InnovaSafe.

12. NOTICES

12.1 Notice and Notice Address: (a) Except as otherwise provided herein for Escrow Deposits or notices of Updates and Replacements, all notices, requests, demands, or other communications required or permitted under this Agreement shall be in writing. Notice shall be sufficiently given for all purposes as done by personal delivery, or electronic mail, or First Class Mail, or Certified Mail, or commercial overnight delivery service (DHL, FedEx, UPS), or facsimile transmission (b) Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service. Any party may change its contact information by giving the other party notice of the change in any manner permitted by this Agreement. Any party has the option to update their contact information with InnovaSafe using the "Change of Status" form on our website, <http://www.innovasafe.com/update.html>.

DEPOSITOR ADDRESS:

IS2ns v5.0
Account# 2630

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Contact Name:	Rori Robison
Title:	Contract Administrator
Street address:	2215 Bridgepointe Pkwy, Ste 300
City, State, Postal Code	San Mateo, CA 94404
Phone:	650-227-7770
Facsimile:	650-227-7771
Email:	rori.robison@emctcr.com
Purchase Order (if applicable)	NA

INNOVASAFE, INC.:

Attn: Client Services
28502 Constellation Rd.
Valencia, CA 91355
Phone: 800-239-3989
Facsimile: 661-295-5595
E-Mail: clientservices@innovasafe.com

BENEFICIARY: As set forth in [Exhibit "B-NS"](#).

13. MISCELLANEOUS PROVISIONS

13.1 Independent Contractors: The parties are independent contractors, and no party shall be held to be a fiduciary or trustee, or to have any fiduciary obligation, to any other party, or shall be considered, by entering into or performing any obligation under this Agreement, to assume or become liable for any special duty, or any existing or future obligations, liabilities or debts of the other party. No employee or agent of one party shall be considered to be an employee or agent of the other party.

13.2 Complete Statement, Interpretation and Modification of Agreement: The parties hereto acknowledge that each has read this Agreement, understands it, and agrees to be bound by its terms. The parties further agree that this Agreement is the complete and exclusive statement of their agreement with respect to the subject matter hereof, and supersedes all oral or written proposals, understandings, representations, warranties, covenants, and communications between the parties relating hereto. InnovaSafe is not a party to the License Agreement and no provision of the License Agreement shall be construed to apply to InnovaSafe or otherwise give rise to any obligation of InnovaSafe. Each party and its counsel have participated fully in the review and approval of this Agreement. Any statute or rule of law to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by Depositor and InnovaSafe, and by the Beneficiary if it affects any material right or obligation of such Beneficiary provided hereunder. No course of performance by the parties hereunder shall be deemed to constitute an amendment of this Agreement.

13.3 Waiver: No waiver of a breach, failure of a condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the waiving party. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

13.4 Attorneys' Fees: In any litigation, arbitration or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded reasonable attorneys' fees, together with any costs and expenses, to resolve the dispute and to enforce the final judgment.

13.5 Force Majeure: Except for obligations to make payment as indicated herein, no party shall be held responsible for any act, failure, event, or circumstance addressed herein if such act, failure, event, or circumstance is caused by conditions beyond such party's reasonable control

13.6 Due Authorization, No Third Party Rights, Partial Invalidity, Headings: (a) Each party represents and warrants that the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate, partnership, or limited liability company action, (b) This Agreement is made solely for the benefit of the parties to this Agreement and their respective permitted, authorized and acknowledged successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement, (c) If any provision of this Agreement is held illegal, unenforceable, or in conflict with any law of any federal, state or local government having jurisdiction over this Agreement, the validity of the remaining provisions hereof shall not be affected thereby, (d) The headings in this Agreement are included for convenience only and shall neither effect the construction or interpretation of any provision in this Agreement nor affect any of the rights or obligations of the parties to this Agreement.

13.7 Governing Law: The validity of this agreement and any of its terms or provisions, as well the rights and duties of the parties under this agreement, shall be construed pursuant to and in accordance with the laws of the State of California, and each party to this agreement specifically agrees to submit to the jurisdiction of the courts of the State of California.

13.8 Counterparts: This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date below the signatures.

DEPOSITOR	INNOVASAFE
BY: <u>Elice W. Smith</u> Signature	BY: <u>[Signature]</u> Signature
Name: <u>Elice W. Smith</u>	Name: <u>John J. Stulman</u>
Title: <u>Secretary</u>	Title: <u>President/CEO</u>
Date: <u>10-12-08</u>	Date: <u>Oct. 12, 2008</u>

**EXHIBIT A
DESCRIPTION OF DEPOSIT
INNOVASAFE ACCOUNT # 2630**

THIS FORM MUST ACCOMPANY EACH DEPOSIT TO INNOVASAFE. PLEASE SEND ALL DEPOSITS TO THE INNOVASAFE CORPORATE OFFICES.

The Ex. A can also be completed online at: <http://www.innovasafe.com/exhibitA.html>

DEPOSITOR CONTACT INFORMATION:

Company:	Contact:
Title:	Email:
St. Address:	City/State:
Postal Code:	Country:
Tel #:	Fax #:

Escrow Deposit Details

Media Type (CD, DVD, DAT etc...):

Indicate hardware used to create deposit:

Number of Media:

Indicate operating systems used:

Copies (1 or 2):

Indicate backup command/software used:

Product(s) Name:

Indicate software compression used:

Product Version:

Indicate whether encryption/password protection was used:

What computer language was the source written:

**Approximate size of the data on the media:
(MB/GB)**

TYPE OF DEPOSIT (REQUIRED): *Please Check Only One Box

Initial Deposit Update Deposit Replacement Deposit

IF THIS IS A REPLACEMENT DEPOSIT, PLEASE INDICATE WHETHER WE SHOULD RETURN OR DESTROY THE PREVIOUS DEPOSIT(S):

Return OR Destroy (Checking this box authorizes InnovaSafe to Destroy the previous deposit(s)) If this deposit is to be returned or destroyed, please indicate in the space below the name and version of the previous deposit(s) you would like to replace. If you would like to replace all previous deposits select "All":

All or Specific Deposits (list here): _____

**EXHIBIT B-NS
BENEFICIARY ENROLLMENT FORM
INNOVASAFE ACCOUNT # 2630**

Pursuant to the IS2ns Escrow Agreement ("Agreement"), Depositor hereby enrolls the following as a Beneficiary thereunder. Upon filing of this form with InnovaSafe, the below listed Beneficiary shall become entitled to certain rights under this Agreement that relate to the Source Code Deposit(s) listed below held by InnovaSafe. **ALL RIGHTS ESTABLISHED BY DEPOSITOR FOR THE BENEFIT OF BENEFICIARY ARE ENTIRELY CONDITIONED UPON THE COMPLETE AND CONTINUOUS SATISFACTION BY BENEFICIARY OF EACH OF ITS OBLIGATIONS UNDER THE AGREEMENT, INCLUDING BUT NOT LIMITED TO, EACH OF THE BENEFICIARY RELEASE CONDITIONS SET FORTH IN PARAGRAPH 3.2 OF THE AGREEMENT. BENEFICIARY FURTHER AGREES TO PAY INNOVASAFE A RELEASE REQUEST FEE OF \$500 PER REQUEST FOR RELEASE OF THE DEPOSIT MATERIAL LISTED ON THE EX B-NS DUE IMMEDIATELY AT THE SAME TIME THAT THE RELEASE CONDITION NOTICE IS SUBMITTED TO INNOVASAFE PURSUANT TO PARAGRAPH 4.J (C) RELEASE PROCEDURES.**

BENEFICIARY INFORMATION: Company: Contact Name: Title: Street Address: City, State, Zip: Country: Tel #: Fax #: Email:	DEPOSITOR INFORMATION: Company: Contact Name: Title: Street Address: City, State, Zip: Country: Tel #: Fax #: Email:
PLEASE LIST WHICH SOFTWARE PACKAGE(S) THIS BENEFICIARY IS ENTITLED:	
Party responsible for annual Beneficiary enrollment fee: (see Exhibit "C" Fee Schedule): Depositor / Beneficiary (Please circle or indicate to the right):	

Depositor	InnovaSafe, Inc.
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

PLEASE RETURN THIS FORM, COMPLETED AND SIGNED TO:

**INNOVASAFE, INC.
28502 CONSTELLATION RD
VALENCIA, CA 91355 USA**

**EXHIBIT B
BENEFICIARY ACKNOWLEDGEMENT FORM
INNOVASAFE ACCOUNT # 2630**

The undersigned Beneficiary hereby acknowledges, accepts, and agrees to be bound by the terms of the above referenced Software Source Code Escrow Agreement by and between InnovaSafe, Inc., a California corporation, as Intellectual Property Escrow Agent and eMeter Corporation as Depositor, on this _____ day of _____, 20____ (the "Agreement"). Beneficiary further agrees to pay InnovaSafe a release request fee of \$500 per request for release of the Deposit Material listed on the Ex B-NS due immediately at the same time that the release condition notice is submitted to InnovaSafe pursuant to Paragraph 4.3 (c) Release Procedures.

BENEFICIARY INFORMATION:

Check here if there is an alternate contact person and list them on the back of this form.

Company:	Contact:
Title:	Email:
St. Address:	City/State:
Postal Code:	Country:
Tel #:	Fax #:

Signature (Required): _____

Please return this form via certified or registered mail, completed and signed to:

**INNOVASAFE, INC.
28502 CONSTELLATION RD
VALENCIA, CA 91355 USA**

EXHIBIT C

SCHEDULE OF FEES

INNOVASAFE ACCOUNT # 2630

Account Initialization Fee (one-time payment) NO FEE

*Fee waived with initial deposit of three (3) products

Fees for Annual Administration

Standard or Electronic Delivery -
Per Product Deposit - Unlimited Update and Replacement Deposits \$700

Annual Beneficiary Fee*

Per Beneficiary per year \$500

Technical Verification Fees

Limited Deposit Verification (LDV) No Fee

Comprehensive Deposit Verification (CDV) Quote only

Release Fees

Per release request \$500

*One beneficiary enrollment is required

All Fees Are Payable in US Dollars unless otherwise agreed to in writing.