



MASTER AGREEMENT  
DATA SERVICE LICENSES AND EQUIPMENT LEASES

Operator # or Unique Identifier

This Master Agreement (“Agreement”) is made and entered into by and between Remote Gauge, LLC (“Provider”) and the undersigned Grantee (“Grantee”), upon the following terms and conditions:

Grantee fully understands that under the terms of this Agreement Provider is granting it one or more licenses to use Provider’s Website for data services; and/or, Grantee is leasing one or more of Provider’s Tank Level Sensor Systems (“Sensors”) for the purpose of generating and transmitting certain data to Provider’s Website, which data Grantee shall have the right to access under the terms of the licenses granted in this Agreement.

Grantee agrees to timely pay Provider all fees charged for Provider’s Data Service Licenses and Equipment Leases as documented in all Unit Orders attached to this Agreement. Grantee shall maintain with Provider a valid and chargeable credit card (“Authorized Card”) or an automatic withdrawal agreement from a valid account Grantee has established with a Bank located in the U.S. (“ACH Account”), for payment of all such fees due and owing under this Agreement. The Authorized Card or the ACH Account will be automatically debited for the amounts payable by Grantee to Provider under this Agreement. If, at any time, Grantee fails to have a valid Authorized Card or ACH Account on file with Provider, Grantee rescinds authorization for Provider to charge the Authorized Card or ACH Account, or Grantee fails to timely pay any amounts due under this Agreement, Provider may, at its option, accelerate all amounts due under this Agreement such that they become immediately due and payable.

**DATA SERVICES LICENSES**

**1. Website Access.** Provider agrees to provide Grantee monthly, limited, twenty-four hour access to its Website for the purpose of accessing all data generated by each Sensor leased from Provider by Grantee under this Agreement. Grantee agrees to pay all specified charges in all Unit Orders that reference this Master Agreement. Access to Provider’s Website shall begin on the earlier of the date of a Sensor’s first transmission, or the Service Start Date documented in the Unit Order attached to this Agreement. Grantee is responsible for all telephone, DSL, cable, Wi-Fi, cellular, or other charges assessed for or related to Grantee’s connection to the Website. If at any time Grantee is not in compliance with any of the terms of this Agreement, including payment of fees, then Provider may, without notice, invalidate Grantee’s and its associated third-party’s passwords and cancel Grantee’s access to and use of Provider’s Website, including any associated third-party licenses granted by Provider under this Agreement. Should Provider revoke Grantee’s licenses for non-compliance, all fees due under this Agreement shall become immediately due and payable.

**2. Ownership of Sensor Data.** Provider owns all level measurement and other data communicated to Provider. Provider may use, distribute, resell, and otherwise fully exploit any and all such data for any purpose. With respect to Provider, Grantee waives any right to confidentiality of such data.

**3. Agent or Employee Accounts.** Provider recognizes that it may be necessary for more than one of Grantee’s agents or employees to have access to certain data and information on the Website. Upon request by Grantee, Provider shall provide Grantee separate access codes for each of Grantee’s agents or employees who have a need for such access in the ordinary course of Grantee’s business, and the separate codes shall be coded to access only the portions or portions of such data and information as requested by Grantee. All access codes issued by Provider to Grantee, its agents, or employees, are subject to the terms of this Agreement.

**EQUIPMENT LEASES**

**4. Lease.** Grantee agrees to lease Provider’s Sensors and Provider agrees to provide Grantee the right to exclusive possession and use of the leased Sensors during the Term documented in the Unit Order attached to this Agreement.

**5. Sensors.** All Sensors under lease by Grantee shall be quantified in a Unit Order attached to this Agreement. GRANTEE AGREES TO BE FINANCIALLY RESPONSIBLE FOR EACH LEASED SENSOR AT THE VALUE STIPULATED IN THE UNIT ORDER. At any time during the lease Term documented in the Unit Order, Grantee may lease additional Sensors. Such additional units shall be subject to this Agreement the same as if they had been originally leased under this Agreement; provided, however, that the Term of the Lease for any additional units shall begin on the Data Service Start Date documented in the Unit Order for the additional units and continue until the last day of the month of the Data Service Contract Term documented in the Unit Order for such additional units. The Unit Order for any additional units shall automatically be attached to and become part of this Agreement for all purposes.

**6. Term.** Unless terminated earlier as provided by this Agreement or by law, the initial lease Term for Sensors identified in the attached Unit Order begins on the Data Service Date documented in the Unit Order and continues until the last

day of the last calendar month of the Data Service Contract Term documented in the Unit Order. At the expiration of the initial Term, the Sensor lease automatically renews for additional successive one-month periods without warranty unless Grantee agrees to extend the Sensor lease for a longer Term or provides written notice of termination at least 30 days before the end of the initial Term or any extension.

#### **7. Limited Warranty.**

(a) Provider warrants that the Sensors will be free from defects in materials and workmanship for a warranty period that is equal to the initial Term of the Sensor lease, or purchase such that the warranty shall expire at the end of the initial term and does not apply to any Sensors leased under any extension of the initial Term;

ALL DATA GENERATED AND TRANSMITTED BY ANY SENSORS LEASED BY GRANTEE ARE DEPENDENT ON GRANTEE'S PROPER INSTALLATION OF THE SENSORS. PROVIDER IS NOT RESPONSIBLE FOR SENSORS THAT DO NOT OPERATE CORRECTLY BECAUSE OF IMPROPER INSTALLATION OR INSUFFICIENT SUNLIGHT. IT IS GRANTEE'S SOLE RESPONSIBILITY TO PRECISELY FOLLOW PROVIDER'S INSTALLATION INSTRUCTIONS AND OBTAIN AUXILLIARY POWER FROM PROVIDER WHERE NECESSARY.

ALL DATA DISPLAYED ON PROVIDER'S WEBSITE IS IDENTIFIED WITH DESCRIPTION INFORMATION ABOUT EACH SENSOR PROVIDED BY GRANTEE. IT IS GRANTEE'S SOLE RESPONSIBILITY TO ENSURE THE ACCURACY OF DESCRIPTION INFORMATION. PROVIDER IS NOT RESPONSIBLE FOR DATA INACCURACIES BECAUSE OF FAULTY DESCRIPTION INFORMATION.

(b) This warranty shall not apply to any Sensor which has been damaged by hydrogen sulfide (H<sub>2</sub>S) or any other cause, abused, altered, misused, and/or removed from its installation (other than under the terms of this Agreement) without the express written permission of Provider;

(c) If a Sensor becomes inoperable while under warranty, Grantee's sole remedy is to immediately contact Provider to request instructions for a field repair to be performed by Grantee. If a field repair cannot be made then Provider will deliver Grantee a replacement Sensor to be installed by Grantee in place of the inoperable Sensor so as to minimize any down time for tank level measurements. It is Grantee's responsibility to remove the inoperable Sensor and ship it to the address provided by Grantee for determination of the cause of the problem. Grantee assumes the risk of loss during any of these shipments. The repaired or replaced Sensor shall carry the same warranty for the balance of the warranty period; and,

(d) Provider may take any action necessary to determine if there is a defect, identify the cause of the alleged defect, if any, and to establish in its sole discretion whether the defect is covered under this limited warranty. Grantee shall cooperate fully in assisting Provider in making this determination. Under no circumstances shall Provider be liable for any down time between the time the Sensor is removed from the tank and the time the repaired Sensor or a replacement is reinstalled on the tank by Grantee. If Provider determines that the defect is not covered by this limited warranty, then Grantee shall be liable for the Stipulated Value of the Sensor.

**8. DISCLAIMER OF ALL OTHER WARRANTIES.** EXCEPT FOR THE LIMITED WARRANTY IN PARAGRAPH 7, PROVIDER DISCLAIMS ALL WARRANTIES FOR ITS SERVICES OR SENSOR(S) LEASED UNDER THIS AGREEMENT, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. FURTHER, PROVIDER DOES NOT WARRANT THE ACCURACY, COMPLETENESS, OR TIMELINESS OF ANY DATA GENERATED BY ANY SENSOR LEASED UNDER THIS AGREEMENT.

**9. Theft, Loss or Damage.** If at any time during the Term of any Sensor lease a Sensor is lost, stolen, damaged, or becomes inoperative for reasons other than defects in material or workmanship, Grantee shall immediately notify Provider and Grantee agrees to pay Provider the Stipulated Value for such Sensor as documented in the Unit Order and authorizes Provider to charge the Authorized Card or ACH Account for the Stipulated Value.

**10. Equipment Maintenance.** Grantee is responsible for the maintenance of all Sensors and all accompanying equipment that it leases from Provider. Also, Provider regularly monitors its leased Sensors for data generation and transmission of such data to its Website. During such monitoring Provider may discover a problem that needs to be addressed by Grantee and issue Grantee maintenance instructions to correct the problem. A failure by Grantee to follow any such instructions shall void any warranty under this Agreement.

**11. Termination by Provider.** If at any time Grantee is not in compliance with any of the terms and conditions of this Agreement, then Provider reserves the right to terminate the leases of any or all Sensors identified in the attached Unit Orders, to revoke all of Grantee's access codes to the Website, to charge an account reactivation fee of \$300, and/or to

accelerate full payment of all remaining payments due under this Agreement for the leased Sensors for the full lease Term of each Sensor, without refund or notice.

**12. Return of Sensors Upon Termination of this Agreement.** Upon termination of this Agreement for any reason, Grantee shall:

(a) enter into a new Master Agreement with Provider for the Licenses and Sensors on such terms and conditions as Grantee and Provider mutually agree; or

(b) return the Sensors to Provider at Grantee's expense in substantially the same condition in which they were received, except for normal wear and tear, with Grantee bearing the risk of loss or damage during transit; or

(c) pay the Stipulated Value documented in the attached Unit Order for any Sensor not returned within 60 days after termination of this Agreement or within 60 days after Grantee receives notice from Provider that the Agreement terminated because Grantee has defaulted under one or more terms of this Agreement.

#### **MISCELLANEOUS**

**Indemnity.** To the fullest extent permitted by law, Grantee agrees to defend, hold harmless and unconditionally indemnify Provider and its officers, managers, partners, employees, agents, and assigns for all liability, costs, expenses, claims, liens, citations, penalties, fines, attorney's fees, losses, and damages which Provider may at any time suffer or sustain or become liable for by reason of any accidents, damages, or injuries either to persons or property or both in any manner arising out of or resulting from Grantee's use of the Sensor(s), the data produced by such Sensor(s) or the Website, or failure or defects in materials or goods supplied by Provider including, but not limited to, any negligent act or omission or claim involving strict liability or negligence per se of Provider or its officers, managers, partners, employees, agents, or assigns.

The coverage of any insurance policy carried by Grantee shall not limit the extent of Grantee's liability under the foregoing indemnity.

Grantee further agrees to protect and fully indemnify Provider and the owner of any tank on which Grantee installs any Sensor leased under this Agreement against all liability for claims for all labor, taxes, materials, appliances, equipment and supplies whatsoever, including any costs, attorney's fees, and incidental damage resulting therefrom; and, for failure of Grantee or anyone acting on Grantee's behalf to comply with all laws, ordinances and regulations of all governmental authorities in any manner relating to Grantee's use of Provider's Sensors, the data produced by such Sensors, the Website or any of Provider's services or products.

All indemnity obligations under this Agreement shall apply to claims arising both before and after Grantee's use of any of Provider's Sensors, the data produced by such Sensors, the Website or any of Provider's services or products, and to claims arising both before and after termination of this Agreement.

Provider shall be entitled to recovery of its attorney's fees and costs associated with enforcing any of these indemnity provisions or any other provision in this Agreement.

**LIMITATION OF LIABILITY.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, WHETHER OR NOT EITHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT SHALL PROVIDER'S CUMULATIVE LIABILITY TO GRANTEE ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE SENSORS, SPARE PARTS, DATA GENERATED, OR THE WEBSITE, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EXCEED THE AMOUNT DUE AND PAYABLE BY GRANTEE TO PROVIDER UNDER THIS AGREEMENT AT THE TIME OF THE ALLEGED COMPLAINED OF INCIDENT. PROVIDER SHALL NOT BE RESPONSIBLE FOR ANY DAMAGES WHATSOEVER THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES, ERRORS, DEFECTS, DELAYS IN OPERATION OR TRANSMISSION OF DATA, OR ANY FAILURE OF PERFORMANCE. FURTHER, IN NO EVENT SHALL PROVIDER'S TOTAL LIABILITY FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION EXCEED THE DOLLAR AMOUNT CONTRACTED TO BE PAID UNDER THIS AGREEMENT FOR THE CURRENT YEAR OF SERVICE.

**Governing Law and Venue.** The validity and interpretation of this Agreement will be construed in accordance with the laws of the State of Texas.

Any claim or dispute between Grantee and Provider arising out of this Agreement shall be decided by arbitration administered by the American Arbitration Association and in accordance with the Rules of the American Arbitration Association and shall be final, binding and subject to enforcement in any Court of competent jurisdiction. However, the foregoing arbitration provision shall not prevent Provider from joining Grantee as a party to any litigation or arbitration between Provider and any person or entity arising out of the use by Grantee of any of Provider's products or services.

Grantee consents to venue for Arbitration in San Antonio, Texas, and expressly waives any claim of improper venue and any claim that San Antonio, Texas is an inconvenient forum. Further, no language or provision in this Agreement, whether it is determined to be ambiguous or not, shall be construed against Provider simply because Provider drafted the Agreement.

**Proprietary Information and Trade Secrets.** "Proprietary Information" means all information, data, material, passwords, account information, software, editorial content of the Website, and any data generated by Provider's Sensors. The Proprietary Information is developed and owned by Provider. The Proprietary Information is intended for Grantee's internal use only. Grantee acknowledges and agrees Provider owns all rights, title and interest in the Proprietary Information and all intellectual rights in and to such information, including without limitation, any copyrights and trade secret rights. Any reproduction, distribution, or unauthorized use by Grantee of the Proprietary Information is strictly prohibited. Grantee agrees to keep the Proprietary Information confidential, and not to copy, distribute, or otherwise exploit the Proprietary Information; and, such confidentiality agreement shall survive termination of this Agreement.

Grantee acknowledges and agrees that Provider developed the Sensors and that all Sensor technology including the know-how and trade secrets appurtenant thereto are the exclusive property of Provider. Grantee may use the Sensors leased under this Agreement only as expressly permitted in this Agreement. Grantee may not duplicate the Sensors or any components of such Sensors; sublease, sell, lend, license, or distribute the Sensors or the components of such Sensors to others; use the Sensors or components separately in any manner whatsoever; use, permit the use of, or attempt to register the Sensors or the components as a trademark or service mark; claim any proprietary rights of any kind with respect to the Sensors or the components; or, use the Sensors or components for any purpose prohibited by law.

**Assignment.** Provider may assign all of its rights under this Agreement and shall provide notice to Grantee of such assignment within 30 days of the date of the assignment. Grantee may only assign its license to use the Website and its Sensor lease rights under this Agreement with the express written consent of Provider; provided, however, the assignee promptly executes a Master Agreement covering the remainder of Grantee's lease Term and provides an Authorized Card or ACH Account for payment of fees due under this Agreement. At the time of any such assignment, Grantee or assignee shall have the right to pay the Sensor leases in full. Any assignments under this Agreement shall be binding upon the parties hereto and upon their heirs, executors, administrators, successors or assigns; and, the parties hereto agree for themselves and their heirs, executors, administrators, successors and assigns to execute any and all instruments in writing which are or may become necessary or proper to carry out the purpose and intent of this Agreement.

**Entire Agreement.** This Agreement represents the entire understanding between the parties with respect to the subject matter thereof, and supersedes all other agreements, oral and written, with respect thereto. If any term or provision in this Agreement is declared invalid then only that term or provision shall be invalid and the remainder of the Agreement shall be valid and fully enforceable by the parties. This Agreement may be modified only in writing signed by both parties.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

**PROVIDER:**

Remote Gauge, LLC  
5150 Broadway St. 606  
San Antonio, TX 78209  
(210) 900-2424

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

RG Rep \_\_\_\_\_

**GRANTEE:**

Company \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Phone \_\_\_\_\_

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_