

**A RESOLUTION OF THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF NORTH BRUNSWICK AUTHORIZING A CONTRACT WITH VERTEXONE FOR A ONE-YEAR WATERSMART SUBSCRIPTION**

**WHEREAS**, the Township owns approximately 12,000 water meters as part of its municipal water distribution system; and

**WHEREAS**, in May 2019, pursuant to Resolution 157-5.19, the Township Council authorized Contract BID19004 with In-Line Services, Inc. of Flemington, New Jersey, for the Meter Replacement Project, which included the installation of a Neptune Advanced Metering Infrastructure (“AMI”) system, replacement of all meters, and Watersmart software for customer portal access; and

**WHEREAS**, in September 2023, pursuant to Resolution 285-9.23, the term for software maintenance under BID19004 expired, and a one-year proprietary maintenance contract was authorized with Rio Supply in the amount of \$59,776.20 for continued support of the Neptune 360 AMI System and Watersmart Software subscription (10/1/2023-9/30/2024); and

**WHEREAS**, in November 2024, pursuant to Resolution 339-11.24, the Township authorized a one-year agreement with Rio Supply to continue their support of the Neptune AMI System which includes three tower collectors, excluding the Watersmart subscription which was no longer available through Rio Supply; and

**WHEREAS**, VertexOne has submitted a proposal with a do-not-exceed amount of \$25,000.00 for a one-year subscription to Watersmart which will include the VXsmart (Watersmart) platform, VertexOne Digital Base, and all transactional fees; and

**WHEREAS**, the Purchasing Agent has certified that the value of this contract exceeds \$17,500.00; and

**WHEREAS**, this contract may be awarded by the governing body without competitive bidding, in accordance with N.J.S.A. 40A:11-5(1)(dd) of the Local Public Contract Law, for the provision or maintenance of proprietary computer hardware and software; and

**WHEREAS**, prior to entering into a contract with the Township, VertexOne will complete and submit a Business Entity Disclosure Certification, certifying that they will not make any reportable contributions to a candidate committee in the Township of North Brunswick for the term of the contract.

**NOW THEREFORE, BE IT RESOLVED**, on this 16<sup>th</sup> day of December 2024, that the Township Council of the Township of North Brunswick, in the County of Middlesex, and the State of New Jersey, does hereby authorize and confirm the following:

1. The Mayor, or his designee, is hereby authorized to execute a contract/purchase order and any other necessary documents, in an amount not to exceed \$25,000.00 (10/1/2024-9/30/2025) with VertexOne (1321 Upland Drive, Suite 8389, Houston, TX 77043) as set forth on the attached supporting document.

2. This contract is awarded without competitive bidding pursuant to Local Public Contracts Law, N.J.S.A. 40A:11-5(1)(dd) and Elections Law commonly known as Pay-to-Play N.J.S.A. 19:44A-20.5 Et seq. as described herein above.
3. The Business Disclosure Entity Certification and the Determination of Value shall be placed on file with the Resolution.
4. Notice of this action shall be published by the Municipal Clerk in the Home News and Tribune as the legal newspaper for the Township.

CERTIFICATION

I, Cavel Gallimore, Chief Financial Officer of the Township of North Brunswick, certify that funds totaling \$25,00.00 shall be made available contingent upon the adoption of the FY2025 Budget under Water Utility account 5-05-55-502-000-183. Contract 25-01413

\_\_\_\_\_  
Cavel Gallimore  
Chief Financial Officer

\_\_\_\_\_  
Justine Progebin  
Business Administrator

\_\_\_\_\_  
Ronald Gordon, Esq.  
Township Attorney  
Approved as to legal form

**RECORDED VOTE:**

<b>COUNCIL MEMBER</b>	<b>YES</b>	<b>NO</b>	<b>ABSTAIN</b>	<b>NOTES</b>
CHEDID				
MEHTA				
GUADAGNINO				
DAVIS				
SOCIO				
HUTCHINSON				
MAYOR WOMACK				

I hereby certify that the above Resolution was duly adopted by the Township Council of the Township of North Brunswick, County of Middlesex, at its meeting held on December 16, 2024.

\_\_\_\_\_  
Lisa Russo  
Township Clerk



1321 Upland Dr. Suite 8389  
Houston, TX 77043  
United States

## ORDER FORM

Prepared By: Eric Thompson  
Email: eric.thompson@vertexone.net  
Phone: (314) 401-0808  
Legal Entity: WaterSmart Software Inc

Client Name: North Brunswick NJ, Township of  
Contact Name: Justine Progebin  
Email: jprogebin@northbrunswicknj.gov  
Phone: (732) 247-0922 ex 435

Offer Valid Through: 12/15/2024  
Effective Date: 10/1/2024  
Contract Term (months): 12  
Contract End Date: 9/30/2025  
Payment Frequency: Annually in Advance  
Payment Terms: Net 30

Year 1

VertexOne Product	VertexOne SKU	Unit of Measure	Contractual Minimum	Unit Fee	Amount	Monthly SaaS Fee
VXsmart	EV2001	Managed Meters	11,075.00	\$0.64500	\$7,143.38	\$595.28
VertexOne Digital Base	EV1000	Active Accounts	1.00	\$14,512.50000	\$14,512.50	\$1,209.38

**ORDER TOTAL \$21,655.88**

## Transactional Fees

Price Component	Price	Note
System Generated Notifications	\$0.00	Unlimited notifications are included at no-cost to Client
On Demand Notifications Composition and Initiation Fee	\$0.005	Per On Demand communication (Email, SMS, Print and/or Call) generated by VertexOne
Electronic Document Archival Notifications and Document Images (up to 24 months)	\$ 0.005	One-time charge, per item archived within VertexOne. This applies to all documents that incur composition fees (detailed above) or documents uploaded by Client staff and/or Client end-customers.
VertexOne SMS Gateway Transactional Fee	Cost + 10%	Per SMS sent
VertexOne Print & Consumable Transactional Fee	Cost + 10%	All services bill to VertexOne by VertexOne print vendors exclusively for printed Welcome Letters, Home Water Reports and/or Leak Alerts

## Rate Card

Rate Card	Price	Note
VertexOne Blended Rate	\$ 225.00	Per hour for professional services

## Terms and Conditions

### Introduction

This order replaces and supersedes any other previous Order Forms, and/or understandings between WaterSmart Software Inc and North Brunswick NJ, Township of ("Client") Agreement dated, 10/1/2024 pertaining to the subject matter herein and for the products listed above. Notwithstanding the foregoing, Client shall remain responsible for any and all amounts already due and/or payable for the products listed above up to the Billing Start Date of this Order. In the event of a conflict between the Agreement and this Order Form, the Order Form shall control. VertexOne pricing is presented in USD.

**This agreement shall run 1-year from contract effective date, and total payment(s) for term of contract shall not exceed \$25,000.00 to include VXsmart Platform, VertexOne Digital Base, and all Transactional Fees. This will not include any local, state, or federal taxes or surcharges or added products or services requested by Township of North Brunswick.**

### Timely Renewal Policy

If Client uses the Software beyond the Subscription End Date, VertexOne may apply a twenty-five percent (25%) increase to the Fees and may, in its sole discretion, add new charges (including charges to account for increases or decreases in transaction volume). If Client has agreed to a renewal (in an Order Form or Statement of Work) before the Subscription End Date or the first day of the hold-over period, the relevant

Order Form or Statement of Work associated with such renewal shall prevail. Client understands that pricing is contingent on timely renewal and failure to timely renew requires VertexOne to allocate resources in a manner that incurs additional cost. If a renewal is agreed after the hold-over period, no refund or credit against future fees will be given.

### Change Management Policy

Where either Party sees the need for a change, Client may request or VertexOne may recommend such Change in accordance with the Change Management Process outlined in Exhibit A. Either Party may also seek additional information or suggest reasonable modifications to a proposed change. Additional work falling under the Change Management Policy will be billed at the VertexOne Blended Rate, excluding travel expenses. The VertexOne Blended Rate is subject to Annual Escalation increases per the Agreement terms.

### Transactional Fees

Transactional Fees include, Composition Fee, Document Archival, SMS Pass Through and Print Pass Through. The Annual Pricing detailed in this Quote are based on average usage, actual pricing will be based on Client usage on a monthly basis. Transactional Fees are calculated by the volume of Services consumed. Unless explicitly stated otherwise, Transactional Fees are not cancelable, and Fees paid are not refundable.

### Signatures

	VertexOne	Client
Name:	_____	_____
Title:	_____	_____
Date:	_____	_____
Signature:	_____	_____



## TERMS AND CONDITIONS

This agreement is made between WaterSmart Software, Inc. ("VertexOne"), a Delaware Limited Liability Company, and Township of North Brunswick ("Utility"). In addition, for the protection of Utility and VertexOne, certain customary legal terms are set forth below and on the "Software-as-a-Service Provisions" attached. This document and its incorporated attachments are together referred to as the "Agreement".

1. Payment by Utility under this Agreement for the initial term specified above is outlined in the Order Form. VertexOne shall invoice Utility upon signing of the Agreement and be compensated as set forth in the Order Form, and Utility shall pay invoices within 30 days of receipt. VertexOne shall be entitled but not obligated to suspend services due to delinquent payments, and any late payments shall be subject to an additional charge of the lesser of either (i) 1.5% per month; or (ii) the maximum interest rate permitted by law. Client is responsible for paying all taxes associated with its purchases hereunder. If VertexOne has the legal obligation to pay or collect taxes, VertexOne will invoice Client and Client will pay that amount unless Client provides VertexOne with a valid tax exemption certificate authorized by the appropriate taxing authority.
2. Each party has the right to terminate this Agreement if the other party has materially breached the Agreement and such breach remains uncured for a period of thirty days after written notice of such breach is sent to the breaching party.
3. VertexOne is an independent contractor, and shall not be considered an officer, agent, or employee of Utility.
4. VertexOne shall perform its services in a timely and professional manner consistent with standards generally and reasonably expected of software-as-a-service VertexOnes serving water utilities in the United States. VertexOne and its pertinent contractors have and shall maintain any applicable licenses or authorizations necessary to provide their services to Utility.
5. The Software-as-a-Service Provisions attached are incorporated by reference and include terms covering intellectual property rights, confidentiality, cooperation of the parties, limitation of liability, and certain other terms. Also included are terms applicable to bill payment, leak alert and group messenger services if such services are elected by Utility.
6. VertexOne shall hold harmless, defend, and indemnify Utility and its officers, directors, employees, and volunteers from and against all claims, damages, losses, and expenses including reasonable attorney fees arising out of VertexOne's services, to the extent caused by any grossly negligent act or omission of VertexOne, any of its subcontractors, and anyone employed by any of them, except if caused by the active negligence, sole

negligence, or willful misconduct of Utility. VertexOne's defense and indemnity obligations under this Agreement shall be limited and shall not exceed the fees received by VertexOne for the services that give rise to the liability in the twelve months preceding the accrual of such liability. The foregoing general defense and indemnity provisions shall not apply to contexts excluded by other express terms of this Agreement.

7. If Utility elects to make available to its end users optional bill payment services offered by or supported by VertexOne, which may or may not be integrated within VertexOne's electronic interfaces, Utility acknowledges that such services are provided directly to Utility by a third-party independent contractor. Such services shall not be supported by VertexOne until Utility enters into a mutually acceptable commercial agreement directly with such third party which shall govern Utility's rights and obligations with respect to such services. The indemnity provisions above shall not apply to bill payment services, and any indemnity for such services shall be provided by the referenced third-party provider.
8. Unless otherwise specified, VertexOne shall maintain the following policies of insurance in full force and effect during the term of the Agreement in the amounts shown below.

Commercial General Liability Insurance (policy as broad as the standard ISO form)	\$1,000,000 per occurrence / \$2,000,000 aggregate per policy
Professional Liability (errors and omissions, including cyber coverage)	\$5,000,000 per claim
Automobile Liability Insurance including hired, and non-owned vehicles	\$1,000,000 per accident
Workers' Compensation	As required by statute

9. All insurance coverages of VertexOne are primary insurance as to Utility.
10. Upon request by Utility, a certificate of insurance shall be promptly provided by VertexOne confirming the coverages above.
11. VertexOne shall comply, and upon request shall certify its compliance with, any conflict-of-interest avoidance requirements of Utility.
12. Upon or before external launch of VertexOne's services, Utility and VertexOne shall cooperate to mutually approve a press release announcing the parties' relationship. Each party may disseminate and display such press release and/or its contents and may reference its relationship with the other party by name and display of the other's logo, online and offline and in subsequent communications with third parties.
13. Utility may extend or expand the agreement beyond the initial term provided for above by signing a

mutually acceptable Order Form prior to the expiration of the initial term.

- 14. This Agreement may be executed in counterparts, including by electronic delivery. It states the complete agreement of the parties concerning its subject matter, and it may be extended or amended only in a writing signed by both parties.
- 15. Notices shall be sent to each party at the addresses in the signature block.
- 16. Where either Party sees the need for a change, Client may request or VertexOne may recommend such Change in accordance with the Change Management Process outlined in Exhibit A. Either Party may also seek additional information or suggest reasonable modifications to a proposed change. Additional work falling under the Change Management Policy will be billed at the specified hourly rate, excluding travel expenses. The Blended Rate is subject to Annual Escalation increases per the Agreement terms.
- 17. Upon (a) any automatic extension of the Term or the Subscription End Date, or (b) use of the Software

beyond the Term or Subscription End Date, VertexOne shall apply a twenty-five percent (25%) increase to the Fees and may in its sole discretion add new charges (including charges to account for increases or decreases in transaction volume). If Client has agreed to a renewal (in an Order Form or Statement of Work) before the automatic extension date, Subscription End Date, or the first day of the hold-over period, the relevant Order Form or Statement of Work associated with such renewal shall prevail. Client understands that pricing is contingent on timely renewal and failure to timely renew requires VertexOne to allocate resources in a manner that incurs additional cost. If a renewal is agreed after the extension or hold-over period, no refund or credit against future fees will be given.

**IT IS SO AGREED.**

VertexOne

Utility

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Effective Date: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

## Software-as-a-Service Provisions

BACKGROUND: VERTEXONE's customer engagement and data analytics services are to be provided primarily by utilization of VERTEXONE's proprietary software hosted on VERTEXONE'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 VERTEXONE are commonly referred to as "SaaS" or "software-as-a-service" providers. Certain supplemental provisions which are customary within the SaaS sector and essential to enabling VERTEXONE's SaaS service model and providing substantial cost savings for Utility, are set forth below and incorporated by reference in the Agreement. Also included below are additional terms applicable to bill payment, leak alert and group messenger services if such services are elected by Utility.

A. VERTEXONE's reservation of intellectual property rights VERTEXONE has created, acquired or otherwise currently has rights in, and may, in connection with the performance of this 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 ("VERTEXONE IP"). Utility acknowledges that VERTEXONE owns and shall own all intellectual property rights in and to deliverables hereunder, the VERTEXONE IP and derivative works of VERTEXONE IP (whether

independently or jointly conceived), regardless of whether or not incorporated in any print or electronic Water Reports, Customer Portal, Utility Dashboard, or other software or deliverable provided to Utility by VERTEXONE, and that Utility shall acquire no right or interest in the same.

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

Subject to the foregoing, authorized employees and customers of Utility may during the term of the Agreement access and use the VERTEXONE SaaS services, print and electronic Water Reports, Customer Portal, Utility Dashboard, Extended Messaging Services, other deliverables provided to Utility by VERTEXONE, and applicable bill presentment services, each as so specified by the Scope of Work, for purposes of Utility's customer engagement program, customer billing, and for Utility's internal purposes, so long as Utility is current with respect to its financial and other obligations under the Agreement. Such authorization is limited to Utility's service territory and is non-exclusive, non-transferable, and non-sublicensable. If Utility enters into an agreement with a third-party contractor of VERTEXONE 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 VERTEXONE and its licensors.

B. Utility's cooperation in providing necessary inputs Deliverables to be provided by VERTEXONE via its proprietary software require certain data from Utility. Utility shall provide VERTEXONE with those data, records, reports, approvals, and other inputs identified for Utility to provide in the Scope of Work or otherwise requested by VERTEXONE. Utility shall ensure that such inputs are accurate and within Utility's



legal rights to share with VERTEXONE subject to the confidentiality and other applicable provisions of the Agreement. Time is of the essence, and Utility shall provide its inputs within the timeframes specified for Utility by the Scope of Work. If bill payment services are included in the Scope of Work, Utility shall cooperate with VERTEXONE and its applicable third-party partner(s) in timely providing the data, records, reports, approvals, and other inputs requested for such services. VERTEXONE shall not be responsible for delays outside VERTEXONE's control, and deadlines for VERTEXONE's performance shall be adjusted, if necessary, to accommodate delays by Utility.

C. Confidentiality and VERTEXONE's use of aggregated data All data, documents and other information received or accessed by one party ("Receiver") from the other party or its end users (collectively, "Discloser") for performance of this Agreement, including without limitation personally identifiable information and financial information, are deemed confidential. Such information shall not be used or disclosed by the Receiver without the prior written consent of the Discloser or owner (which may include without limitation consent by end users to share any information with additional users they authorize), except to the Receiver's employees and contractors on a need-to-know basis for performance of this Agreement with appropriate confidentiality protections. For this purpose, protected 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 the Receiver; (ii) information that the Receiver can demonstrate was in its possession prior to receipt from the Discloser; (iii) information received by the Receiver from a third party who, to the Receiver's knowledge and reasonable belief, did not acquire such information on a confidential basis from the Discloser; (iv) information the Receiver can demonstrate was independently developed by it or a third party; or (v) information that the Receiver is legally required or compelled by a court to disclose.

The foregoing confidentiality obligations are subject to the following clarification of the parties' rights and obligations with respect to aggregated and anonymous data. Utility hereby gives its permission to VERTEXONE to use and disclose on an anonymous and/or aggregated basis (excluding any personally identifiable information) any data pertaining to Utility end customers and their water consumption, including without limitation derivative data and data combined with the data of other utilities, for purposes of project evaluation and any research, product development, marketing, or other legitimate business purposes. This Section C shall survive any termination or expiration of the Agreement. Each party shall post and comply with its applicable privacy policy.

D. Software corrections and third-party acts; limitation of liability for SaaS services In the event that VERTEXONE's services fail to meet specifications or other requirements specified by the Scope of Work, Utility shall promptly notify VERTEXONE and VERTEXONE shall promptly correct any defect or substitute services, software, or products to achieve the functionality and benefits originally specified. If VERTEXONE promptly makes such correction or substitution, VERTEXONE 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. Utility understands that Utility's use of VERTEXONE's services provided online may be interrupted by circumstances beyond VERTEXONE's control involving third parties, including without limitation computer, telecommunications, network, Internet service provider or hosting facility failures or delays involving hardware, software, networks, or power systems not within VERTEXONE's possession or direct control, and network intrusions or denial of service attacks (collectively, "Third Party Acts"). VERTEXONE shall not be responsible or otherwise liable for any Third-Party Acts, including, without limitation, any delays, failures, or security breaches and damages resulting from or due to any Third-Party Acts, provided that VERTEXONE has exercised due care. However, in the case of any Third-Party Act which will delay

or prevent VERTEXONE from providing online services to Utility, VERTEXONE will promptly notify Utility and assist in mitigating any impact. NEITHER PARTY WILL BE LIABLE TO THE OTHER, UNDER ANY CLAIM RELATING TO THIS AGREEMENT, FOR ANY INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL, RELIANCE or CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, REVENUE OR LOSS OF DATA, EVEN IF ADVISED OF THE POSSIBILITY OF THESE DAMAGES. Under no circumstances or event shall VERTEXONE's total cumulative liability for losses or damages of any kind arising under or relating to this Agreement and under any theory (contract, tort, defense, and indemnity, or otherwise), exceed the fees received by VERTEXONE for the services that give rise to the liability in the twelve months preceding the accrual of such liability. 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. Utility acknowledges that pricing for VERTEXONE's services would be substantially higher without the aforementioned limitations.

E. Technology and services infrastructure  
VertexOnes VERTEXONE 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 VERTEXONE customers. VERTEXONE utilizes a reputable third party VertexOne to perform printing and mailing services when included within the scope of VERTEXONE's work. For bill payment services, including credit card, debit card, and ACH payments and authentication, VERTEXONE works with leading edge, reputable third party VertexOnes specializing in such functions. Since the referenced cloud hosting platform, printing and mailing VertexOnes, bill payment services providers, and certain other VertexOnes performing similar or related functions, are integral components of VERTEXONE's technology and services infrastructure used across its pertinent customer base and are not specific to Utility and services

under this Agreement, Utility acknowledges that such utilization or collaboration is not considered subcontracting of VERTEXONE's services under this Agreement.

If Utility elects to make bill payment services available to its end customers, the pertinent end users and Utility assume all risks associated with such services, and no indemnity provisions in favor of Utility shall apply to such services, except in the event of VERTEXONE's willful misconduct. In the absence of willful misconduct by VERTEXONE, Utility'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 Utility and such provider. If Utility enters into an agreement with any third-party contractor of VERTEXONE for any other services ancillary or related to the services provided by VERTEXONE 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 VERTEXONE with respect to such services.

With respect to all bill payment services, as well as any services provided by independent third-party contractors not in contract with VERTEXONE, including without limitation any such services which at Utility's request or direction are integrated by VERTEXONE into its electronic interfaces for Utility, VERTEXONE shall not be responsible for services provided by such third parties. In furtherance of the foregoing, Utility shall hold harmless, defend, and indemnify VERTEXONE 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 such third-party services, except in the event of VERTEXONE's willful misconduct.

F. Compliance with Laws VertexOne shall comply with all federal, state, and local laws, regulations, regulatory rulings, and ordinances as may be applicable to the performance of its services under this Agreement. Utility shall comply with all federal, state, and local laws, regulations, regulatory rulings, and ordinances related to this Agreement, and shall have sole responsibility for

securing any necessary regulatory approvals, if any, for this Agreement and/or the services hereunder.

Utility 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 VertexOne hereunder, as well as any bill payment or other third-party services elected by Utility.

G. Extended Messaging Services If Utility elects to utilize VERTEXONE'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 VERTEXONE services involving automated phone calls (conventional and mobile), pre-recorded messages, text messages, and other such bulk communications (including emails outside of VERTEXONE's core customer engagement offerings) (collectively, "Extended Messaging Services").

1. Utility shall be solely responsible for the content of any messages or communications to end customers which Utility initiates or authorizes in connection with the Extended Messaging Services, as well as Utility's selection of any vehicle (i.e., conventional phone, mobile phone, text, email) for such messages or communications. VERTEXONE shall have no responsibility or liability of any kind with respect to messages or communications initiated or authorized by Utility or its representatives. In furtherance of the foregoing, Utility shall hold harmless, defend and indemnify VERTEXONE 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 Utility of the Agreement including without limitation these Extended Messaging Terms, except in the event of VERTEXONE's willful misconduct. For avoidance of doubt, if the

Agreement has other indemnity provisions in favor of Utility such provisions shall not apply to the Extended Messaging Services, except in the event of VERTEXONE's willful misconduct.

2. If Utility elects to make available to its end customers Extended Messaging Services offered by VERTEXONE to alert end users of potential leaks or high-water usage, the pertinent end users and Utility assume all risks associated with such alerts, and no indemnity provisions in favor of Utility shall apply to such risks (including without limitation any liability claims for failure to alert or inaccurate alerts), except in the event of VERTEXONE's willful misconduct.
3. With respect to Extended Messaging Services, VERTEXONE's role is limited to delivering via its technology platform Utility's communications through vehicles selected by Utility; accordingly, compliance with applicable laws (which may vary by state and locale) is strictly Utility's responsibility with respect to Extended Messaging Services notwithstanding any provision to the contrary.
4. Utility 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. Utility shall not rely on VERTEXONE or VERTEXONE's representatives for legal advice or guidance concerning the content or appropriate vehicles (i.e., conventional phone, mobile phone, text, email) for communications with Utility end customers.
5. In order to provide the Extended Messaging Services at efficient cost and with optimal levels of security and reliability, VERTEXONE may utilize one or more third party communications technology and communications services providers. Since such providers are utilized across VERTEXONE's pertinent customer base and are not specific to Utility and service choices

by Utility under the Agreement, Utility acknowledges that such utilization is not

considered subcontracting of VERTEXONE's services under the Agreement.