

## **AGREEMENT**

THIS AGREEMENT is made as of this 1<sup>st</sup> day of July 2021, by and between the **Bay Area Water Supply & Conservation Agency** (“Agency”) and WaterSmart Software, Inc. (“Consultant” or “WaterSmart”).

WHEREAS, Agency desires to obtain professional services in connection with the development and implementation of a water analytics platform and home water use reports to promote water use efficiency, and

WHEREAS, Consultant desires to perform such services and has represented that it is experienced and qualified to perform such services. It has submitted a Scope of Services, dated May 29, 2021, a copy of which is attached and incorporated as Exhibit A, a Schedule of Performance attached and incorporated as Exhibit B, software-as-a-service (“SaaS”) provisions, which are attached and incorporated as Exhibit C, the Member Agencies Participation Agreement, which is attached and incorporated as Exhibit D, WaterSmart Data and Security Policy, which is attached hereto and incorporated as Exhibit E, WaterSmart breach Response Plan, which is attached hereto and incorporated as Exhibit F, and WaterSmart Software Service Level Agreement, which is attached hereto and incorporated as Exhibit G.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

### **1. SCOPE OF SERVICES**

The scope of the Consultant's services shall consist of the services set forth in Exhibit B (“Scope of Services”). In the event of any conflicting terms among the exhibits, with regard to the scope of services to be provided by the Consultant, Exhibit A shall govern. In the event of any inconsistency between this Agreement and any exhibits, this Agreement and Exhibit C shall be construed consistently with one another to the greatest extent possible, and together their terms shall take precedence over conflicting terms of the other exhibits. Agency may also engage Consultant to perform additional work as set forth in Section 3 below.

### **2. SCHEDULE AND TERM OF CONTRACT**

Consultant will commence work upon Agency’s issuance of a Notice to Proceed and, unless the Agreement is terminated sooner pursuant to Section 19, will complete the pilot program implementation work, including Phase I, II, and III in accordance with the Schedule included in Exhibit B. Optional services may be required, at Agency's sole discretion, at costs specified on Exhibit D or negotiated by the Parties.

The term of this Agreement consists of a three year base term commencing upon the execution date of this Agreement.

**3. COMPENSATION**

Agency shall pay Consultant based on the level of participation selected by BAWSCA member agencies ("Participating Agency(ies)" or "Utility(ies)") that enter into individual Participation Agreements as identified in the Exhibit D and in accordance with the pricing specified therein. Agency shall notify Consultant by June 30 of each year as to the maximum amount of compensation authorized, which amount will be specified in the Participation Agreement submissions; provided, however, that if a Participating Agency modifies its Participation Agreement after June 30 each year, Agency shall follow the process to increase or decrease compensation set forth in Section 5. Agency will notify Consultant promptly in writing of any change in the maximum amount of compensation. In the event that a Participating Agency exercises its right to terminate its participation, Consultant will be compensated for costs incurred up to the effective date of such termination.

This is a requirements contract and in no event will Agency pay for more services than specified in the Participation Agreement, including any modifications thereto. Compensation will be based on services actually rendered. Agency will pay Consultant based on the rates set forth on Exhibit D, which is inclusive of all labor, materials, taxes, profit, overhead, insurance, subcontractor costs and all other costs and expenses incurred by the Consultant.

The Agency's Chief Executive Officer may from time to time request Consultant to perform additional tasks outside the scope of work described in Section 1, and not subject to the maximum compensation described above. At Agency's request, Consultant will (1) provide a proposal for such additional task(s) and (2) a proposed rate schedule and the parties shall discuss in good faith whether such work should take place under this Agreement or a separate agreement. If engaged, such task(s) will be on a work directive basis and will include a separate not-to-exceed budget for each specific task.

**4. MANNER OF PAYMENT**

Consultant will submit detailed monthly invoices at the end of each month describing the work performed, including which Participating Agency the work was performed for, the personnel performing the work, the applicable deliverables, and Consultant's applicable fees, which will be consistent with Exhibit D. Setup and annual subscription fees will be billed for upon initiation of services. Invoices will also include total expenditures to date and the remaining balance on the budgeted or not-to-exceed amount. Invoices will be prepared in a format acceptable to Agency.

Agency will pay for work satisfactorily performed within thirty (30) days after receipt of an invoice meeting the requirements of this section. Should Agency dispute the accuracy of any invoice, or deem Consultant's work unsatisfactory, Agency will notify Consultant within 30 days of receipt of such an invoice. Agency will only pay the undisputed portion of any invoice.

Resolution of a dispute over an invoice will be pursuant to Section 20.

**5. CHANGES**

Agency may from time to time make commercially reasonable changes to the scope of work by written notice to Consultant. Agency will notify Consultant promptly in writing of any change in the maximum amount of compensation. If such changes increase, or decrease, the Consultant's cost of performing the work, or the time required for its completion, an equitable adjustment as mutually agreed will be made to the limit on compensation contained in Section 3, or the Schedule referred to in Section 2, or both.

In the event that the Consultant encounters any unanticipated conditions or contingencies that may affect the scope of work or services, schedule, or the amount of compensation specified herein, the Consultant will notify the Agency immediately of such condition or contingency. The Consultant will explain the circumstances giving rise to the unforeseen condition or contingency and will suggest the proposed adjustment in schedule or compensation. Consultant will notify the Agency prior to the time that the Consultant performs work or services related to any proposed adjustment. Any agreed-upon changes will be memorialized in a written amendment to the Agreement.

**6. CONSULTANT'S STATUS**

Consultant is an independent Consultant and not a partner or agent of, nor a joint venturer with, Agency. Neither Consultant nor any of Consultant's officers or employees are employees of Agency for any purpose. Consultant will determine the means and methods by which the work is performed; Agency may, however, monitor Consultant's performance.

**7. ASSIGNMENT**

Neither party may assign any of its rights or transfer any of its obligations under this Agreement without the prior written consent of the other party. In the event Consultant is the subject of a merger, acquisition or other such change in control, Agency's consent to assignment by Consultant shall not be unreasonably withheld, denied or delayed.

**8. SUBCONSULTANTS**

Consultant may not subcontract any work to be performed under this Agreement without the prior written consent of Agency, except for minor administrative services. The following subconsultant is approved by Agency for the following task(s): Data-Mail, Inc., a printing and mailing vendor, and Amazon Web Services and Rackspace Inc, data servers.

Consultant will be solely responsible for reimbursing any subconsultants and Agency will have no obligations to them.

**9. KEY PERSONNEL**

WaterSmart shall name a dedicated Customer Success manager for each participating Member Agency. The Consultant agrees that these personnel will devote their personal attention to the work, as further described in Exhibit A. Key personnel contact information for

WaterSmart is given in Section 23. Consultant may substitute a dedicated Customer Success manager with prior written notice.

#### **10. STANDARD OF CARE**

Consultant will exercise the same degree of care, skill and diligence in the performance of the work as would be exercised by a reasonable provider of SaaS services performing similar work for public agencies in the San Francisco Bay Area under similar circumstances. Consultant will re-perform, at no cost to Agency, services which fail to meet this standard. In the performance of its work, the Consultant represents that it (1) carries all applicable licenses, certificates, and registrations in current and good standing that may be required to perform the work; and (2) will retain all such licenses, certificates, and registrations in active status throughout the duration of this engagement.

#### **11. OWNERSHIP OF WORK**

During the term of this Agreement, Agency will be entitled to access to and copies of Consultant's deliverables prepared for Agency and each Participating Agency and each Participating Agency will be entitled to all of their deliverables, data, and Agency PII (as defined below). Upon completion of the work, or earlier termination of this Agreement, copies of all such deliverables, data, and Agency PII in the possession of Consultant or any subconsultant will be delivered electronically to Agency and/or the Participating Agencies upon request. Consultant may retain all materials and deliverables produced under this Agreement, subject to the provisions of Section 12. Participating Agencies that execute a Participation Agreement will also be entitled to access to, copies of, and use of all deliverables, data, and Agency PII applicable to their respective Participating Agency, prepared by Consultant, pursuant to the terms of Exhibit D.

The parties' intellectual property rights are governed by Exhibit C. Agency agrees to include Exhibit C in the Participation Agreement and provide to Consultant from each Participating Agency a signed copy of the Participation Agreement (in a form acceptable to Agency and Consultant) acknowledging this Agreement and each of its exhibits and binding each Participating Agency to the terms of Exhibit C.

The Consultant represents and warrants that all materials prepared under this Agreement are original and/or developed from data received in performance of this Agreement and/or materials owned by Consultant or in the public domain, and that all materials prepared under and services provided under this Agreement do not infringe or violate any copyright, trademark, patent, trade secret, or other intellectual-property or proprietary right of any third party.

#### **12. CONFIDENTIALITY**

Consultant will hold in confidence any Agency and Participating Agency materials or data to which the Consultant has access, or materials prepared by the Consultant during the course of this Agreement which duplicate such materials or data ("Confidential Information"). Consultant will exercise all reasonable precautions to prevent the disclosure of Confidential Information to anyone except the officers, employees, subcontractors and agents of the Consultant as necessary to perform services under this Agreement. Consultant, its employees, subcontractors, and agents, may not release any Confidential Information, and any reports or other materials

prepared by it under this Agreement if within the scope of “Confidential Information” as defined herein, without the prior written approval of Agency or the Participating Agency to which such Confidential Information, reports or materials pertain. Agency grants permission to Consultant to release Confidential Information related to a specific Participating Agency to the specific Participating Agency. Consultant shall not release any Confidential Information related to a specific Participating Agency to any other Participating Agency; provided, however, that aggregate and anonymous data may be used and disclosed as provided below.

“Confidential Information” shall not include (i) information that, at the time of disclosure, is publicly available or generally known or available to third parties, or information that later becomes publicly available or generally known or available to third parties through no act or omission by Consultant; (ii) information that Consultant can demonstrate was in its possession prior to receipt in the course of this Agreement; (iii) information received by Consultant from a third party without an obligation of confidentiality; (iv) information Consultant can demonstrate was independently developed by it or a third party; or (v) information that Consultant is legally required or compelled by a court to disclose.

The foregoing confidentiality obligations are subject to Section C of Exhibit C and the following clarification of the parties’ rights and obligations with respect to aggregated and anonymous data. Notwithstanding the foregoing, Consultant is permitted to use and disclose on an anonymous and/or aggregated basis (excluding any personally identifiable information) any data pertaining to residential end customers and their water consumption, including without limitation derivative data and data combining the data of two or more utilities, for purposes of project evaluation and any research, product development, marketing, or other legitimate business purposes.

### **13. DATA PRIVACY**

Consultant may have access to personally identifiable information (PII) relating to Agency or Participating Agency's customers in connection with the performance of the Agreement. PII is any information that identifies or describes a person or can be directly linked to a specific individual. Examples of PII include, but are not limited to, name, address, phone or fax number, signature, date of birth, e-mail address, utility usage data, and method of payment. Agency PII means any PII relating to Participating Agencies' customers.

Consultant must ensure and maintain the confidentiality, security, safety, and integrity of all Agency PII, including physical, electronic, and procedural safeguards designed to prevent unauthorized access or use and protect against known or anticipated threats to the security or integrity of such data. This includes, but is not limited to, the secure transport, transmission and storage of Agency PII used or acquired in the performance of this Agreement. This Section will survive termination or expiration of this Agreement.

### **14. DATA SECURITY**

Consultant must provide administrative, physical, and technical safeguards for protection of the security, confidentiality, integrity, and availability of Agency PII consistent with the current industry standards of care and California law, including California Civil Code section

1798.81.5. In addition, Consultant agrees to comply with the provisions set forth in Exhibit E.

Consultant will keep Agency PII and data in a primary database, backup repository, and secondary backup repository. Consultant will keep data and Agency PII from different Participating Agencies segregated and never intermingled. Consultant will perform backups locally within the hosted SSH-key protected environment, then encrypt the backups using PGP privacy, and push the backups securely over SSL to a secure cloud storage system. Consultant will push an additional copy of the encrypted backup to a secure cloud storage system for redundancy. Consultant will not store any data on its premises. Consultant will store daily backups for 30 days. After 30 days, weekly backups are stored for several months. Monthly backups are stored for one year. At the termination or expiration of the Agreement, Consultant will properly dispose of any Agency PII and data obtained during the Agreement and will certify in writing when Agency PII and data have been properly disposed of. Data destruction includes all data sent to Consultant by the Agency and Participating Agencies including customer account information and meter read data, and information provided to Consultant by Participating Agencies' end-users through the Customer Portal. Backups of these data stored on separate servers will also be deleted within 10 working days of notice to dispose. This Section will survive termination or expiration of this Agreement.

## 15. INDEMNIFICATION

Consultant will indemnify and hold harmless the Agency, Participating Agencies, and their directors, officers, employees and agents from and against any and all suits, claims or actions arising out of (i) any injury to persons or damage to property that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by the Consultant if caused by the willful misconduct, negligent act or omission by Consultant, its employees, subcontractors or agents, (ii) any unauthorized access, use, or disclosure, or allegation thereof, of Confidential Information or Agency PII and all associated costs related to security breach notifications as may be required under California Civil Code sections 1798.29 and 1798.82, or (iii) any allegation that materials or services provided by the Consultant under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

The Consultant further agrees to defend any and all such suits, claims or actions, and pay all reasonable charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered against the Agency or any of the other individuals enumerated above in any such action, the Consultant will, at its expense, satisfy and discharge the same. This indemnification will survive the expiration or earlier termination of this Agreement.

## 16. INSURANCE

### A. Types of Insurance

(1) Workers' Compensation Insurance. If Consultant employs any person to perform work under this Agreement, Consultant will procure and maintain:

(a) Workers' Compensation Insurance meeting the requirements of the State of California, and

(b) Employer's Liability Insurance with a policy limit of at least One Million Dollars (\$1,000,000) per accident or illness.

The policy will contain a waiver of subrogation in favor of Agency and its directors, officers, employees and agents.

(2) Commercial General Liability Insurance. Consultant will procure and maintain Commercial General Liability insurance providing bodily injury and property damage coverage with a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence or claim and a general aggregate limit of at least One Million Dollars (\$1,000,000). This insurance will include, but not be limited to, premises and operations, contractual liability covering the indemnity provisions contained in this Agreement, personal injury, products and completed operations, and broad form property damage, and include a Cross Liability endorsement. Said Policy will protect the Consultant and the Agency in the same manner as though a separate policy had been issued to each, but nothing in said policy will operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

(3) Comprehensive Automobile Liability Insurance. Consultant will procure and maintain Automobile Liability insurance on vehicles used in connection with its business in an amount not less than One Million Dollars (\$1,000,000) combined single limit per occurrence or claim. This insurance will provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.

(4) Professional Liability Insurance. Consultant will maintain Professional Liability insurance covering Consultant's performance of this Agreement in an amount not less than One Million Dollars (\$1,000,000) per occurrence or claim.

(5) Cyber Liability Insurance. Such policy shall contain Cyber Liability risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage.

The policy shall provide coverage for all work performed by the Consultant and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of the Consultant. No contract or agreement between the Consultant and any subcontractor/consultant shall relieve the Consultant of the responsibility for providing this Errors & Omissions or Professional Liability and Cyber Liability coverage for all work performed by the Consultant and any subcontractor/consultant working on behalf of the Consultant on the project.

Minimum Coverage and Minimum Limits:

\$1,000,000 Per Claim and Policy Aggregate

\$1,000,000	Errors and Omissions and Professional Liability
\$1,000,000	Cyber Liability including Privacy, Confidentiality and Network Security liability
\$1,000,000	Regulatory Defense, Awards and Fines

**B. Other Requirements**

(1) Insurers. All insurance policies must be issued by a California admitted carrier. Insurance policies issued by surplus lines carriers are not acceptable absent the express written approval of Agency and the carrier is listed on the California DOI LASLI list. Policies must be issued by insurers must have a Best Financial Strength Rating of A- or better, and be in the Best Financial Size Category of VII or larger.

(2) Endorsements

(a) The company(ies) issuing all such policies will agree to give Agency thirty (30) days advance written notice of non-renewal or cancellation.

(b) The Commercial General Liability and Automobile Liability policies will include Agency, its directors, officer and employees as additional insureds.

(c) The Commercial General Liability and Automobile Liability policies will be primary to and not contributing with any insurance maintained by Agency.

(d) The inclusion of more than one insured will not affect the rights of such insureds as against one another; such policies will protect Consultant and Agency as though a separate policy had been issued to each, but inclusion of more than one insured will not increase the limits of the insurer's liability.

(3) Evidence of Insurance. Before commencing work, Consultant will provide Agency with a certificate or certificates of insurance evidencing the existence of the required insurance policies. Agency may request a duplicate original of such policies and endorsements. The Consultant may not violate or permit to be violated any conditions or provisions of said policies of insurance, and at all times will satisfy the requirements of the insurer for the purpose of maintaining the required insurance in effect.

(4) Notice to Agency. If any claim is made by any third person against the Consultant on account of any incident connected to the Agreement, the Consultant will promptly report the fact in writing to the Agency, giving full details of the claim.

(5) Self-Insurance, Deductibles, and Retentions. Upon evidence of financial capacity satisfactory to the Agency, and Consultant's agreement to waive subrogation against the Agency respecting any and all claims that may arise, Consultant's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance. Consultant shall be responsible for payment of any deductible or retention on Consultant's policies without right of contribution from the Agency. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable. In the event that the policy of the



Consultant or any subcontractor contains a deductible or self-insured retention, and in the event that the Agency seeks coverage under such policy as an additional insured, Consultant shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy for a lawsuit arising from or connected with any alleged act or omission of Consultant, subcontractor, or any of their officers, directors, employees, agents, or suppliers, even if Consultant or subcontractor is not a named defendant in the lawsuit.

(6) Subcontractors. Any person, firm, or corporation that the Consultant authorizes to work pursuant to this Agreement, including any subcontractor, is deemed to be the Consultant's agent and is subject to all applicable terms of this Agreement. Prior to the Consultant's start of the work, the Consultant agrees to procure and maintain for each subcontractor, or require its subcontractors to procure and maintain, at the Consultant's (or its subcontractor's) sole cost and expense (and to prove to the Agency's reasonable satisfaction that it remains in effect throughout the performance of the work under this Agreement), the kinds of insurance described above. Such insurance must remain in effect throughout the term of this Agreement and will be at the sole cost and expense of the Consultant (or its subcontractors).

#### 17. RECORDS

Agency and its authorized representatives, including the California State Auditor, may inspect and make copies of Consultant's books, records and data relating to billing under the Agreement, as well as any reports and deliverables specified by the Scope of Services, at any reasonable time during Consultant's business hours upon reasonable prior written notice to Consultant, and may audit and verify invoices submitted by Consultant. Consultant will provide such assistance as may be reasonably required in the course of such inspection and audit.

Consultant will maintain its above-specified records relating to this Agreement, and make them available for inspection, for a period of three (3) years after Agency makes final its payment to Consultant.

#### 18. NONDISCRIMINATION

In connection with the performance of this Agreement, Consultant will not discriminate against any employee or applicant for employment because of race, religious creed (including religious dress and grooming practices), color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, sexual orientation, gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), gender identity, gender expression, age (if 40 or over), military and veteran status, taking or requesting statutorily protected leave, or any other category protected under federal, state, or local laws. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religious creed (including religious dress and grooming practices), color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, sexual orientation, gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), gender identity, gender expression, age (if 40 or over), military and veteran status, taking or requesting statutorily protected leave, or any other category protected under federal, state, or local laws. Such actions will include, but not be limited to, the

following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant and subcontractors will ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

Consultant and subcontractors will comply with the applicable provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Consultant will include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

#### **19. COMPLIANCE WITH LAW**

In connection with the performance of this Agreement, Consultant and Agency will comply with all applicable federal and state laws, including regulations of federal and state agencies, and with applicable local ordinances.

#### **20. MODIFICATION**

This Agreement may be modified or amended only by a written document signed by both parties.

#### **21. TERMINATION**

Agency may terminate this Agreement at any time and for any reason by 30 days written notice. Upon receiving notice of termination, Consultant will promptly wind down its work and deliver to Agency all deliverables prepared per the requirements of the Scope of Services and materials obtained in performance of this Agreement and will not commit itself to any further expenditure of time or resources.

If the Agreement is terminated for any reason other than a breach or default by Consultant, Agency will pay Consultant, in accordance with the provisions of Sections 3 and 4, all sums actually due and owing from Agency for all services performed and all expenses incurred up to the effective date of termination, plus any costs reasonably and necessarily incurred by Consultant to effect such termination. If the Agreement is terminated for breach or default, Agency will pay Consultant for only those services performed and expenses incurred in full accordance with the terms of this Agreement, up to the effective date of termination. Whether terminated for breach or for convenience, the Agency will not in any manner be liable for the Consultant's actual or projected lost profits had the Consultant completed the services required by this Agreement.

#### **22. DISPUTE RESOLUTION**

In the event of any dispute, the parties will promptly meet and confer, first at a staff level

and then elevated to a meeting of executives, in a good faith attempt to resolve the dispute. If a dispute cannot be resolved by the parties independently, they may agree to submit such dispute to non-binding mediation by a mutually agreed-upon neutral third party with offices in the San Francisco Bay Area. The cost of mediation will be shared equally. Unless otherwise directed by Agency, Consultant will continue performance under this Agreement while matters in dispute are being resolved.

In the event the parties agree to mediation, the party proposing mediation will provide the other party with the names of three mediators (provided by the American Arbitration Association, JAMS, or other such organization), each of which is acceptable to that party. The other (second) party will select one of the three mediators and notify the first party of its selection within fifteen (15) days after receiving the names of the three mediators. If the second party fails to make a selection within this fifteen (15) day period, the first party may either select the mediator from among the three it proposed or may pursue its legal and equitable remedies through litigation.

The parties will meet with the mediator within thirty (30) days of his/her selection and will discuss the dispute with the mediator in a good faith effort to reach an agreement. However, nothing in this section requires either party to make a concession or accept an offer. If the mediation does not resolve the matter to the satisfaction of both parties within sixty (60) days after the mediator is selected, either party may pursue its legal and equitable remedies through litigation. Any lawsuit between the parties will be filed and prosecuted in the Superior Court of the State of California and the agreed venue is the County of San Mateo; provided, however, that any claim(s) involving intellectual property rights may, if necessary for enforcement of such rights, be filed in any court with jurisdiction over such claim(s). This section does not limit Agency's right to terminate the Agreement.

### **23. NOTICE**

All notices will be given in writing by personal delivery, or first class mail, to the parties at the following addresses:

If to Agency: Bay Area Water Supply & Conservation Agency  
155 Bovet Road, Suite 650  
San Mateo, CA 94402  
Attention: Chief Executive Officer

If to Consultant: WaterSmart Software, Inc.  
20 California Street, Suite 200  
San Francisco, CA 94111  
Attention: Chief Executive Officer

Notice given by mail will be deemed received two days after it is deposited in the United States mail postage prepaid, addressed as provided above.

Day-to-day communications will be between Kyle Ramey for Agency at (650) 349-3000, and Ora Chaiken for Consultant at (415) 366-8622.

**24. CONFLICT OF INTEREST**

The Consultant warrants and represents that it presently has no interest and agrees that it will not acquire any interest which would present a conflict of interest under California Government Code §§ 1090 *et seq.* or §§ 87100 *et seq.* during the performance of services under this Agreement. The Consultant further covenants that it will not knowingly employ any person having such an interest in the performance of this Agreement. Violation of this provision may result in this Agreement being deemed void and unenforceable.

Depending on the nature of the work performed, the Consultant may be required to publicly disclose financial interests under the Agency's Conflict of Interest Code. The Consultant agrees to promptly submit a Statement of Economic Interest on the form provided by Agency upon receipt.

No person previously in the position of director, officer, employee or agent of the Agency may act as an agent or attorney for, or otherwise represent, the Consultant by making any formal or informal appearance, or any oral or written communication, before the Agency, or any officer or employee of the Agency, for a period of twelve (12) months after leaving office or employment with the Agency if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, award or revocation of a permit, license, grant or contract.

**25. PUBLICITY**

The Consultant, its employees, subcontractors, and agents will not refer to the Agency, or use any logos, images, or photographs of the Agency for any commercial purpose, including, but not limited to, advertising, promotion, or public relations without the Agency's prior written consent. Such written consent will not be required for the inclusion of the Agency's name on a customer list.

**26. WAIVER**

A waiver of any requirement of this Agreement must be in writing by an authorized representative of the party waiving the requirement. The waiver by either party of a breach of any requirement of this Agreement will not be deemed a waiver of any such breach in the future or of a breach of any other requirement.

**27. INTERPRETATION**

Section headings are solely for convenience and are not intended to affect the interpretation of the Agreement. The Agreement will be interpreted reasonably, not in favor of or against either party.

**28. ENTIRE AGREEMENT**

This Agreement including any exhibits or attachments, constitutes the complete agreement between the parties and supersedes any prior agreements, promises, and understandings whether written or oral. This Agreement may be modified or amended only by written instrument signed by both the Consultant and the Agency.

**29. NO THIRD PARTY RIGHTS**

The Participating Agencies are direct beneficiaries of this Agreement. The parties do not intend this Agreement to create rights in any other third parties, including the Participating Agencies' customers, and nothing in this Agreement should be construed to do so.

**30. SEVERABILITY**

If any provision of this Agreement or any portion thereof is held to be invalid or unenforceable for any reason, that provision will be reformed and/or construed consistently with applicable law as nearly as possible to reflect the original intentions of this Agreement, and in any event such provision will be severable and will not affect the validity or enforceability of any other provision.

**31. BINDING ON SUCCESSORS**

All of the terms, provisions and conditions of this Agreement will be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns and legal representatives.

**32. WARRANTIES**

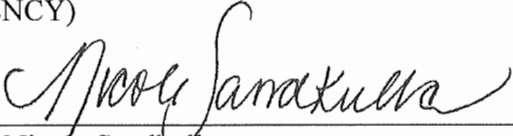
Neither party makes any warranties or representations, either express or implied, beyond such as are explicitly stated in this Agreement.

**33. APPLICABLE LAW**

This Agreement, its interpretation and all work performed under it will be governed by the laws of the State of California.

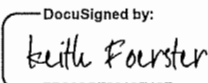
IN WITNESS WHEREOF the parties have executed this Agreement by their duly authorized officers as of the day and year first above written.

BAY AREA WATER SUPPLY & CONSERVATION AGENCY  
(AGENCY)

By:  June 10, 2021  
Nicole Sandkulla Date:

Title: CEO/General Manager

WATERSMART SOFTWARE, INC.  
(CONSULTANT)

By:  7/1/2021  
Keith Forster

Title: CFO

Taxpayer ID Number: 27-1447869

## Exhibit A: Scope of Work

### SECTION 1: INTRODUCTION AND PROGRAM ELEMENTS

#### Introduction

Consultant is a provider of a customer engagement and analytics platform. Agency has contracted with Consultant to provide a customer engagement program for the Participating Agencies that submit a qualifying Participation Agreement with respect to the Customer Engagement and Conservation Program administered by the Agency.

The program is comprised of the following required elements, which are explained in more detail below:

- Program Initialization: Program setup and initialization, including data collection. This is required for new Participating Agencies only and is described in detail in Section 2 Program Initialization and Milestones. (Exhibit D, Item A)
- Annual Software Subscription: Includes the products described in detail in this section below Utility Analytics Dashboard, Customer Portal, Alerts and Notifications, Group Messenger & List Builder, and Electronic Bill Presentment. Also includes Customer Service and Support described in detail in Section 5 Customer Service and Support, (Exhibit D, Item B)

Most Participating Agencies also employ these optional elements:

- Standard Support (Exhibit D, Item C)
- Welcome Letter or Customer Letter (Exhibit D, Item D)
- Water Report Program summarized below and described in detail in Section 3 Water Report Program Design (Exhibit D, Item E)
- Single Sign-On or Click Through Registration with Participating Agency's online payments provider, or Electronic Bill Payment (Exhibit D, Item F)
- Paperless Billing (Exhibit D, Item G)
- Print Leak Alerts (Exhibit D, Item H)

Utility is responsible for providing WaterSmart key program inputs including account information, regular feeds of meter data, and logos and contact information. Utility is also responsible for timely feedback and input on key program elements during initialization. Utility maintains responsibility as the primary contact for customer inquiries and technical assistance.

WaterSmart will designate a customer success manager, and the Utility shall designate a single person as Program Manager for the program. All Utility decisions shall be channeled through the Utility Program Manager. In addition, Utility shall designate a Data contact who is responsible for providing the data indicated below.

Content and design of all materials are subject to change over time, as WaterSmart incorporates new features.

This scope of work and agreement cover services rendered over term of the Agreement. The exact timing of program launch and duration of services may vary depending on Utility resource levels, data availability, and other unforeseeable events. WaterSmart endeavors to adhere to the proposed schedule. Utility's responsiveness and prompt provisioning of necessary program inputs is also critical to schedule adherence. A proposed schedule is provided in Exhibit B, Schedule of Performance.

### **Annual Software Subscription** (Exhibit D, Item B)

Annual software subscription is a core component of the WaterSmart program and includes the following features:

#### Utility Analytics Dashboard

The Utility Analytics Dashboard provides analytical insights regarding customer consumption (use by account type, high users, etc.), outbound and inbound communications (outgoing leak or other alerts, incoming emails, etc.), and use of the Customer Portal (visit frequency, device access, most visited pages, etc.) The Dashboard also identifies and notifies Utility staff about suspected leaks in both AMI and non-AMI environments, and allows Utility staff to monitor compliance requirements. The Dashboard delivers information on all customer classes whose data are provided to WaterSmart and integrates external data sources like property records and maps. The Utility Analytics Dashboard is available to all Utility staff, each with their own unique login.

#### Customer Portal

The WaterSmart Customer Self-Service Portal, available to customers through a mobile and web application interface, provides a single place for customers to see consumption, check and resolve leaks, view bills, sign up for paperless billing, and receive targeted messages about Utility promoted events and programs.

#### Alerts and Notifications

WaterSmart provides alerts to customers to notify of potential high volume or continuous use, to notify a customer that they have reached a self-selected consumption threshold, or to inform customers before the end of the billing cycle that they are likely to have high water use on their upcoming bill. Threshold notifications and leak alerts are further enabled by AMI, though they are also available for non-AMI customers. Alerts can be sent through multiple channels -- email, SMS text message, or automated voice call. Leak alerts are currently targeted at single-family residential accounts and irrigation-only accounts. The leak resolution workflow helps customers identify the source of their leak, and resolve the leak on their own.

#### Group Messenger & List Builder

Group Messenger is a module within the Utility Analytics Dashboard that allows rapid delivery of targeted, timely, and topical messages to groups of customers. The integrated 'Lists' tool allows the Utility to create a



custom list of accounts to analyze or communicate with. Group Messenger supports multiple communication channels, including email, SMS text, and automated voice.

#### **Electronic Bill Presentment**

WaterSmart's Electronic Bill Presentment allows Utility customers to view their billing amount online. Utilities have the option to present the billing amount and, or display a PDF of the bill.

#### **Standard Support** (Exhibit D, Item C)

Standard support is an optional feature of the WaterSmart Program for agencies choosing a higher level of support and is described in Section 5 below.

#### **Welcome Letter or Customer Letter** (Exhibit D, Item D)

Customer Welcome Letters are an optional feature of the WaterSmart Program. If selected, utilities can send a Customer Letter to explain the program and its benefits to end-use customers. The Customer Letter is branded for the Utility including Utility logo, contact information and a signature line from an appropriate representative, and informs recipients about the program and what they can expect to receive. Customer Letters can be sent in the beginning of a program to introduce customers to the service or throughout the life of the program to remind customers of the service.

#### **Water Reports** (Exhibit D, Item E)

Water Reports are an optional feature of the WaterSmart Program. Water Reports are personalized, informative, carefully designed reports that help Utility customers better understand their water use and the cost and effort it takes the Utility to deliver high quality and reliable water services. Water Reports can be sent via mail or email to any account type, and may be targeted to certain accounts, sent to randomly selected accounts as part of a randomized control trial, or sent to all of a Utility's customers. Every Water Report is customized by our proprietary content personalization to tailor messages and recommendations specifically to each end-user. Water Reports programs are set up, administered, and measured according to Section 3 Water Report Program Design.

#### **Electronic Bill Payment** (Exhibit D, Item F)

Electronic Bill Payment is an optional feature of the WaterSmart Program. If selected, an Electronic Bill Payment option is offered by one of WaterSmart's selected independent payment partners, which agrees to comply with all PCI-DSS requirements, in collaboration with WaterSmart. This allows a customer to pay a bill on the partner's payment platform from within the WaterSmart Customer Portal using payment partner's

credit, debit, and e-check services. Customers can make a one-time payment, and set up recurring payments. Participating Agency is required to sign a separate agreement with payment partner to access this feature and acknowledges that payment partner provides all services, support, documentation and compliance related to these features, and is separately compensated per the terms of its separate agreement.

**Single Sign-On or Click Through Registration with Participating Agency's online payments provider (Exhibit D, Item F):**

Instead of selecting WaterSmart's Electronic Bill Payment product, the Participating Agency can optionally select to deploy Single Sign On or Click Through Registration. WaterSmart can provide log-in to our customer Portal using third party credentials (i.e. billing provider or other government website registration information) through SSO (Single Sign-On) using the SAML 2.0 or OAUTH2 protocol. This provides for bi-directional, seamless registration to multiple portals using a single set of credentials. Alternatively, if selected WaterSmart supports Click-Through Registration for uni-directional sign-on from a third party site to WaterSmart using a URL redirect with key-based encrypted data. Single Sign-On and Click Through Registration require that the Participating Agency's online payment provider is able to meet WaterSmart's specification for these services.

**Paperless Billing (Exhibit D, Item G)**

Paperless Billing is an optional feature of the WaterSmart Program. It is only available to utilities that opt to use the Electronic Bill Presentment feature (included in the Annual Software Subscription). Paperless Billing Services provide a method for the Participating Agency's account holders to enroll for electronic bill delivery from within the Customer Portal.

**Print Leak Alerts (Exhibit D, Item H)**

Print Leak Alerts are an optional feature of the WaterSmart Program. Print Leak Alerts are generated and mailed for leak events if: the utility is configured to enable print leak alerts for the account's meter class, the account has an ongoing AMI leak, the account cannot be alerted by email, text, or phone, the account has not opted out of the WaterSmart program, the account has not already received a Print Leak Alert for the same leak event, or the leak event has not been alerted or cancelled by staff. The alerts are sent to the printer on either a daily or weekly basis, depending on the utility's configuration. Customers who receive Print Leak Alerts will not receive another in the 30 days following a prior Print Leak Alert. Water utilities have the option of setting leak detection thresholds for generating alerts. The default leak rate and time threshold values are the same as the utility's standard leak alerting thresholds. Print Leak Alerts are currently only available to AMI Single Family Residential and Irrigation-Only customers.

## **SECTION 2: PROGRAM INITIALIZATION AND MILESTONES**

The initialization phase of the program begins with Contract Signing (or Purchase Order Issue if a Purchase Order is necessary for invoicing) and will last for three months. WaterSmart begins the (first) 12-month implementation term at the start of the fourth month after Contract Signing/PO Issue. If a utility has provided the data and input necessary to launch the program early, WaterSmart accommodates the Utility by making the Customer Portal and Utility Analytics Dashboard available and (if selected) sending the first Customer Letters prior to the end of the 3-month initialization phase, though the invoicing schedule will not change.

Significant delay on the part of the Utility during launch may result in less than 12 months of access to the Customer Portal and Utility Analytics Dashboard and/or fewer than the planned number of communications to be sent during the 12 month period. If the Utility delays approval of a renewal or extension agreement, WaterSmart may, at its discretion (assuming the renewal agreement will be retroactive to begin at the previous contracts' end), maintain Customer Portal and Utility Analytics Dashboard access and functionality, in the interim, for up to 90 days at which time all access will be revoked until the renewal/extension has been signed.

To initialize the program, WaterSmart works with Utility to set up the transfer of key data elements, discuss customized elements of the Customer Portal and Water Reports, finalize a Customer Letter, and train Utility employees on the WaterSmart platform. Below are the key steps for the Program Initialization Phase.

### **Kickoff**

WaterSmart conducts a 60- to 90-minute introductory online meeting to orient Utility staff involved in the Program with the Customer Portal and Utility Analytics Dashboard Applications, Alerts, and Reports (if selected). WaterSmart suggests Utility include a representative from each functional group that will be involved with the setup and use of the program, including: Conservation, Customer Service, Field Service, Finance, Marketing/Public Information Office, and Information Technology (IT) representatives.

### **Data Transfer and Utility Obligations**

While WaterSmart has developed processes to minimize the burden on Utility staff to launch the program, initiative and technical know-how on the part of Utility IT staff is necessary. All approvals and scheduling of Utility IT time for the project should be confirmed in advance to ensure a timely, high-quality, and well-supported launch. Delays on the part of the Utility may reduce the number of months the Utility and its customers are able to make use of the software platform.

WaterSmart works with Utility to securely transfer a dataset on accounts, including but not limited to the following data:

Account Information:

- Account Number
- Account Type
- Account Sequence Number
- Property APN, where available
- Meter Size
- Customer Mobile Number, where available
- Service Address
- Billing Address
- Customer Name
- Customer Email, where available

#### Consumption History:

WaterSmart requests, for at least the last two years but ideally for five to ten years in the past, such fields as, but not limited to:

- Account Number
- Account Sequence Number
- Meter I.D. (serial number)
- Current Meter Read Date
- Previous Meter Read Date
- Days in Billing Cycle
- Consumption
- Bill and water allocation details as mutually agreed

\* Note this consumption history is for billed consumption, with up to twelve data points per account per year. WaterSmart does not load historic interval data.

#### Current Consumption:

WaterSmart also works with Utility to set up a regular transfer of meter reads from the Utility to WaterSmart through a secure channel. This will be the same file format as the Consumption History file above. The frequency of meter data transfer determines how frequently Water Reports are shipped (see Table 1).

WaterSmart requests, for accounts with interval data:

- Account Number
- Timestamp
- Timezone
- Consumption
- Additional details as mutually agreed

#### Rebate Program Participation File

Optionally, Utility may provide data on rebate program participants, and those receiving citations or notifications. This file must meet WaterSmart specifications and should include:

- Account Number
- Program Name
- Participation Date
- Additional details as mutually agreed

Should Utility implement new data management systems after the first initialization process, which require WaterSmart to re-onboard new file structures or map historical identifiers (e.g. customers, accounts, premises, service points), WaterSmart assesses an additional one-time fee not to exceed \$10,000 upon receipt of first test files from the new system.

### **Configuration of Customer Portal and Water Reports**

WaterSmart's Customer Portal and Water Reports (if selected) contain several configurable fields. WaterSmart works with the Utility to configure the Water Report and Customer Portal with Utility logo and contact information. WaterSmart provides messages and recommendations for Utility to review and approve for display on a targeted basis. Utility has the opportunity to approve or exclude any recommendations shown in the Water Report and Customer Portal and messages shown in the Water Report. The Utility also has the opportunity at the start of the program to provide WaterSmart with information on available rebates and incentives that should be flagged within relevant water saving recommendations.

Utility and WaterSmart agree to complete this process in a timely manner. Utility should provide final approvals to WaterSmart no more than ten (10) business days from when initial materials are provided to Utility.

For both Messaging and Recommendations, the review process is as follows:

- WaterSmart sends default content to Utility.
- Utility Project manager sends back a single, consolidated list of approved messages.
- WaterSmart's customer success manager can offer the Utility the opportunity to proof finalized content of Water Reports and the Customer Portal once they are configured.

In addition, Utility has the opportunity to provide one custom text Water Report message per Report cycle. Content is to be provided at least ten (10) business days prior to report generation.

Appendix A, Figure 1 shows the configurable content to be reviewed during initialization.

### **Finalization of Customer Letter**

WaterSmart sends a Customer Letter (if selected), on behalf of the Utility, to accounts that will receive access to the Customer Portal or Water Reports. Utility has the ability to personalize the signature and the introductory paragraph of content, within space constraints. The review process is similar to the process for Messaging and Recommendations described above. The format, design and content of the Customer Letter will be based on existing WaterSmart documents. Content and design of all materials are subject to change over time, as WaterSmart incorporates new features. WaterSmart will send Customer Letters by email where a valid email address is available and by print otherwise.

## **Training**

After all initial customer data has been received and program content is finalized, WaterSmart will provide Utility staff with training and resources to understand the features and functionality of the Customer Portal and Utility Analytics Dashboard. On-site training may be conducted as multiple sessions on a single day.

A proposed schedule for the Program Initialization Phase is provided in Exhibit B: Schedule of Performance.

## **SECTION 3: WATER REPORT PROGRAM DESIGN**

### **Experimental and Control Group**

If selected, WaterSmart uses a randomized control group design to ensure the water saved in single-family residential accounts as a result of the WaterSmart program can be accurately measured and verified. While the Residential Recipients, as specified in the Participation Agreement, will receive Water Reports the Control Group will not. This program design allows WaterSmart to compare the changes in water consumption and customer satisfaction of the Recipients versus the Control Group and provide the Utility with formal statistical results. While the group of Residential Recipients may expand after the first term of the project, only the first group of recipients will be used to measure results.

### **Water Reports**

#### *Recipients*

The number of recipients (specified in the Participation Agreement) may vary slightly in any cycle of Water Reports based on the availability of valid meter data available for each account and the number of new or closed accounts in a given period. Water Reports will be sent digitally where valid email addresses are available, and by print otherwise.

#### *Number and Scheduling of Cycles and Shipments per Report*

Each recipient account is eligible to receive a Water Report (if selected) in each of the 4, 6 or 12 cycles of reports per term, as specified in the Program at a Glance. Some accounts may receive fewer Water Reports due to a missed or incorrect reads, or a closing or opening of a new account with the Utility.

Each cycle of reports can be sent in one or more shipments, with each shipment going to a subset of households. WaterSmart will ship Water Reports based on the schedule that the Utility transfers meter read data to WaterSmart. For utilities that provide account billed consumption data to WaterSmart on a rolling basis (with data for a subset of accounts transferred each day or each week), WaterSmart will send out shipments for each cycle on a weekly basis. For utilities that provide billed consumption data to WaterSmart once per billing period, WaterSmart will send each cycle of Water Reports in a single shipment.

The schedule of these shipments is given below:

**Table 1: Schedule of Water Reports Shipments**

<b>Utility Transfers Billing Data to WaterSmart:</b>	<b>WaterSmart Sends Shipments of each Report Cycle:</b>
Daily	Weekly
Weekly	Weekly
Monthly	Monthly
Bi-Monthly	Bi-Monthly

The report delivery schedule is designed so that every customer account will be eligible to receive a report in each cycle. If the Utility wishes to stagger the initial set of reports over more than one cycle or in such a way that it does not correspond to the utility billed consumption data transfer schedule, these are special circumstances that must be identified in advance in the Participation Agreement and are subject to approval by WaterSmart.

The delivery of the Customer Letter and the initial cycle of Water Reports will be scheduled in conjunction with the Utility. Email deliveries may be scheduled to arrive on, or avoid, a specific day of the week. Print deliveries are subject to postal schedules and cannot be guaranteed for specific dates. Utility-requested delays in sending materials may result in fewer reports per recipient than the maximum number specified in the contract.

*Cohort Group*

WaterSmart creates cohort groups of similar residences in order to maximize the relevance of water use comparisons and potential water savings. Cohort groups may include the following variables:

- Number of occupants per home (based on user-generated information and real-estate based estimates)
- Irrigable area (e.g. small, medium, large, etc.) to be determined based on home size and lot size information contained in real estate data obtained by WaterSmart, or optionally, provided by Utility if it already possesses such information
- Residence location (e.g. city, zip code, etc.) for utilities which span large areas

**Post-Launch Survey**

A post-launch Satisfaction Survey is available to those Utilities that have selected Water Reports. WaterSmart sends a link to a post-launch survey to accounts with email addresses. The post-launch survey typically is conducted after at least eight months of engagement. WaterSmart will provide a sample of the post-launch survey invitation, including one block of content, which the utility may personalize. Utility should provide

consolidated comments and final approvals to WaterSmart no more than ten (10) business days from when initial materials are provided to Utility. The results of the post-launch survey are used to gauge customer satisfaction and Water Report perceptions. WaterSmart shares all results of the post-launch survey with Utility.

### **Measurement and Verification**

WaterSmart reports changes in consumption for the Recipient Group versus a randomized control group selected from Utility's entire population of residential households. After three Water Reports have been sent, WaterSmart will prepare an efficiency study that details the change in water usage for the Recipient Group versus control group, and load those results into the Utility Analytics Dashboard. This evaluation is performed with a Fixed-Effects regression model using the consumption data for each household in the Recipient and control groups. The efficiency study report includes percentage savings, GPD (Gallons per Day) savings and Acre Foot savings at the program level for all months after the first Water Reports were sent. While WaterSmart can continue to measure results after the first term (as long as a control group is maintained), Water Report recipients added to the program after the first term will not be included in the experimental group.

## **SECTION 5: CUSTOMER SERVICE AND SUPPORT**

### **Customer Service**

WaterSmart does not communicate directly with the Utility's customers; end-user support is the responsibility of the Utility. WaterSmart provides a number of tools to facilitate both end-user support as well as assist Utility staff looking to understand and maximize their WaterSmart experience:

- 1) The **WaterSmart Support Site**, which is accessible by all Utility staff, includes responses to Frequently Asked Questions as well as common troubleshooting topics and other customer support oriented content.
- 2) The **Customer Detail Page** helps customer service representatives respond to Customer inquiries by providing all relevant customer property and water use information, a complete history of notes and email interactions including water reports, a quick link to their portal and step-by-step process support for common questions around high bills.
- 3) A **Live Chat** feature that allows Utility staff to ask questions about data, get help with challenging customer questions, provide product feedback and more. Users can generally expect to receive a response within the hour. Chat is available between the hours of 7 a.m. and 6 p.m. PST Monday thru Friday, excluding federal holidays.
- 4) **Monthly Product Webinars** provide the latest WaterSmart news including product releases, practical implementation case studies, a forum to interact with other WaterSmart customers and sneak previews of products on the horizon.



**Standard Support Option** – Standard Support is an optional service of the WaterSmart Program. For an additional annual fee, Standard Support provides all of the above Customer Service benefits and features, as well as:

- Dedicated Customer Success Manager (CS Manager): will support the Utility program, answer questions, provide updates, support complex tasks, provide new feature updates and additional training as needed.
- Phone/email support – The CS Manager is available by telephone and email to answer specific programmatic and technical questions for up to one additional hour per week.
- Bi-monthly check-in meetings – Meetings will track performance relative to Utility objectives and adjust as necessary, provide implementation suggestions, support outreach efforts, gather feedback and answer any questions.
- Portal and Water Report content customization- The CS Manager can help the Utility create personalized messaging for the Customer Portal and outbound Engagement vehicles, including Group Messenger and Water Reports, if requested.

### **Maintenance of Web Applications**

WaterSmart maintains commercially reasonable systems and controls designed to maximize monthly uptime and minimize unscheduled outages of the Customer Portal and Utility Analytics Dashboard. Excluding any down time for maintenance and/or upgrades, WaterSmart makes strong efforts to provide Customers and Utility with access to their respective Web applications on a continuous basis and guarantees 99.95% uptime for all Web applications. WaterSmart provides advance notification of any planned outages and notifies Utility without unreasonable delay if it detects or receives notice of any material problems relating to the Customer Portal and/or the Utility Analytics Dashboard. WaterSmart's Service Level Agreement (Exhibit G) is also available at [www.watersmart.com/service-level-agreement](http://www.watersmart.com/service-level-agreement).

WaterSmart's Web Applications include dynamic and interactive charts and tables that may not be compatible with older Internet browsers.

The Internet browser and operating system requirements are:

- Windows XP: Chrome 38+, Firefox 32+
- Windows 7, 8, 8.1, 10: IE 11+, Chrome 38+, Firefox 32+
- Mac: Chrome 38+, Firefox 32+, Safari

### **Data Security and Privacy**

WaterSmart does not share personally identifiable customer information or customer-specific water use information with any third party without prior consent from Utility. Data transferred to WaterSmart from Utility is stored in a database dedicated to Utility and its WaterSmart project. The data is not comingled with the data provided by any other entity; provided, however, that certain anonymous data may be copied and

consolidated with data provided by one or more other entities for the research and product development purposes subject to the terms of the Agreement.

WaterSmart enacts standard controls, policies, and procedures to ensure the security of Utility's data and customer provided information, including but not limited to choosing a reputable cloud-server vendor with appropriate physical security of server infrastructure, secure public-private key-based login to all WaterSmart server infrastructure, password authentication on all Web site interaction, and audit logging.

WaterSmart provides Utility with private key access to a secure FTP destination for regular delivery of the data. Utility agrees to send data only through this secure channel, or by having WaterSmart pull data from a secure server maintained by the Utility or Utility partner.

## APPENDIX A: WATER REPORT CONFIGURABLE AREAS

Figure 1: Configurable Areas in Home Water Reports setup during Initialization

### Settings supplied by utility

1. Utility logo
2. Utility address
3. Utility phone
4. Utility email, 25 char max
5. Program URL, 30 char max
6. Native units
7. Social media links

### Defaults can be updated by request, within the space limitations of the report

- A. Program name
- B. 2 Registration keys

**1** City Water

**2** Smart Program  
123 Main Street  
Anytown, USA

**3** 555.555.5555

**4** @citywater.com

**5** WATER REPORT FOR CAFE PARISIAN  
123 UNIVERSITY AVE

**6** THIS IS AN INFORMATIONAL REPORT AND NOT A BILL.  
ACCOUNT NUMBER: 1234567890

**7** GO PAPERLESS. SEE ALL INFO & PRODUCTS AT:  
http://waterSMART.com

**1** City Water

**2** Your Water Use  
AUG 1 to SEP 30, 2016

**3** 11,606 gallons per day

**4** Compare Your Past Use for this period

Period	Usage (GPD)
Avg-Sep-2015	12,449
Avg-Sep-2014	10,946
Avg-Sep-2016	11,606

**5** Cafe Parisian  
123 University Ave  
Anytown, USA

**6** Upgrades really work!  
"I was skeptical about the new dishwasher, but I saw savings on my very next water bill. Even though we did 10K more business that month!"  
-Lisa P., restaurant owner

**7** Relative use for August  
Your use compared to other local restaurants.

**1** FROM: City Water  
SUBJECT: INSIDE: Your New Water Report!

**2** Water Report for  
123 University Ave

**3** City Water

**4** Your Water Use

**5** 417 gallons per day

**6** Compare Your Past Use for this period

**7** Learn more about your water use

**1** Your use compared to last year  
You are using 20% less water than you did in the same month last year.

**2** Where is your water from?

**3** Water-saving recommendations

**4** Harvest rainwater  
Install a rainwater catchment system and use the resulting water for irrigation.

**5** Use your hose efficiently  
Don't water if it's hot or windy, use a timer and keep water off of pavement.

**1** Water-saving recommendations  
Selected based on your property characteristics and historical water use. Log on to track your progress.

**2** Potential annual savings if you:

Upgrade	Water Savings (GALLONS PER DAY)	Cost Savings (DOLLARS PER YEAR)
Upgrade dishwasher	240	\$342
Replace pre-rinse spray valves	180	\$292

**3** Log On  
Track your water use at macro and micro levels, and access:  
• Seasonal trends  
• Downloadable history  
• Efficient products for purchase

**4** demo.watersmart.com  
Account: 1234567890  
Zip Code: 99999

**5** Contact us  
415.555.8522  
City: watersmart@watersmart.com  
Demo: watersmart.com

**6** Follow us

**7** A free service offered by your water utility and powered by WaterSmart Software®

## Exhibit B: Schedule of Performance

### INITIALIZATION SCHEDULE

WaterSmart proposes the following schedule to initialize and launch the program.

**Table 2: Estimated Initialization Schedule**

Task	Weeks 1-2	Weeks 3-4	Weeks 5-6	Weeks 7-8	Weeks 9-10	Weeks 11-12
Kickoff Meeting						
Utility Completes Launch Questionnaire						
Data Acquisition Process						
Configuration Process						
Customer Letter Review						
Customer Letter Send						
Dashboard and Portal are Live						
WaterSmart Training for Utility Staff						

### IMPLEMENTATION SCHEDULE

WaterSmart proposes the following schedule to complete all work required to fulfill the Scope of Work.

**Table 3: 6 Water Report Implementation Schedule**

Task	1	2	3	4	5	6	7	8	9	10	11	12
Water Report Sends	█		█		█		█		█		█	
Program Check Ins	█					█		█		█		█
Measurement & Verification						█					█	
Yearly Review												█

## Exhibit C: Software-as-a-Service Provisions

WaterSmart's services are to be provided primarily by utilization of WaterSmart's proprietary software hosted on WaterSmart's computer systems and accessed by authorized users over the Internet. This is a shared cost software utilization model which enables customers to achieve substantial cost savings versus commissioning custom development of software or licensing software for installation and maintenance on customers' computer systems. Companies like WaterSmart are commonly referred to as "SaaS (software-as-a-service)" providers. Certain supplemental provisions which are customary within the SaaS sector and essential to enabling WaterSmart's SaaS service model and providing substantial cost savings for the Agency and the Participating Agencies, are set forth below. Also included below are additional terms applicable to bill payment, leak alert and group messenger services if such services are elected by a Participating Agency.

### **A. WaterSmart's reservation of intellectual property rights**

WaterSmart has created, acquired or otherwise currently has rights in, and may, in connection with the performance of the Agreement or otherwise develop, create, employ, provide, modify, acquire or otherwise obtain rights in various inventions, concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates, software, applications, documentation, user interfaces, screen and print designs, source code, object code, databases, algorithms, development framework repositories, system designs, processing techniques, tools, utilities, routines and other property or materials, including without limitation any and all subject matter protected or which may be protected under patent, copyright, mask work, trademark, trade secret, or other laws relating to intellectual property, whether existing now or in the future, whether statutory or common law in any jurisdiction in the world ("WaterSmart IP"). Agency and each Participating Agency acknowledges that WaterSmart owns and shall own all intellectual property rights in the WaterSmart IP and derivative works of WaterSmart IP (whether independently or jointly conceived), regardless of whether or not incorporated in any print or electronic Home Water Reports, Customer Portal, Utility Dashboard, or other software provided to Agency or its Participating Agencies by WaterSmart, and Participating Agency shall acquire no right or interest in the same.

Agency and each Participating Agency agrees to assign, and hereby does assign, any right, title and interest in any suggestions, enhancement requests, or other feedback they may provide relating to services offered by WaterSmart. If and to the extent any such assignment is ineffective, Agency and each Participating Agency hereby grants to WaterSmart a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into its services any such suggestions, enhancement requests, or other feedback provided.

Subject to the foregoing, authorized employees of Agency and authorized employees and end customers of Participating Agencies may during the term of the Agreement access and use the WaterSmart SaaS services, applicable print and electronic Home Water Reports, Customer Portal, Utility Dashboard, Extended Messaging Services, other deliverables provided to Agency or Participating Agencies by WaterSmart, and applicable bill presentment services, each as so specified by the Scope of Services, for purposes of Agency's and Participating Agencies' water conservation programs and for their respective internal purposes, so long as Agency and each

Participating Agency is current with respect to its respective obligations under the Agreement. Such authorization is limited to Agency's and each Participating Agency's service territory, respectively, and is nonexclusive, nontransferable, and non-sublicenseable. If Agency or a Participating Agency enters into an agreement with a third party contractor of WaterSmart related to bill payment services, the intellectual property provisions of such agreement shall apply with respect to intellectual property owned or controlled by such third party. Any rights not expressly granted herein are reserved by WaterSmart and its licensors.

For clarity, this Section A does not apply to Agency Data, which is governed by Section B of this Exhibit C.

**B. Agency's reservation of intellectual property rights**

Agency or Participating Agencies may provide data, materials, works, expressions, or other content, including any that are (a) uploaded, submitted, posted, or otherwise provided or made available by or on behalf of Agency or any Participating Agencies for processing by or through the WaterSmart services, or (b) collected, downloaded or otherwise received by WaterSmart from Agency or any Participating Agencies pursuant to this Agreement ("Agency Data"). Agency or Participating Agencies will remain the sole and exclusive owner of all right, title and interest in and to all Agency Data and Agency PII, including any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

Subject to the terms and conditions of this Agreement, WaterSmart may use Agency Data and Agency PII solely as necessary to provide the services for Agency's and Participating Agency's benefit as provided in this Agreement and for the use outlined in Section 12 of the Agreement related to the data pertaining to residential end customers and their water consumption. Such authorization is limited to Agency's and each Participating Agency's service territory, respectively, except with respect to aggregated and anonymous data pertaining to residential end customers and their water consumption for the use outlined in Section 12. Authorizations herein are nonexclusive, nontransferable, and non-sublicenseable. Any rights not expressly granted herein are reserved by Agency or Participating Agencies.

Upon the expiration or termination of the Agreement, WaterSmart, at no additional charge, shall promptly provide Agency with a complete electronic file containing the Agency Data and Agency PII and shall provide each applicable Participating Agency with a complete electronic file containing the Agency Data and Agency PII specific to such Participating Agency. WaterSmart shall provide such data file(s) in a format or formats useable to the Participating Agency or offer a choice of commercially reasonable alternatives with respect to file formats.

**C. Agency's cooperation in providing necessary inputs; data provisions**

Deliverables to be provided by WaterSmart via its proprietary software require certain data from Agency or Participating Agencies. Agency or Participating Agencies shall timely provide WaterSmart with those data, records, reports, approvals and other inputs identified for Agency or

Participating Agencies to provide in Exhibit A of the Agreement or otherwise requested by WaterSmart. Agency and each Participating Agency shall ensure that such inputs are accurate and within Agency's or the applicable Participating Agency's legal rights to share with WaterSmart subject to the confidentiality and other applicable provisions of the Agreement. Time is of the essence, and Agency and each Participating Agency shall provide its respective inputs within the timeframes specified by Exhibit B. If Electronic Bill Payment services are selected by the Participating Agency, each applicable Participating Agency shall cooperate with WaterSmart and its applicable third party partner(s) in timely providing the data, records, reports, approvals and other inputs requested for such services. WaterSmart shall not be responsible for delays outside WaterSmart's control, and deadlines for WaterSmart's performance shall be adjusted, if necessary, to accommodate delays by Agency or Participating Agencies. Each Participating Agency acknowledges and agrees that all deliverables prepared for such Participating Agency and its data, including without limitation any data relating to its end customers, will be shared among WaterSmart and Agency. WaterSmart is also permitted to use and disclose on an anonymous and/or aggregated basis (excluding any personally identifiable information) with Agency and third parties any data pertaining to residential end customers and their water consumption, including without limitation derivative data and data combining the data of two or more utilities, for purposes of project evaluation and any research, product development, marketing, or other legitimate business purposes.

**D. Software corrections and third party acts; limitation of liability for SaaS services**

In the event that WaterSmart's services fail to meet specifications or other requirements specified by Exhibit A to the Agreement, Agency shall promptly notify WaterSmart and WaterSmart shall promptly correct any defect or substitute services, software, or products to achieve the functionality and benefits originally specified. If WaterSmart promptly makes such correction or substitution, WaterSmart shall have no further liability with respect to said defect(s), notwithstanding any other provision of the Agreement. All warranties not expressly stated in the Agreement are disclaimed. Agency and each Participating Agency understands that their use of WaterSmart's services provided online may be interrupted by circumstances beyond WaterSmart's control involving third parties, including without limitation computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within WaterSmart's possession or direct control, and network intrusions or denial of service attacks (collectively, "Third Party Acts"). Except as set forth in Sections 12, 13, 14, and 15 of the Agreement, WaterSmart shall not be responsible or otherwise liable for any Third Party Acts, including, without limitation, any delays, or failures and damages resulting from or due to any Third Party Acts, provided that WaterSmart has exercised due care and complied with the terms of this Agreement. However, in the case of any Third Party Act which will delay or prevent WaterSmart from providing online services to Agency or a Participating Agency, WaterSmart will promptly notify each affected agency and assist in mitigating any impact. For any types of liability not expressly specified above in this section, WaterSmart's total cumulative liability for losses or damages of any kind arising under or relating to the Agreement and WaterSmart's services whether provided to Agency or any Participating Agency and under any theory (contract, tort, indemnity, or otherwise), shall in no event exceed (i) the amounts received by WaterSmart for the services that give rise to the liability in the twelve months preceding the accrual of such liability, or (ii) available insurance proceeds from WaterSmart's carriers, whichever is higher; provided however that the aggregate



limit of liability shall not apply to or include the following types of damages: (1) damages for bodily injury (including death) and to real and tangible property caused by WaterSmart; or (2) damages arising out of infringement or violation of any third party intellectual property rights. The foregoing limited remedy and limitation of liability provisions shall apply notwithstanding any conflicting provisions or any failure of essential purpose with respect to a limited remedy or limitation of liability, and shall survive any termination or expiration of the Agreement. Agency and each Participating Agency acknowledges that pricing for WaterSmart's services would be substantially higher without the aforementioned limitations which are customary for providers in the SaaS sector.

#### **E. Technology and service infrastructure providers**

WaterSmart as a SaaS provider utilizes the secure cloud hosting platform of a third party industry leader in cloud computing with state-of-the art security to host the data of all WaterSmart customers. WaterSmart utilizes a reputable third party vendor to perform printing and mailing services when included within the scope of WaterSmart's work. For bill payment services, including credit card, debit card, and ACH payments and authentication, WaterSmart works with leading edge, reputable third party vendors specializing in such functions. If the Participating Agency enters into a separate contract with WaterSmart's bill payment services provider, it is acknowledged and agreed that such utilization is not considered subcontracting of WaterSmart's services under the Agreement.

If a Participating Agency elects to make Electronic Bill Payment services available to its end customers, the pertinent end users and Participating Agency assumes all risks associated with such services, and no indemnity provisions in favor of Participating Agency shall apply to such services, except in the event of WaterSmart's willful misconduct. In the absence of willful misconduct or negligent acts or omissions by WaterSmart, Participating Agency's sole remedies related to bill payment services shall be from the independent third party provider of such services in accordance with any contract between Participating Agency and such provider. If Participating Agency enters into an agreement with any third party contractor of WaterSmart for any other services ancillary or related to the services provided by WaterSmart during the term of this Agreement, Utility shall first seek and exhaust all remedies from such third party contractor prior to seeking any remedy from WaterSmart with respect to such services.

With respect to all bill payment services, WaterSmart shall not be responsible for services provided by such third parties.

#### **F. Compliance With Laws**

WaterSmart shall comply with all federal, state and local laws, regulations, regulatory rulings, and ordinances as may be applicable to the performance of services under this Agreement. Agency and each Participating Agency shall comply with all federal, state and local laws, regulations, regulatory rulings, and ordinances related to this Agreement, and shall be responsible for securing any necessary regulatory approvals, if any, for this Agreement and/or the services hereunder.

Each Participating Agency shall be responsible for obtaining from its end customers any consents and providing any notices, if any are legally required, for the services to be provided by

WaterSmart hereunder, as well as any bill payment or other third party services elected by Participating Agency.

### **G. Extended Messaging Services**

If a Participating Agency elects to utilize WaterSmart's leak alert or group messenger services, certain supplemental legal terms shall apply. These supplemental terms ("Extended Messaging Terms") are set forth below and shall prevail in the event of any conflict or inconsistency. For avoidance of doubt, the Extended Messaging Terms apply to all WaterSmart services involving automated phone calls (conventional and mobile), pre-recorded messages, text messages, and other such bulk communications (including emails outside of WaterSmart's core customer engagement offerings) (collectively, "Extended Messaging Services"). WaterSmart shall hold harmless, defend and indemnify the Agency and Participating Agencies and their officers, directors, employees, contractors, representatives and volunteers from and against all allegations, claims, damages, losses and expenses including without limitation any statutory damages, penalties, and attorney's fees, caused by WaterSmart's willful misconduct or a technology failure which constitutes a negligent acts or omissions relating to the Extended Messaging Services.

Each Participating Agency shall be solely responsible for the content of any messages or communications to end customers which it initiates or authorizes in connection with the Extended Messaging Services, as well as its selection of any vehicle (i.e., conventional phone, mobile phone, text, email) for such messages or communications. WaterSmart shall have no responsibility or liability of any kind with respect to messages or communications initiated or authorized by a Participating Agency or its representatives. In furtherance of the foregoing, the applicable Participating Agency shall hold harmless, defend and indemnify WaterSmart and its officers, directors, employees, contractors, representatives and volunteers from and against all claims, damages, losses and expenses including without limitation any statutory damages, penalties, and attorney's fees, arising out of or relating to the Extended Messaging Services or any breach by such Participating Agency of the Agreement including without limitation these Extended Messaging Terms, except in the event of WaterSmart's willful misconduct or negligence. For avoidance of doubt, if the Agreement has other indemnity provisions in favor of Agency or a Participating Agency such provisions shall not apply to the Extended Messaging Services, except in the event of WaterSmart's willful misconduct or negligence.

If a Participating Agency elects to make available to its end customers Extended Messaging Services offered by WaterSmart to alert end users of potential leaks or high water usage, the pertinent end users and Participating Agency assume all risks associated with such alerts, and no indemnity provisions in favor of Agency or a Participating Agency shall apply to such risks (including without limitation any liability claims for failure to alert or inaccurate alerts), except in the event of WaterSmart's willful misconduct or negligence.

With respect to Extended Messaging Services, WaterSmart's role is limited to delivering via its technology platform a Participating Agency's communications through vehicles selected by such Participating Agency; accordingly, compliance with applicable laws (which may vary by state and locale) is strictly the Participating Agency's responsibility with respect to Extended Messaging Services notwithstanding any provision to the contrary.

Participating Agency is encouraged to consult legal counsel of its own with respect to this Agreement and in reference to Federal Communications Commission Declaratory Ruling FCC 16-88 (released August 4, 2016), any Extended Messaging Services, and compliance with applicable federal, state and local laws, regulations and regulatory rulings, and ordinances. Participating Agency shall not rely on WaterSmart or WaterSmart's representatives for legal advice or guidance concerning the content or appropriate vehicles (i.e., conventional phone, mobile phone, text, email) for communications with Participating Agency's end customers.

In order to provide the Extended Messaging Services at efficient cost and with optimal levels of security and reliability, WaterSmart may utilize one or more third party communications technology and communications services providers. Since such providers are utilized across WaterSmart's pertinent customer base and are not specific to any utility, Participating Agency acknowledges that such utilization is not considered subcontracting of WaterSmart's services under the Agreement (and not subject to Section 18 or other subcontractor requirements).

## Exhibit D, Sample Participation Agreement

**BAY AREA WATER SUPPLY AND CONSERVATION AGENCY**  
**PARTICIPATION AGREEMENT FOR THE WATERSMART CUSTOMER ENGAGEMENT**  
**AND CONSERVATION PROGRAM**  
**FOR JULY 1, 2021 THROUGH JUNE 30, 2024**

The Bay Area Water Supply and Conservation Agency (BAWSCA) administers a Customer Engagement and Conservation Program (Program), under which WaterSmart Software, Inc. (WaterSmart Software) develops and delivers individual customer water use reports (Water Reports) to provide water consumption information, messaging, and water saving recommendations to water users. The Water Reports are based on data analytics and behavioral science techniques and are distributed to residential customers through an interactive mobile and web-based Customer Portal, email and/or paper reports.

The objective of the Program is to motivate customers to improve water use efficiency through changes in behavior or adoption of more water efficient technology by increasing customer awareness of account water usage when compared to peers.

BAWSCA has entered into a professional services agreement with WaterSmart Software, which provides that Participating Agencies will (in accordance with such agreement's terms) be entitled to control of, access to, copies of and unrestricted use of all deliverables, related to their individual Participating Agency, prepared by the vendors.

This Participation Agreement is between the Participating Agency for the WaterSmart Software Program, which utilizes an analytics dashboard, an interactive mobile and web-based portal, and email and paper Water Reports to deliver customized water consumption information, messaging, and water saving recommendations. BAWSCA's 2021 professional services agreement with WaterSmart Software, Inc. (BAWSCA-WaterSmart Agreement) is attached hereto and incorporated herein as Attachment 1.

The respective roles and responsibilities of BAWSCA and each Participating Agency are outlined below:

BAWSCA's Roles and Responsibilities:

- 1) Overall Program management and coordination.
- 2) Develop regional and local messaging content for online and mobile portal and water use reports.
- 3) Maintain database of Program-wide data for billing and reporting purposes.
- 4) Conduct Proposition 84 grant administration, reporting and grant money disbursement.
- 5) Periodically provide data for BAWSCA managed rebate programs for presentment in portal if requested by Participating Agency.
- 6) Protect from disclosure any confidential information, including confidential or private customer information, provided to BAWSCA by Participating Agency or WaterSmart Software.

Participating Agency's Roles and Responsibilities:

- 1) Agree to Program Scope of Work and Software-as-a-Service Provisions (both set forth in Attachment 1).

- 2) Provide customer data to WaterSmart Software for report generation and transmittal in timely manner.
- 3) Respond to program related customer service calls pertaining to the individual Participating Agency.
- 4) Submission of Program data to BAWSCA via online database on a regular, bi-monthly basis, or as needed to support the Proposition 84 grant administration.
- 5) Customize report messaging to Participating Agency's customers (at Participating Agency's discretion).
- 6) Cooperate with BAWSCA in administering the Program.

Participating agencies may be required to pre-pay BAWSCA a deposit of 100% of the maximum program cost shown in line I of the table on page 3. BAWSCA will determine whether the deposit account will be required upon receipt of the applications and will notify the Participating Agencies of its determination. If a deposit is required, BAWSCA will invoice individual Participating Agencies for the full deposit amount. Participating Agencies can add funds to their deposit account at any time during the Program period. Each Participating Agency's funds will be separately accounted for and the interest tracked individually. The deposit account will be used by BAWSCA to pay WaterSmart Software for the Program implementation costs on a quarterly basis. On a quarterly basis, BAWSCA will invoice each Participating Agency for its Program costs, detailing use of the deposit account, and identifying the remaining budget balance. At the end of the fiscal year, each Participating Agency will have the option of receiving a check for any remaining balance in the deposit account or applying the remaining balance to participation in next year's Program.

Participating Agencies may terminate participation in the Program upon 30 days written notice to BAWSCA. Participating Agencies electing to terminate their participation will be responsible for all costs related to the Participating Agencies' participation in the Program up to the effective date of termination.

If an agency applies to participate in the WaterSmart Customer Engagement and Conservation Program prior to July 1, 2021, the member agency's program will last for the full program term – three years from application for newly Participating Agencies, or three years for renewing Participating Agencies – under this Participation Agreement.

1. NAME OF AGENCY:

\_\_\_\_\_

3. PHONE:

\_\_\_\_\_

2. CONTACT PERSON\*:

\_\_\_\_\_

4. E-MAIL:

\_\_\_\_\_

\*Prior to finalizing this Participation Agreement, Agency Representative should contact WaterSmart to review requested program details to ensure program success. Contact WaterSmart at [sales@watersmart.com](mailto:sales@watersmart.com) or call (415) 366-8622.

Participating Agency will be billed according to the Program Cost below. If Participating Agency wishes to revise its Program Parameters it must give 30 days' advance notice.

Program Term: Start Date / End Date

Program Item	Unit Cost x Quantity	Annual Cost	Total Cost
A. Program Initialization	\$9,000 x 1 Agency		
B. Annual Software Subscription: Customer Service and Support, Utility Analytics Dashboard, Customer Portal, Alerts and Notifications, Group Messenger & List Builder, Electronic Bill Presentment	\$1.75 x _____ (total # of accounts served by Agency if under 20,000 accounts) \$1.50 x _____ (total # of accounts served by Agency if over 20,000 accounts)		
C. Standard Support	\$5,500 x 1 Agency		
D. Welcome Letter or Customer Letter	\$ 0.98 x _____ (total # of accounts served by Portal only or Water Reports and Portal program)		
E. Water Reports  Setup Fee (first year only)  First Year (sent 5 times in the first year)  Continuation Years (sent 6 times annually)	\$7,500 x 1 Agency  \$ 3.75 x _____ (# of accounts enrolled, must be between 50% and 85% of total # of accounts served by Agency)  \$ 4.50x _____ (# of accounts enrolled, must be between 50% and 85% of total # of accounts served by Agency)		

<b>F.</b> Single Sign-On or Click Through Registration with Participating Agency's online payments provider, or Electronic Bill Payment	\$5,500 x 1 Agency		
<b>G.</b> Paperless Billing	\$0.10 per e-bill per customer, billed monthly in arrears		
<b>H.</b> Print Leak Alerts	\$1.50 per print leak alert, billed monthly in arrears; minimum of 300 per year		
<b>I.</b> BAWSCA Member Discount	(Subtotal * 5%)	( )	( )
<b>J.</b> BAWSCA Administration Fee	\$150 for each Program Year	\$150	
<b>K. Maximum Program Cost</b>	Subtotal – BAWSCA Member Discount + BAWSCA Administration Fee		

**Notes:**

- A. Program Setup. One-time fee for new agencies added to Program.
- B. Annual Software Subscription. Ongoing annual costs associated with maintenance of agency and customer analytics and data access. Includes access to Utility Analytics Dashboard, Customer Portal (mobile and web), Alerts and Notifications, Group Messenger and List Builder, and Electronic Bill Presentment. Number of accounts should include all agency accounts across customer classes. All accounts will be included in Utility Analytics Dashboard. Agency will work with WaterSmart to choose which accounts to provide portal access for customers.
- C. Standard support is optional, Participating Agencies should consult with WaterSmart to determine their likelihood of needing Standard Support.
- D. Welcome Letter. Sent at start of program to welcome residents to the WaterSmart program and orient them to its benefits (branded for utility). Customer Letters can be sent at other times than the start of the program.
- E. Optional: Water Reports (reports sent bi-monthly - for each term, WaterSmart will deliver Water Reports over the course of a three year period, by email where valid

email address is available). Per account fee for reports sent directly to customers. Exact number of reports sent each cycle will vary based on availability of valid meter data, and number of new or closed accounts in a given period. New Participating Agencies opting into Water Reports will be assessed a one-time Water Report setup fee to configure this program element.

- F. Optional: Single Sign-On and Click Through Registration require that the Participating Agency's online payment provider is able to meet WaterSmart's specification for these services. Electronic Bill Payment option requires WaterSmart and Participating Agency to partner with a third-party vendor of online payment services.
- G. Optional: Paperless Billing services provide a method for the Participating Agency's account holders to enroll for electronic bill delivery from within the Customer Portal.
- H. Optional: WaterSmart will print and mail leak alerts to customers that cannot (and have not) be contacted by email, text, automated voice, or by staff.
- I. BAWSCA Participating Agencies are able to receive WaterSmart services at a discount.

BAWSCA Administration Fee. Fee BAWSCA uses to recover costs of administering Program.

To memorialize this arrangement, please have the enclosed copy of this Participation Agreement executed by an individual authorized to enter into such agreements and return it to BAWSCA, attention Kyle Ramey, **no later than May 28, 2021** to begin the program on July 1, 2021. Agencies wishing to enroll after July 1 can enroll on an ongoing basis. If a Participation Agreement is returned to BAWSCA after July 1, 2021, the Agency's program will last for a full three year term under this Agreement.

By submitting this Participation Agreement, the Participating Agency agrees to pay its share of the Program costs, up to the maximum in line K within thirty (30) days of its receipt of an invoice from BAWSCA. In addition, the Participating Agency represents it has reviewed the BAWSCA - WaterSmart PSA attached hereto as Attachment 1; and the Participating Agency hereby acknowledges and finds acceptable the terms and conditions of the BAWSCA - WaterSmart PSA including all of its exhibits. WaterSmart agrees to provide services to the Participating Agency and perform in accordance with the terms and conditions of the BAWSCA-WaterSmart PSA. **Participating Agency agrees to the Software-as-a-Service Provisions attached hereto as Exhibit C to the BAWSCA-WaterSmart Agreement, and acknowledges that it is responsible for obtaining from its end customers any consents and providing any notices for leak alert and group messenger services, if any are legally required, and that it has reviewed with its legal counsel Section G of the SaaS Provisions as well as the end customer consent requirements of Section F.** The Participating Agency is responsible for working with WaterSmart Software to ensure it remains within the Maximum Program Budget. Participating



Agency agrees to hold BAWSCA harmless from any claims or actions arising from WaterSmart Software's performance or any allegation that materials or services provided by WaterSmart Software infringe or violate third party intellectual-property right. The person signing below represents and warrants that they are authorized by the Participating Agency to bind the Participating Agency to this Participation Agreement.

\_\_\_\_\_  
*[Signature of authorized representative]* Date: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
*[Please print]*

## Exhibit E, WaterSmart Data and Security Policy

Updated: March 2017

### A. Risk Management

#### 1. WaterSmart's IT Risk Governance

WaterSmart strives to strike a balance between opportunity and risk for our business, while minimizing risk for our customers. We govern based on best practices extracted from various frameworks. During our regular prioritization meetings, we discuss the company's appetite for risk and assess each potential initiative with respect to IT concerns. Example of the risks assessed might include: late-delivery risk, compliance risk, architecture/flexibility risk, data security risk, or service risk. These sessions often include risk review with the goal of understanding the business impact of a given scenario.

#### 2. WaterSmart's IT Risk Life Cycle

As described above, we identify the value of business propositions, identify the risks, and assess the risks. If the project goes forward, the IT team is responsible for developing a response to any potential risk, implementing it, and monitoring the response/control/measure for its effectiveness. We often iterate on and improve risk responses over time to continually minimize risk as new information, ideas, or technologies become available.

### B. Information Security Policy

#### 1. WaterSmart's Information Security Policy

WaterSmart's Information Security Policy establishes a framework for managing risk in accordance with business requirements. At the core of our policy, we focus on:

- Tight access control, ensuring only approved users are granted appropriate access
- Encryption in transfer, to keep data secure as it flows in and out of system boundaries
- Encryption at rest, to keep data secure as it remains within our system boundaries
- Partnering with best-in-class cloud vendors for asset management and physical & environmental security
- Automation for change-management accuracy
- Daily backups with geographically distributed, redundant encrypted storage
- Documentation for business continuity
- Human resources security, to ensure all necessary controls on employees
- Policy creation, maintenance and review

Specific aspects of WaterSmart's Information Security Policy are documented in our secure online repository. We continuously update and maintain our documentation when new business requirements or risks are surfaced. As a whole, Security Policy is

reviewed with each new customer; any suggested policy improvements are documented and prioritized within our project prioritization framework.

**C. Information Security Organization**

1. Dependent Service Providers

Our company carefully reviews all cloud service provider partners for their security. We only select vendors with high standards regarding security, privacy, and disaster preparation. We select best-in-class vendors with multiple 3<sup>rd</sup> party verifications; for example, RackSpace and Amazon Web Services for servers and networking, SendGrid for email delivery, and Twilio for telecommunications. The verifications and certifications of our vendors are publicly available for inspection.

**D. Physical and Environmental Security**

1. Physical Controls

WaterSmart's servers are deployed in the secure Rackspace Cloud. Physical security includes state-of-the-art building access controls, video surveillance and 24x7 onsite security. Rackspace's facilities and security procedures are regularly subject to independent 3<sup>rd</sup> party reviews and certifications including but not limited to ISO27002 and SOC1/2/3.

2. Environmental Controls

Our servers are connected to multiple high-performance networks, uninterruptible power supplies, backup diesel generators and fire-safety systems. A full-time, on-site operations staff addresses any hardware problems.

**E. Operational Security**

1. WaterSmart's operational controls

Operational controls include strict access control, encryption in transit and at-rest, precise firewall configuration, access logging, application logging, real-time server metrics collection and graphical display, multi-tenant data segregation, intrusion detection, aggressive backup policy, process automation, development and production environment separation, documentation, and change-control.

Furthermore, all data transmitted between WaterSmart and a customer or cloud partner is always transferred in an encrypted fashion, using either SSL, SSH, PGP, or TLS as appropriate for the channel.

Data files delivered by utility partners are immediately encrypted and remain encrypted while within system boundaries. Personally Identifiable Information (PII) that is stored within our databases is encrypted at rest.

2. WaterSmart's monitoring of system and network activity

All access to servers, as well as to customer-facing products, is logged. System activity logs are collected in real time and displayed graphically in our operational dashboard. Our operational alert framework analyzes system data and is configured to send instant alerts to the IT team at various thresholds.

3. Intrusion detection methodology

Our servers are only accessible via individual SSH public/private key pair, and no access is allowed via password. Only members of the IT team have access to their private keys; and keys may be revoked at any time. Our alert framework monitors all access and reports immediately if it sees an unknown user. The intrusion detection framework also geo-locates the IP address of each connection and alerts on any geographic anomalies. We also analyze for time-of-use anomalies, and alert on any access outside of the usual clock-pattern of access.

4. WaterSmart's data backup and restoration process

We backup all critical system configuration data and all multi-tenant customer data daily. The data is PGP encrypted and then transferred via SSL to our Cloud Files storage area within the secure RackSpace cloud as well as a secondary geographic location hosted by Amazon Web Services. Our restoration procedure is carefully documented in our operations guide; it involves downloading a specific backup and installing it as needed. The restoration process is practiced routinely. We employ a cascading fade-out backup storage scheme in which we keep daily backups for 30 days, and transition older backups to weekly or monthly snapshots. We also maintain a hot-failover backup system that is primed daily to serve product via DNS swap.

5. WaterSmart's change control process

We develop software in an agile/scrum method. On a weekly or bi-weekly basis, all requested changes are documented in our issue-tracking/scrum system. All data-related or operational changes are included in this change-request process. Data and operational changes are made only by script automation. Once changes are committed with comments to our secure source code repository, the changes are pushed to our development/test environment where they are validated. All validated changes are deployed to our live environment on-demand via automation from our repository.

**F. Access Control**

1. WaterSmart's access control policy

Access to servers and data by WaterSmart employees is granted only on as-needed basis, and only by individual, revocable SSH public/private key-pairs. Authorization is never granted via password or by shared key. Role-based access control (RBAC) is

implemented to regulate access to computer and network resources based on the roles of individual users within the WaterSmart organization.

Editorial rights to content used in our application require an individually provisioned, revocable SSL Certificate on the physical machine of the employee.

Each new employee signs a Non-Disclosure Agreement and is subject to a background security check. We maintain written de-provisioning procedures to universally withdraw access from individuals who no longer require data access.

2. WaterSmart's privilege delegation and separation of duties policy

Group-level RBAC is used to handle privilege delegation. Some employees may have administrator rights, while others are read-only, or some have no access at all.

3. WaterSmart's inactive accounts and access revocation policy

Written procedures are followed to withdraw access from an inactive account or terminated employee. This includes but is not limited to SSH key removal, SSL certificate revocation, user deletion, and de-provisioning of all cloud-based services.

**G. Software Development and Maintenance**

1. WaterSmart's Software Development Lifecycle

WaterSmart is on a continuous release cycle with minor updates and improvements to the product released on a daily or weekly basis. As a hosted software as a service product all versions are the most current.

2. WaterSmart's application vulnerability assessment methodology

Application Vulnerability is handled proactively by employing best-practice authentication technology, web application frameworks designed to eliminate cross-site or injection attacks, and most importantly, code review. All code added to our secure repository triggers our code-review automation, in which code-differences are highlighted and distributed to peers in the engineering team for review.

3. WaterSmart's application and system patching strategy.

As a web application company, we have almost no barrier to application patching. Any necessary changes are committed, tested, and rolled out to our multi-tenant infrastructure as required via an automated process that cleanly shuts-down, deploys

and restarts the necessary applications. Customer-facing products enter maintenance mode during the procedure. An application deploy, on average, takes less than 30 seconds.

System level patching, including OS upgrades, occurs on an as-needed basis for critical issues and approximately quarterly for enhancements. All patching occurs first in our development and test environment. After the development patch, we complete a system-wide smoke test of our applications and infrastructure. Subsequently, we begin our production patching procedure with a full image clone of each virtual server to be upgraded, followed by the patch and test cycle.

We run only Long Term Support (LTS) versions of Linux Ubuntu on our servers, in an effort to minimize vulnerability threats.

As a cloud services company with over 80 utility customers, we do security reviews many times a year during the contracting phase. Internally, the IT team formally reviews our system security on a quarterly basis; informally we do code-reviews and read technical and vulnerability blogs on a daily basis.

#### **H. Incident management**

##### **1. WaterSmart's incident management program**

We have a 5-step incident management program. After an incident identification, (1) incidents are assigned an incident manager responsible for responding to the incident in a timely manner and pro-actively communicating incident status to all relevant internal and external parties. (2) Incidents are documented via incident management form and permanently filed in our incident repository. (3) We identify and execute corrective actions. (4) We perform a root cause analysis. (5) We feed back lessons learned to the planning function team. Throughout the incident process, we maintain open lines of communication with our customers. WaterSmart also maintains a breach response plan intended to govern the organizational structure and response in the unlikely event of a data-breach incident. This policy is available upon request.

#### **I. Business Continuity**

##### **1. WaterSmart's Business Continuity program**

WaterSmart takes several approaches to business continuity beginning with our decision to deploy image-based virtual servers in a cloud data center featuring multiple high-performance networks, uninterruptible power supplies, backup diesel generators, fire-safety systems, and a full time operations staff. New instances of our servers can be quickly deployed from bare metal via automation in case recovery is needed. We also maintain documentation and test our failover procedure in which application hosting is switched from one cluster to another with minimal customer interruption.

From a business perspective, our organization is designed to operate in a distributed fashion making use of cloud technologies such as our secure cloud document silo, an online documentation repository, and a web-managed hosting environment. Employees have unlimited access to multiple communication channels including web-based chat and video presentment tools.

Most importantly, we rigorously maintain 'how-to' documentation for running our business smoothly in a repeatable fashion whether or not an emergency is at hand. Documentation is maintained in an editable, electronic format so it can be easily updated during trial or execution.

## 2. Business Impact Analysis

Our business recently completed a brief business impact analysis using the assets available and recommended by ready.gov.

## 3. Continuity Plan testing

Our continuity plan is continuously tested, on different frequencies. For example, server deployment procedures are used on a monthly basis, failover to secondary servers is tested annually, and 'work anywhere' business operations and communications are tested on a daily basis. Documentation is tested using a trade-off technique where the author passes the documentation to a second employee for validation.

## J. DDoS Attack Mitigation

### 1. Detection

WaterSmart currently engages 24/7 monitoring of our website uptime from various access points around the globe. If an outage or latency issues is detected, our detection services immediately notify our operations team via two independent communication channels including mobile phone notification.

### 2. Vendor notification and partnership

In the event of a denial of service attack, WaterSmart will immediately coordinate with our hosting partner (RackSpace) in order to understand the magnitude of the problem as it affects their infrastructure, and identify resolution vectors. Rackspace's anti-DDoS arsenal includes network-level traffic analysis, server level anomaly detection, and possibilities for packet filtering and rerouting.

### 3. Elastic WebServer Provisioning

WaterSmart can create and deploy web servers with new external IP addresses at will. Our backstop procedure for DDoS mitigation is to deploy new web servers and reassign the public entry-point IP via a DNS change and propagation. DNS time-to-live (TTL) is set reasonably low to facilitate this type of migration.

**K. Regulatory Compliance**

1. WaterSmart's compliance with internal policies and standards

We regularly review our operating procedures against our organizational policies, including documentation execution 'practice sessions', maintaining a prioritization queue of desired improvements, and auditing our internal alerting and monitoring systems to make sure they are operating as expected.

We review legal requirements in the context of each Customer's contractual agreement with the help of internal counsel and the counsel of our customer-partners.

**L. Privacy**

1. WaterSmart's Privacy program

WaterSmart has a serious commitment to the privacy of our customer data. We do not share any personally identifiable data with anyone without the express consent of our customer. We do not store any billing data, financial data, or payment information. The extent of what might be considered private data is customer name, address, account number, email address, and water usage.

Our information security practices address the privacy of data during its entire lifecycle: storage (encrypted at rest and SSH-based server access only), usage (end-user access via HTTPS and encrypted password), sharing (never), transferring (SSH encryption), securing (SSH), retention (backups PGP + HTTPS), and destruction (delete or return-to-customer).



## Exhibit F, WaterSmart Breach Response Plan

### Breach Response Plan v1.2

Revised December, 2016

WaterSmart works diligently to minimize the possibility of data breach. For more information, please review WaterSmart's information security policy, which documents our approach to security and our technical safeguards. In the case of a data breach, this document describes our core approach for responding to these events in a predetermined and organized manner across our entire organization.

A data breach is an event in which data intended to be protected from unauthorized access is inappropriately exposed.

#### 1. GENERAL APPROACH

WaterSmart's general approach to response will include the following steps:

1. Documentation of events prior to and following discovery
2. Immediate response
3. Activation of the response team and legal counsel
4. Clear and timely communication within the company about the issue and with Utility Partner as appropriate
5. Instructions to the organization on responding to external inquiries
6. Determination of law enforcement and regulatory agency inclusion
7. Root cause analysis, remediation planning, and remediation
8. Development of messaging and notification schedule to affected parties based on legal counsel
9. Account management for the Utility Partner
10. Determination of compensatory necessity based on legal counsel

#### 2. DISCOVERY AND DOCUMENTATION

Upon discovery of a data breach, WaterSmart will immediately record the date and time when the breach was suspected, as well as the current date and time when response efforts begin.

Once the breach has been verified to actually include PII, we begin the documentation phase. Documentation about the breach should include everything known thus far. The necessary facts are:

- Who discovered it
- Who reported it
- To whom it was reported
- Who else knows about it
- What type of breach occurred
- When the breach occurred
- What systems are affected
- What was stolen or is missing
- Which Utility Partners, if any, are affected
- If the breach is active or on-going

After the facts are recorded, we will interview those involved in discovering the breach as well anyone else who may know about it and document this investigation. The investigation will include such facts as how the discovery was made and a distinction between what is known versus suspected.

### **3. IMMEDIATE RESPONSE**

Depending on the nature of the breach, it may be appropriate to take some immediate response actions.

These may include:

- Securing the premises in the case of a physical breach event
- Cordoning off areas to preserve evidence
- Isolating specific machines from broader networks
- Disabling certain internal facing tools
- Disabling certain customer-facing tools or products

Additionally, we will immediately take the following technical actions:

- Replace developer system SSH access keys
- Replace machine-to-machine internal system SSH access keys
- Revoke all laptop SSL client-certificates and plan to reissue them
- Change employee passwords for key cloud-based systems

### **4. RESPONSE TEAM ACTIVATION**

While documentation is ongoing, WaterSmart will alert and activate everyone on the response team, including necessary external resources, to begin executing our preparedness plan. A senior level manager such as the CTO or organizational unit head will be assigned as the incident manager. In accordance with our agreements with Utility Partners, if we believe a data breach includes data provided by one or more Utility Partners or their end users, we will also notify the Utility Partner of the suspected breach and provide regular updates throughout the rest of the process.

At the time of activation, the immediate priority of the response team is to assess our priorities and risks given what we know about the breach at the time. This risk assessment will provide context to inform all further decisions regarding the breach response timeline.

Our response team will include many members of our organization. The response team leadership committee includes:

Person	Role	Response Responsibilities
Drew Bazan	Vice President	<ul style="list-style-type: none"> <li>• Coordination</li> <li>• Documentation</li> <li>• Technical Discovery</li> <li>• Remediation</li> </ul>
Dominique Gomez	COO	<ul style="list-style-type: none"> <li>• Legal Counsel Liaison</li> <li>• Insurance Liaison</li> <li>• Law Enforcement Liaison</li> <li>• Compensatory Analysis</li> </ul>
Kevin Kern	CEO	<ul style="list-style-type: none"> <li>• Internal Communication</li> <li>• External Messaging</li> </ul>
Ora Chaiken	Vice President of Client Services	<ul style="list-style-type: none"> <li>• Utility Partner Notification</li> <li>• Client Services Team Training</li> </ul>

The response team will also make recommendations as to the necessity or usefulness of retaining outside assistance; specifically, Legal Counsel or Technical Forensics.

These resolution partners may include:

- Silicon Valley Counsel (Legal)
- Kroll or Rackspace (Forensics)
- Law enforcement agencies including local police, the FBI, and/or the department of homeland security

At the conclusion of the response team initiation phase, we will create a high-level overview of priorities and progress, as well as problems and risks. This should include a list of upcoming business initiatives that may interfere with response efforts. The response team will decide whether to postpone these efforts and for how long, in order to focus on the breach.

## **5. INTERNAL COMMUNICATION**

As the response team concludes the first phase of response planning, WaterSmart will communicate in a clear and timely fashion to all employees regarding the incident. The purpose of this dialog is to:

- Ensure a breach incident is never hidden
- Retain the trust of all employees with a high level of transparency
- Create an avenue for two-way communication and Q&A
- Explain to employees that the breach information must be kept confidential; no information may be communicated outside the organization at this time

## **6. RESPONDING TO INQUIRIES**

Employees may not discuss the breach with customers unaffected by the breach, the general public, or the press until explicitly given the go-ahead to do so and provided with a response guide by the breach response team. This is to make sure that no speculative comments or unverified information is spread unnecessarily.

WaterSmart will have a single point of contact for any potential inquiries; the personnel to be assigned by the response team member with the responsibility for external communication. This response team member will also be responsible for training WaterSmart employees on inquiry response when the timing is appropriate.

## 7. LAW ENFORCEMENT / REGULATORY

WaterSmart, under the supervision of the response team member responsible for legal and regulatory process, will first identify its legal obligations. This includes:

- Revisiting state and federal regulations governing our industry and the type of data involved in the breach
- Based on regulations, determining all entities that need to be notified, i.e., customers, employees, the media, government agencies, regulatory boards, etc.
- Determining the correct timeline mandates for any possible notification requirements

At this phase, WaterSmart will also decide whether to retain specific assistance from legal counsel regarding the breach and its resolution. We will also decide which possible law enforcement agencies could be relevant to involve and if so, make appropriate notification.

## 8. ANALYSIS AND REMEDIATION

Led by the response team member with technical discovery and remediation responsibilities, WaterSmart will begin a deep dive into the breach with an attempt to fully understand the timing and risk of the exposure.

Once the extent has been discovered and documented, the team will begin root cause analysis to identify the security flaw that created a breach opportunity.

The remediation effort will consist of the following phases:

- Fix the root issue that caused the breach
- Fully audit all existing systems for evidence that anything undesired was left on any systems (such as bots, hacker tools etc.)
- Fully audit all network traffic across the DMZ boundary to ensure outbound traffic is all rightfully generated by WaterSmart systems
- Wiping and rebuilding any of the affected machines

Since WaterSmart uses an almost entirely virtual infrastructure, all machines can be easily rebuilt from scratch using our machine build automation. This includes all network configurations and security certificates.

At this phase, WaterSmart will also decide whether to retain specific assistance from a forensic specialist or data breach investigation management firm.

## 9. NOTIFICATION

In the event that WaterSmart is legally obligated must to notify the affected individuals of a data breach, the legal team will identify:

- The mandated timelines for notification
- The mandated channels of notification (email, print)
- The mandated requirement of a call center and other services for affected individuals
- Any specific content mandated for the notification letters
- Any timeline adjustments necessary to avoid interference with ongoing law enforcement investigation
- Any notification requirements as a result of geographical jurisdictions in which the affected individuals reside

In addition to requirements gathering, the notification team will decide the scope of the notifications, i.e., will they be sent to affected individuals or to all individuals regardless of being affected by the breach, etc. WaterSmart will coordinate these efforts with Utility Partners as appropriate.

Additional management points for consideration include:

- Management of multiple letter versions based on specific state regulations
- Professional printing that includes company logo and electronic signature
- Address validation and delivery
- Return mail management to handle and discard returned letters
- Certified address cleansing / National Change of address
- Quality assurance for printing and fulfillment
- First-class postage
- Print vendor with top-tier data security protocols
- Electronic letter copies for proof of notification
- USPS Delivery Report

## 10. WORKING WITH THE UTILITY PARTNERS

Due to the unique nature of WaterSmart's business, the representative on the response team responsible for Client Services will take the lead in effectively communicating information about the breach to the Utility Partner.

This will include:

Participation Agreement  
BAWSCA Subscription Program  
Watersmart Customer Engagement & Conservation Program

- Timely notification of data breach when discovered (link pending)
- Updates and description of the breach and affected data, e.g., incident-specific FAQ when available
- Updates and confirmation of remediation steps being taken by the forensic team
- Coordination in publication of the notification plan and communication content to Utility Partner's customers
- Training for how to field inbound inquiries related to the breach and/or referral directly to the WaterSmart action number

## **11. COMPENSATION**

WaterSmart's response team will decide if the breach warrants making a claim against our data breach insurance policies, and if so, begin insurance claim proceedings. During that process, they will also determine if any individuals affected by the breach are entitled to compensation, and if so, determine the mechanics of disbursing said compensation.

WaterSmart's business operations staff will also review existing Utility Partner contracts to determine if any contracts have specific compensatory requirements as related to data breach, and if so, determine the mechanics of acting on those special clauses.

## **12. CLOSURE**

Once all necessary remediation activity has occurred, the breach incident can be closed. All documentation that tells the history of the breach and decisions made will be packaged electronically in a secure repository for archive purposes.

Based on new lessons from executing our breach response plan, we will make the necessary modifications to our response strategy to improve our process, as well as enhance and modify our information security and training policies so that recurrence of breaches are minimized.

## **13. CONCLUSION**

WaterSmart's data breach response plan is intended to be a blueprint of the steps to take in the case a data breach occurs. Periodically reviewing this plan can help it stay current and useful.

On an annual basis, WaterSmart will:

- Review staff security awareness
- Update response team contact information
- Verify response plan is updated for any major changes such as changes in lines of business, departments, or data management policies
- Evaluate internal IT security to ensure proper data access controls are in place
- Ensure automated monitoring and reporting on systems is in place
- Ensure backups are stored securely
- Evaluate third-party vendors we exchange data with for their security policies



# Exhibit G, WaterSmart Software Service Level Agreement

## PURPOSE

The purpose of this Service Level Agreement (SLA) is to define performance levels (the "Service Levels") for the provision of the Services. WaterSmart shall maintain the Service Levels specified below. If WaterSmart fails to meet any of the Service Levels set forth in this SLA, WaterSmart shall:

1. Promptly investigate and report on the causes of the problem;
2. Use reasonable efforts to correct the problem and meet the applicable Service Levels as soon as practicable; and
3. Provide Utility reasonable evidence that the causes of such problem have been cured or shall be cured within a reasonable time period, to the extent requested by Utility.

## SERVICE LEVELS

### 1. Service Availability – WaterSmart Interface Availability

The Customer Portal and Utility Dashboard is available to Utility and its customers not less than 99% of each calendar month. The Customer Portal and Utility Dashboard is considered unavailable if the Utility staff or end user is unable to log in or gain access to the Portal or Dashboard with valid credentials, and shall not include unavailability caused by Scheduled Downtime, user error or issues beyond WaterSmart's reasonable control.

WaterSmart reserves the right to conduct scheduled maintenance, which is (i) announced to Utility at least 72 hours in advance and (ii) occurs outside of the hours of 5AM to 6PM Monday through Friday, US/Pacific Time ("Scheduled Downtime"), unless in the event of an emergency when notice shall be provided as soon as possible.

For the past five years, WaterSmart has maintained availability of greater than 99% even with scheduled maintenance.

### 2. Customer & Technical Support

WaterSmart's Customer Success team is available to provide routine customer and technical support during the following "Business Hours":

- Monday to Friday from 6 a.m. to 6 p.m. Pacific Time, with the exception of Federal Holidays.

Utility may contact WaterSmart by calling 415.366.8622 ext 5, sending an email to [customer-success@watersmart.com](mailto:customer-success@watersmart.com), using the Intercom feature of the Utility Analytics Dashboard, or by directly contacting their assigned Customer Success Manager.

WaterSmart shall address issues that arise based on the following designation:

Table 4: Customer & Technical Support Severity Designations

Priority	Priority Description	Notification & Response Time
Outage	A significant, unplanned event that interrupts business operations more than 3 regular business hours.	Investigation: Immediate.  Notification: As soon as possible, within one business day or sooner.  Resolution: Within one business day.
Urgent	An error that results in a significant element of the Services being substantially non-functional or inoperative.	Investigation: Immediate.  Notification: As soon as possible, within one business day or sooner.  Resolution: Within three business days.
Impact	An error that results in the Services operating or performing other than as represented in the Scope of Work or as planned, but which does not have a material adverse impact on the performance of the Services; or other suggestions of improvements.	Investigation: Within one business day.  Notification: N/A  Resolution: As scheduled by the response team, if necessary.

**Ongoing Technical Support Response and Support Parameters:**

WaterSmart maintains internal escalation and notification procedures to ensure that timely responses and feedback are provided for all open support requests.