

This **PROFESSIONAL SERVICES AGREEMENT** (“Agreement”) is entered into between Avista Corporation (“Avista”), a Washington corporation, and Open Energy Solutions Inc. (“Contractor”), a Delaware Corporation (sometimes, individually, a “Party” and collectively, the “Parties”).

Background and Purpose: Avista desires to retain the services of the Contractor to provide software and implementation services as more fully described in any applicable Work Authorization (the “Work”), and Contractor desires to provide the required Work pursuant to the terms of this Agreement. In consideration of their mutual rights and obligations under this Agreement, the Parties agree as follows:

Except as expressly defined herein, capitalized terms used in this Agreement will have the meaning ascribed to them in the body of this Agreement, or other document incorporated into this Agreement.

1. DEFINITIONS

- 1.1 “**Acceptance**” means completion of the process described in Section 3 of this Agreement to Avista’s satisfaction.
- 1.2 “**Acceptance Record**” means the acceptance record form (“Acceptance Record”) attached and incorporated into this Agreement as “*Exhibit A*” or a written acceptance by Avista (e-mail is acceptable).
- 1.3 “**Access**” includes, without limitation, (i) unescorted, physical access to any Avista facility; (ii) network access to any Avista infrastructure; and (iii) entrance into an Avista customer’s home or property.
- 1.4 “**Applicable Laws**” mean any act, statute, law, regulation, permit, ordinance, rule, judgment, order, decree, directive, executive order, guideline or policy (to the extent mandatory) or any similar form of decision or determination by, or any interpretation or administration of any of the foregoing by, any government authority with jurisdiction over Contractor, Avista, the applicable project, the performance of the Work to be performed under this Agreement (and Work Authorization(s), if or as applicable), including any of the same as they may be amended or imposed from time to time.
- 1.5 “**Background Check**” includes personal identity verification and confirmation that the applicable individual has not been convicted of a felony within seven (7) years of the date of such background.
- 1.6 “**Background Verification Form**” means the background check verification form attached and incorporated into this Agreement as “*Exhibit B*”.
- 1.7 “**Badge**” means an identification badge issued by Avista’s Security Department.
- 1.8 “**Business Day**” means any day except Saturdays, Sundays, New Year’s Day (observed), Martin Luther King Jr. Day, Memorial Day, Independence Day (observed), Labor Day, Thanksgiving Day and the day after Thanksgiving, Christmas Day (observed).
- 1.9 “**Change Order**” means a written and mutually executed change to a Statement of Work, including Schedule or Contract Price.
- 1.10 “**Confidential Information**” includes, without limitation: computer programs; techniques; methods; rules; algorithms; procedures; protocols; forms; instructions; trade secrets; know-how; show-how; copyrights; inventions, improvements, and specifications (not in the public domain); personal information (any information that identifies, relates to, describes, or is capable of being associated with, any particular person, entity, household, or account); financial performance information; internal and business communications including communications between the Parties; and any other proprietary information disclosed in connection with, or in any way relating to the Work provided or the activities of each Disclosing Party, whether disclosed prior to or after execution of this Agreement. Notwithstanding the foregoing, Confidential Information shall not include: (i) information that was or becomes independently known or available to the Receiving Party, from a source other than the Disclosing Party and which is not subject to any restrictions on disclosure; (ii) information that has been legally made public, other than by acts of the Receiving Party; or (iii) information that was independently developed by the Receiving Party without use of or reference to any Confidential Information of the Disclosing Party.
- 1.11 “**Contract Price**” means the total money compensation payable by Avista to Contractor for furnishing the Work as provided for in a Work Authorization.
- 1.12 “**Disclosing Party**” means the Party disclosing its Confidential Information.
- 1.13 “**Documentation**” means information related to the Work performed under this Agreement, including, without limitation: (i) quality assurance and quality control records, (ii) factory inspection, test or calibration data, (iii) copyrights to all user manuals, training products, instructions, and software manuals, (iv) Specifications, Drawings, dimensions, and other information which will assist Avista in coordinating the design and fabrication of all connecting or related parts of the work furnished under separate contracts; and (v) purchase orders and invoices indicating the source of supply of components and
- 1.14 materials.
- 1.15 “**Dollars**” means United States of America dollars unless otherwise expressly stated.
- “**Force Majeure**” means any cause not within the control of the Party claiming suspension of this Agreement or any Work Authorization, and which by the exercise of due diligence, such Party has been unable to prevent or overcome; Force

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Majeure includes without limitation (to the extent consistent with the foregoing) acts of God, the government, or a public enemy; terrorism; cyber-attacks; strikes, lockout, or other industrial disturbances; wars, blockades or civil disturbances of any kind; epidemics and pandemics; and highly unusual weather conditions or fires.

- 1.16 **“Intellectual Property Rights”** means all rights in (i) United States and foreign patents, patent applications, and certificates of invention, and all continuations, continuations in part, extensions, renewals, divisions, re-issues and re-examinations relating thereto; (ii) all moral rights and copyrights in any work of authorship or other work recognized by foreign or domestic law, by statute or at common law or otherwise, including all copyright registrations issued by the United States Register of Copyrights and applications therefor, together with any renewal or extension thereof, or by similar authority in any other jurisdiction, and all rights deriving therefrom; (iii) all, whether registered or unregistered, trademarks, service marks, domain names, trade names and trade dress, and all goodwill relating thereto; (iv) all trade secrets, know-how, databases, inventions, processes, algorithms, techniques, and confidential information; and (v) other intellectual property rights protectable under any laws or international conventions throughout the world, and in each case including the right to apply for registrations, certificates, or renewals with respect thereto and the right to prosecute, enforce, obtain damages relating to, settle or release any past, present, or future infringement or misappropriation thereof.
- 1.17 **“Personnel”** means Contractor, Contractor’s employees, and/or Contractor’s subcontractors and materialmen.
- 1.18 **“Receiving Party”** means the Party receiving Confidential Information belonging to the Disclosing Party.
- 1.19 **“Representative”** means individuals designated by each Party to serve as the primary contact person with respect to this Agreement and with authority and obligations designated throughout this Agreement, including but not limited to authority to inspect the Work and resolve disputes on behalf of the Party they represent. For purposes of this Agreement, Avista’s Representative is Stephanie Myers, and Contractor’s Representative is Wade Malcolm, or as otherwise stated in a specific Work Authorization.
- 1.20 **“Schedule”** means the dates or elapsed time for delivery and performance of Work.
- 1.21 **“Specifications”** means the written requirements for materials, systems, performance, standards and workmanship for the Work.
- 1.22 **“Statement of Work” (SOW)** means a document which provides the narrative description of the Work, including project-specific activities, [deliverables](#) and Schedule, which is incorporated into this Agreement as a Work Authorization.
- 1.23 **“Subcontractor”** means an individual, firm or corporation having a direct contract with Contractor or with any other Subcontractor for the performance of all or any part of the Work.
- 1.24 **The “Term”** means the time period commencing on the date of the last signature to this Agreement and continuing until December 31, 2024, unless otherwise earlier terminated by the Parties as provided by this Agreement.
- 1.25 **“Termination Date”** means the date upon which Contractor must stop performance of the Work under a Termination Notice.
- 1.26 **“Termination Notice”** means written notice terminating this Agreement *OR* a Work Authorization.
- 1.27 **“Warranty”** means the unconditional warranty granted in Section [2.88](#) of this Agreement.
- 1.28 **“Warranty Period”** means that period commencing after Avista’s final written Acceptance of the Work as having met all requirements and conditions described in this Agreement and continuing for two (2) consecutive years for Work.
- 1.29 **“Warranty Repair”** means any and all efforts necessary to correct defects in the Work during the Warranty Period.
- 1.30 **The “Work”** means the labor, materials, deliverables, or services to be furnished to Avista as detailed in the Work Authorization(s) and as may be modified from time-to-time in a Change Order.
- 1.31 **“Work Authorization”** means a written document that incorporates the SOW and any additional Work-specific terms or requirements, which, upon execution by the Parties, will be incorporated into this Agreement. A sample of a Work Authorization is provided as **“Exhibit C”**.

2. PERFORMANCE BY CONTRACTOR

- 2.1 **Qualifications and Expertise.** Contractor certifies that its officers and employees have the necessary knowledge, skill and expertise to: (i) manage and perform the Work required under this Agreement; and (ii) comply with all Applicable Laws. Contractor understands that the knowledge, expertise and qualifications of Contractor and its officers and personnel to perform or supervise the performance of the Work, including the possession of appropriate permits, licenses, and certificates, are essential and material representations of Contractor in executing this Agreement.
- 2.2 **Licenses, Permits, Certificates.** As a precondition to entering into this Agreement, and for the Term of this Agreement, Contractor shall obtain and hold all of the current business or professional licenses, permits, and/or certificates required by the Applicable Laws for the performance of the Work in each state in which the Work is to be performed under this Agreement. Contractor shall also ensure that each of its subcontractors obtains and holds all of the current business or professional licenses, permits, and/or certificates required by Applicable Laws for the performance of the Work in each

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state in which the Work is to be performed under this Agreement. Except as specifically set forth in this Agreement, Contractor shall, directly or through one or more subcontractors, be responsible for obtaining and paying for all necessary permits, licenses, taxes, fees, and/or certificates required by Applicable Laws for the performance of the Work. Contractor shall pay all governmental charges and inspection fees required to perform the Work.

- 2.3 Standard of Performance.** Contractor certifies that the standard of care and skill for all professional and related services performed or furnished by Contractor as part of the Work under this Agreement will be *at least equal to* the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Contractor shall supply required schedules and progress reports to Avista and furnish copies of all Documentation.
- 2.4 Delegation and Subcontracting.** Contractor shall not (by contract, operation of law or otherwise) delegate or subcontract performance of any Work to any other person or entity without the prior written consent of Avista, which consent will not be unreasonably withheld. Any such delegation or subcontracting without Avista's prior written consent will be voidable, at Avista's sole option. In no event will Contractor's delegation or subcontracting of performance of any of the Work, with or without Avista's prior written consent, relieve Contractor of its responsibility to perform the Work in accordance with this Agreement.
- 2.4.1** Avista shall not be responsible for delays or costs incurred by the Contractor because of Avista's reasonable disapproval of any Subcontractor or the late submittal of its name for approval.
- 2.4.2** All Work for Contractor by a Subcontractor must be performed under an appropriate agreement between the Contractor and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of this Agreement.
- 2.5 Contractor Employees.** Contractor shall not employ any Avista employee(s) to perform any of the Work. Contractor shall employ only persons who are experienced and properly qualified to perform such Work. If requested to do so by Avista, Contractor shall remove from performance of the Work, any person Avista determines to be incompetent, careless, or otherwise objectionable. If applicable, Contractor shall assign any key personnel specified in this Agreement to perform the Work, and shall not reassign or remove such key personnel, without the prior written consent of Avista, for so long as they remain in Contractor's employ. Contractor shall replace key personnel who leave Contractor's employ or who are reassigned or removed by Contractor with Avista's consent, with personnel acceptable to Avista. Contractor shall be responsible, at its expense, for meeting all training, supervisory, inspection, certification and retraining requirements necessary to enable its employees and/or each of its subcontractor's employees to safely and competently perform the Work, in compliance with all Applicable Laws, including without limitation, 29 C.F.R. §1910.269 and 29 C.F.R. §1926.950, as applicable.
- 2.6 Independence.** The Parties certify that this Agreement creates an independent contractor relationship between or among them. As such, Contractor's personnel performing the Work under this Agreement are not, and will not be construed to be, employees of Avista. Contractor shall be solely responsible for payment of compensation to Contractor's personnel. Contractor shall be solely responsible for the payment of withholding taxes, unemployment insurance, worker's compensation, social security, pensions, licenses, or other fees on behalf of its personnel in connection with the performance of the Work. Contractor shall be free of any control by Avista in selecting the means, methods, techniques, and procedures of the Work, subject to Contractor's compliance with the terms of this Agreement. Under no circumstances shall this Agreement be interpreted or construed to create an association, partnership, or joint venture between the Parties. Contractor shall not represent Avista in any capacity or assume or create any obligation in the name of or on behalf of Avista.
- 2.7 Compliance with Laws and Regulations.**
- 2.7.1** As a federal contractor, Avista must comply with the provisions of certain federal regulations and include such provisions in its contracts and purchase orders. Contractor shall comply and shall ensure that its suppliers and subcontractors of every tier comply, with all Applicable Laws and shall furnish such documents to Avista as may be required to effect or evidence such compliance. All laws, ordinances, rules, regulations, and orders required to be incorporated into agreements of this character are incorporated into this Agreement by this reference.
- 2.7.2** **Avista is an equal opportunity employer and federal contractor or subcontractor. Consequently, the Parties agree that, as applicable, they will abide by the requirements of 41 C.F.R. § 60-1.4(a), 41 C.F.R. § 60-300.5(a) and 41 C.F.R. § 60-741.5(a) and that these regulations are incorporated into these General Conditions and this Agreement by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. These regulations require that covered contractors and subcontractors take affirmative action to employ, and advance in employment, individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The Parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 C.F.R. Part 471, Appendix A to Subpart A), relating to the**

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notice of employee rights under federal labor laws, which is also incorporated into these General Conditions by reference.

2.7.3 Upon Avista's request, Contractor shall provide Avista (and any federal or state agency) access to, and the right to examine, audit and copy, all information and records that provide verification of Contractor's compliance with all Applicable Laws applicable to Contractor's performance of the Work.

2.7.4 Contractor represents and warrants to Avista that the Work, in whole or in part, does not violate, and does not contain any element that violates, any Applicable Law. Contractor agrees that if the Work, in whole or in part, is determined to be in violation of an Applicable Law, Contractor shall correct or replace the violating Work at Contractor's expense and to Avista's satisfaction.

2.8 Warranty. After completion of the Work and Avista's final written Acceptance of the same, the following warranty provisions shall apply.

2.8.1 Unconditional Warranty. Contractor certifies that (i) all workmanship and materials included in the Work will be free from defects; (ii) the Work has been performed in a competent manner in accordance with relevant industry standards, all Applicable Laws and this Agreement; and (iii) none of the Work rendered by or through Contractor under this Agreement, nor the use of the Work by Avista, nor any license granted to Avista by Contractor, will infringe, violate or constitute a misappropriation of any intellectual property rights.

2.8.2 Defects. Avista will notify Contractor of any defects in the Work that are discovered within the Warranty Period, and Contractor shall promptly commence the Warranty Repair. Contractor shall be responsible for the costs directly associated with the Warranty Repair, including, without limitation, the costs of permits, design, labor, equipment, materials, as well as re-performance, repair and/or replacement of such Work, and repair and/or replacement of any damage to other work or property that arises from any defects in the Work. Contractor shall perform, at its sole expense, such tests as Avista may reasonably request to verify that any correction, repair, replacement, or re-performance of the Work is complete.

2.8.3 Warranty Repair. Contractor warrants to Avista that any Warranty Repair will be performed in a competent manner and in accordance with any mutually agreed to specifications.

2.8.4 The warranty period for Warranty Repair will be thirty (30) days from the completion of such Warranty Repair, provided that such warranty period for Warranty Repair shall not reduce the Warranty Period set forth in Section 1.29. If Warranty Repair is performed during the term of the Warranty Period, the Warranty Period shall be extended accordingly.

2.8.5 If any failure to meet the foregoing warranties appears within the warranty period for Warranty Repair, Avista shall promptly notify Contractor in writing of the defect. Contractor shall correct any defect by re-performing the defective Warranty Repair to the extent necessary.

2.8.6 If a defect in the Work or any part of such Work cannot be corrected by under the Warranty Repair, the Parties will negotiate an equitable adjustment in price with respect to such Work.

2.8.7 The conditions of any tests necessary to determine the success of a Warranty Repair will be mutually agreed upon and Contractor shall be notified of and may be represented at such tests.

2.9 Code of Conduct. Avista's "Contractor Code of Conduct" which may be viewed at <https://investor.avistacorp.com/corporate-governance/code-conduct>, shall apply to all Work and Warranty Repair provided by Contractor pursuant to this Agreement. **Contractor shall abide by and familiarize itself and its agents, employees, and subcontractors with Avista's Contractor Code of Conduct. Contractor shall comply, and ensure that its agents, employees and subcontractors of every tier comply, with the Contractor Code of Conduct.**

3. ACCEPTANCE AND COMPENSATION

3.1 Acceptance Process.

3.1.1 Contractor shall complete the Acceptance Record, certifying Contractor's completion of each milestone (or deliverable) set forth in the associated Work Authorization or Change Order. Contractor shall provide such Acceptance Record (and related documentation, if applicable) to Avista within ten (10) Business Days of completion of each milestone (or deliverable).

3.1.2 Within ten (10) Business Days of receipt of an Acceptance Record, Avista will provide written notice to Contractor of Avista's determination that the Work, or any portion of the Work, is either acceptable or non-compliant. Avista's Acceptance of any Work will not be unreasonably withheld. If the Work (or any portion of the Work) is non-compliant, Avista will provide Contractor with a written explanation of why such Work is non-compliant, and Contractor shall re-perform or correct the non-compliant Work subject to Section [3.1.3](#).

3.1.3 Correction of Non-Compliant Work.

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3.1.3.1 Contractor's obligation to satisfactorily correct non-compliant Work will not in any way limit or qualify any of Contractor's other obligations under this Agreement, and will remain in effect until the Work has been completed and received Avista's final written Acceptance; provided, however, that in the event the Work is found to be defective after Avista's final written Acceptance, Contractor's obligation to correct such defective Work will be governed by Section 2.8, Warranty.

3.1.3.2 Contractor shall correct, at its sole expense, any Work that is performed and is found to be non-compliant with the requirements of this Agreement. After correcting non-compliant Work, Contractor shall resubmit an Acceptance Record in accordance with Section [3.1.1](#). If Contractor fails to comply (or indicates its inability or unwillingness to comply) with Avista's direction to correct non-compliant Work then, upon ten (10) Business Days' advance written notice, Avista may: (i) correct (or cause to be corrected) the non-compliant Work or otherwise achieve compliance (by contract or otherwise) and charge to, or otherwise recover from Contractor (e.g., by offset against compensation payable to Contractor by Avista under this Agreement) the cost of Avista's corrective measures, or (ii) terminate the Agreement and Contractor shall refund Avista all fees paid for the non-compliant Work. Avista's right to make corrections and otherwise achieve compliance and recover from Contractor the cost of such corrections, is in addition to all other rights and remedies available to Avista under this Agreement or otherwise by law.

3.2 Compensation. The Contract Price shall be stated in a Work Authorization and shall be full compensation to Contractor for completed and accepted Work furnished under this Agreement, in accordance with any applicable payment schedule. The Contract Price shall include, without limitation, the following: all engineering, plant, labor, supervision, tools, materials, and equipment; the performance of all operations; insurance, and taxes normally paid by Contractor, unless otherwise provided in this Agreement; all other direct and indirect expenses and items of overhead; general and administrative expenses; and profit for the applicable item. Wherever in this Agreement it is provided that Contractor shall perform certain work "at its expense" or "without charge", or that certain work "will not be paid for separately", such quoted words mean that Contractor shall not be entitled to any additional compensation from Avista for such services.

3.3 Invoicing and Payment.

- 3.3.1** Contractor shall send invoices to Avista's Accounts Payable at accountspayable@avistacorp.com (or mailed to Avista Corporation; Accounts Payable, MSC 30; PO Box 3727; Spokane, WA 99220-3727). Please Note: A reference to organization code as stated in each Work Authorization and Contract Number (R- 44477) must be placed on all invoices submitted by Contractor. Contractor's failure to include the organization code on its invoices and submit such invoices as set forth in this paragraph will delay payment.
- 3.3.2** Avista will determine the percentage of completed and accepted Work applicable for payment under any invoices where incremental payments may be due. Payment for all undisputed invoices will be due net thirty (30) days after receipt, unless otherwise agreed by the Parties in writing. Avista may, in good faith, dispute and withhold payment of any invoice, fee, charge, tax or amount until such dispute is resolved. The Parties shall resolve any invoice disputed by Avista pursuant to Section 11 below; provided, however, in no event shall Avista be liable for any invoice, fee, charge, tax or amount that Contractor failed to properly invoice and submit to Avista within six (6) months after Contractor was otherwise permitted to invoice Avista for such fee, charge, tax or amount under this Agreement.
- 3.3.3** Contractor shall show as a separate line item on all invoices the state and local sales and use taxes (if any) that are Avista's responsibility; provided, however, that Contractor shall be responsible for transmitting such sales tax payments to the appropriate taxing authority.
- 3.3.4** Contractor's invoices must set forth: (i) a complete description of the Work or portion thereof that is the subject of the invoice, (ii) the number of labor-hours spent performing such Work, (iii) the dates on which such Work was performed, and (iv) any approved pre-approved and reasonable expenses including travel expenses, such as hotel, meals, airfare and car rental. Contractor shall seek to minimize all travel expenses associated with performing the Work including, but not limited to, using coach airfare, booking flights in advance whenever possible, staying at hotels identified by Avista as offering corporate rates and sharing rental cars whenever possible. In the event Contractor delays the Work or deliverables for any reason solely due to Contractor, Avista shall not be liable for the travel expenses incurred by the Contractor for the period of time that the Work is delayed. Further, invoices must be supported by such receipts, documents, compensation segregation, information, and other items as Avista may reasonably request; provided that receipts for meals will not be required and will be reimbursed on a per diem basis in accordance with the limits stated in the most current Federal Travel Regulations.
- 3.3.5** Contractor shall keep accurate and complete accounting records in support of all costs invoiced to Avista in accordance with generally recognized accounting principles and practices. Avista will have the right at any reasonable time or times to examine, audit, and/or reproduce the records, vouchers, and their source documents, which serve as the basis

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for any compensation under this Agreement. Such documents will be made available to Avista for examination, audit, and/or reproduction for three (3) years after completion of the Work. Contractor shall reimburse Avista for any overcharges identified during an Avista audit within thirty (30) days of Contractor's receipt of a report identifying such overcharges to Contractor.

4. TERM AND TERMINATION

- 4.1 Term.** This Agreement will become effective when executed by both Parties and will remain in effect for the duration of the Term, unless terminated at an earlier date in accordance with the terms of this Agreement. Avista may terminate this Agreement, at any time, as to all or any portion of the Work not then performed, whether or not Contractor is then in breach or default, by delivering to Contractor a Termination Notice indicating the Termination Date. Upon receipt of a Termination Notice, Contractor shall stop performance of the Work, immediately, or as otherwise directed by Avista in such Termination Notice.
- 4.2.2** If termination is not the result of Contractor's breach or default:
- 4.2.2.1** Avista will pay Contractor, in accordance with the pricing agreed to by the Parties, for the actual Work completed up to the Termination Date.
- 4.2.2.2** Contractor shall not be entitled to anticipated profits on Work not performed because of such termination and shall use commercially reasonable efforts to minimize the compensation payable under this Agreement in the event of such termination.
- 4.3 Termination for Cause.** In the event of a material breach by Contractor, Avista may terminate this Agreement immediately by sending written notice of termination to Contractor. A material breach includes any failure by Contractor to comply with any material term of this Agreement, including without limitation, a breach of any warranty, insolvency, bankruptcy, general assignment for the benefit of creditors, appointment of a receiver for Contractor's properties, Contractor becoming the subject of any proceeding commenced under any statute or law for the relief of debtors, Contractor abandoning the Work, or Contractor not performing the Work in accordance with this Agreement or failing to comply with any Applicable Law, including but not limited to any safety rule, regulation or standard. In the event of termination by Avista for cause, Contractor shall not be entitled to anticipated profits on Work not performed because of such termination and shall reimburse Avista for any prepaid and unused Work.
- 4.4 Termination Assistance.** In the event this Agreement is terminated prior to the completion of the Work, Contractor shall provide whatever termination assistance (including but not limited to, knowledge and documentation transfer) Avista may request to affect the orderly transfer of information and performance responsibilities with minimal disruption to Avista and/or any new contractor selected by Avista.

5. CONFIDENTIALITY OBLIGATIONS

- 5.1** Each Party acknowledges that it may come into contact with or possession of Confidential Information belonging to the other Party prior to or during the Term of this Agreement. Confidential Information disclosed by the Disclosing Party to any employee, agent, Subcontractor, or representative of the other Party is deemed to have been acquired by or disclosed to such Receiving Party.
- 5.2** Each Party shall instruct its employees and agents, and Subcontractors to protect and avoid disclosure of the Confidential Information of the other Party using the same care and discretion, but no less than a reasonable degree of care, which it would use with respect to its own Confidential Information. The Receiving Party may disclose Confidential Information to its employees, agents or consultants (and those of its affiliated companies) only on a need-to-know basis. Furthermore, neither Party shall use the Confidential Information of the other Party for any purpose other than the performance of the Work and Warranty Repair under this Agreement. The Receiving Party shall not divulge, disclose, or otherwise make available in any form to any person or entity, Confidential Information without the Disclosing Party's written consent and except as otherwise provided in this Section 5. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information to the extent such disclosure is required to comply with any Applicable Law or lawful request by a court or regulatory agency of competent jurisdiction.
- 5.3** In the event that disclosure of Confidential Information is required by Applicable Law or by lawful request of a court or regulatory agency of competent jurisdiction, the Receiving Party shall (a) provide the Disclosing Party with prompt written notice of the required disclosure so that the Disclosing Party may seek a protective order or other appropriate remedy and (b) reasonably assist the Disclosing Party in opposing the disclosure, seeking a protective order, or other limitations on disclosure. If, after providing such notice and assistances, the Receiving Party remains obligated to disclose any Confidential Information, the Receiving Party may only disclose that portion of the Confidential Information that is specifically required by Applicable Law or lawful request. Notwithstanding the foregoing, nothing contained in Section 5 shall apply to lawful requests to Avista from a regulatory agency of competent jurisdiction over Avista.

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- 5.4 Avista's Confidential Information also includes the terms of this Agreement and all information provided to Contractor by Avista or developed or gathered by Contractor in connection with the Work or Warranty Repair. Further, Contractor's evaluations, analyses, reports and other assessments of Avista's plans, facilities, and operations (whether presented orally or in writing or other tangible form) performed by or produced by Contractor pursuant to this Agreement will become the property of Avista and will be deemed Avista's Confidential Information. Until the Confidential Information and the information described in this paragraph has been released by Avista for public disclosure, such information shall be Confidential Information and must be held and protected by Contractor in accordance with this Section 5, provided, however, that Contractor may disclose the terms of this Agreement as may be necessary to its accountants, attorneys, tax advisors, insurance carriers, and/or bankers.
- 5.5 Upon Avista's request, or upon termination of this Agreement, Contractor shall, to the extent not prohibited by Applicable Law, securely destroy or return to Avista, all documents or other materials containing Avista's Confidential Information. Within two (2) weeks after (i) receipt of such request, or (ii) the termination or expiration of this Agreement, Contractor shall provide Avista with written and signed certification that all materials containing Avista's Confidential Information, including materials maintained by Contractor's Subcontractor(s), have either been destroyed, returned to Avista, or retained pursuant to Applicable Law (in which case the Applicable Law(s) that require retention shall be specifically identified with a short description of why each is applicable to Avista's Confidential Information). Notwithstanding the foregoing, nothing herein shall require Contractor to destroy Confidential Information retained in electronic archives or similar electronic storage systems that are not routinely accessed and that are subject to a reasonable retention schedule. Any Confidential Information that is retained by Contractor shall be subject to the terms of this Section 5 for a period of five (5) years after termination or expiration of this Agreement.
- 5.6 Contractor certifies that it will inform its employees, agents, and any Subcontractors performing Work or Warranty Repair under this Agreement of the applicable non-disclosure and intellectual property ownership provisions of this Agreement and contained herein, and that said parties are bound by confidentiality provisions at least as restrictive as those included in this Agreement. Contractor shall be responsible for any acts or omissions, including but not limited to unauthorized disclosure of Confidential Information, by its employees, agents, or Subcontractors.
- 5.7 The Parties acknowledge that the unauthorized disclosure of Confidential Information, as defined in this Agreement, may give rise to irreparable injury that may not be adequately compensated by monetary damages. Accordingly, in the event of a breach or a threatened breach of such non-disclosure and Confidential Information obligations, the non-breaching Party will be entitled to injunctive relief, in addition to any other remedies available at law or equity, subject to any limitations as otherwise provided for in this Agreement.

6. DATA AND SYSTEM PRIVACY AND SECURITY

- 6.1 Contractor shall comply with Avista's Data and System Privacy and Security requirements, which are attached and incorporated into this Agreement as "*Exhibit D*".

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 Any and all Confidential Information and Intellectual Property existing as of the date this Agreement is executed shall remain the property the Party owning such Confidential Information or Intellectual Property (collectively, "**Pre-Existing Intellectual Property**"). Contractor hereby grants to Avista a perpetual, irrevocable, non-exclusive, assignable, royalty-free license to use Contractor's Pre-Existing Intellectual Property rights to the extent that Contractor incorporates any Pre-Existing Intellectual Property into any portion of the Work or Warranty Repair furnished by Contractor under this Agreement.
- 7.2 Except as set forth in Section 7.1, all Work and Warranty Repair performed by Contractor, and all other deliverables developed or prepared for Avista by Contractor pursuant to this Agreement, are and shall be the property of Avista, and all title and interest in same will: (i) vest in Avista, and (ii) be deemed to be a work made for hire, made in the course of the Work or Warranty Repair rendered under this Agreement. To the extent that title to any such materials, and/or other deliverables may not vest in Avista by operation of law, or such materials, and/or other deliverables may not be considered works made for hire; Contractor hereby irrevocably assigns all rights, title, and interest in such materials, and/or other deliverables to Avista. All such materials, and/or other deliverables will belong exclusively to Avista, and Avista will have the right to obtain and hold in its own name, copyrights, patents, trademarks, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals of same.
- 7.3 Contractor hereby agrees, in a timely manner, to execute and deliver any and all documents and take any and all other actions that are reasonably requested by Avista so that Avista may obtain any patent protection, copyright registration or other protection that Avista may seek for its Intellectual Property rights under this Agreement and/or to enforce its Intellectual Property rights. Contractor represents and warrants that all of its employees and contractors who participate in providing any services to Avista have executed agreements that contain provisions obligating them to assign Intellectual Property rights and provide further assistance and execute documents necessary to assign any Intellectual Property rights

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Contractor is obligated to assign pursuant to this Agreement. Contractor grants Avista the right to directly enforce such obligations on its behalf. Unless Avista requests otherwise, upon completion of the Work and any Warranty Repair or termination of this Agreement, Contractor shall turn over to Avista all materials, and/or other deliverables developed pursuant to this Agreement.

- 7.4** The Documentation furnished by Contractor in connection with any Work or Warranty Repair provided under this Agreement will remain the property of Contractor or Contractor's vendors. Avista may make copies of the Documentation; provided that: (i) the Documentation is used only for backup or archival purposes, Avista employee training, and support of Avista's operational use of the services provided as part of the Work or Warranty Repair; (ii) the Documentation is not modified or altered in any way; and (iii) all copies of the Documentation bear the copyright owner's copyright notice.
- 7.5** Contractor represents and warrants that the Work and Warranty Repair do not infringe the Intellectual Property Rights of any third party. Contractor further represents and warrants that the performance of the Work and Warranty Repair will not violate the rights of any thirdparty.

8. SITE ACCESS AND BACKGROUND CHECKS

8.1 Site Access

- 8.1.1** Upon Avista's request, Contractor and/or its employees and subcontractors shall: (i) obtain an identification badge from Avista's Security Department prior to performing any Work at any Avista facility, (ii) display such Badge at all times while on-site, and (iii) return the Badge to Avista upon leaving Avista's facility.
- 8.1.2** Whether or not Contractor has obtained a Badge, Avista may require Contractor and/or its Personnel to be escorted, at all times, during the performance of the Work.
- 8.1.3** Contractor shall contact Avista's Representative to schedule available times for all visits to Avista's facilities.

8.2 Background Check

- 8.2.1** Unless specifically waived by Avista, in writing, any Personnel assigned to perform the Work who require Access, or are otherwise required by Avista (in its sole discretion) to obtain a background check before initiating the Work, must clear a background check compiled either by ACRANET or another third-party service provider reasonably acceptable to Avista and that is qualified to perform the background check.
- 8.2.2** Each Background Check must have been performed less than six (6) months prior to the first time any Personnel is granted Access.
- 8.2.3** If Contractor's Personnel has any severance of employment with the Contractor company (including suspension), such Personnel's Access will be terminated and a new Background Check will be required prior to such Personnel being granted Access.
- 8.2.4** Additionally, in the event Contractor's Agreement with Avista is terminated, each Personnel's Access will be terminated and all Personnel will require new Background Checks prior to being granted further Access.
- 8.2.5** Any Personnel for whom a Background Check is required under this Agreement will not be allowed Access, nor shall any such Personnel initiate performance of any Work, until Avista's Human Resource Department has received and approved a Background Verification Form for such Personnel.
- 8.2.6** Contractor must notify Avista within three (3) Business Days of learning that Personnel for whom a Background Check is required under this Agreement has been convicted of a criminal offense. Avista may, in its sole discretion, immediately revoke such Personnel's Access.
- 8.2.7** Upon request from Avista, Contractor shall provide backup documentation such as an invoice or other information requested by Avista directly from the background check provider that provides evidence that a Background Check was performed on Personnel. Such documentation must be redacted so that no personally identifiable information regarding the Personnel is visible and shall not include any actual results of the Background Check other than the required pass/fail information for verification of identity and criminal offenses. Contractor is responsible for obtaining any required authorizations in order to produce such documentation to Avista. In no event shall Avista be responsible for any breaches of confidentiality by Contractor.
- 8.2.8** Avista retains the right to require updated Background Checks for Personnel when it has reasonable grounds to do so (e.g., a workplace violence incident or newly discovered information) to comply with this Section; Applicable Laws; or upon a change of assignment.
- 8.2.9** Background Checks must be kept current and must be repeated at least every seven (7) years.

9. INSURANCE REQUIREMENTS

Contractor shall secure and, for the duration of this Agreement, continuously carry with insurance carriers licensed to conduct business in the state in which the Work is to be performed, the minimum level of insurance coverage identified below. Such

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carriers must have an A.M. Best rating of A-, Class VIII or better. To the extent any insurance coverage is not required due to the specific Work to be performed by Contractor under this Agreement, the requirement for Contractor to secure and maintain such coverage may be waived by Avista in a specific Work Authorization or Change Order.

- 9.1 Workers Compensation/Employer's Liability.** Insurance coverage with respect to all persons performing the Work, in accordance with the Applicable Laws of the state in which the Work is to be performed.
- 9.2 Commercial General Liability.** Insurance coverage, on an occurrence basis, with a minimum single limit of \$2,000,000 per claim. The coverage must include: (i) bodily injury and property damage liability, (ii) contractual liability specifically related to the indemnity provisions of this Agreement, and (iii) completed operations liability to extend for a minimum of three years past Acceptance or termination of the Work.
- 9.3 Business Automobile Liability.** Insurance coverage with a minimum single limit of \$2,000,000 per claim for bodily injury and property damage with respect to Contractor's vehicles whether owned, hired or non-owned, assigned to, or used in the performance of the Work.
- 9.4 Professional Liability (Errors and Omissions).** Insurance coverage, in a form acceptable to Avista, with a minimum single limit of \$2,000,000 per claim to cover claims arising out of Contractor's professional Work under this Agreement. This policy must be maintained for five (5) years after Avista's Acceptance of Contractor's Work.
- 9.4.1 Information Security/Cyber Liability.** Insurance (separately, or as part of a broad E&O policy) in an amount not less than US \$5,000,000 million per claim covering Contractor, its employees, subcontractors, and agents for claims and losses resulting from acts, errors or omissions committed by Contractor, including but not limited to claims, demands, or any other payments Avista may be legally or contractually obligated to pay for such breaches to and failures in electronic and physical security, civil liability, regulatory investigations and notification costs resulting from a breach of confidentiality, invasion of or breach of privacy, or breach of security in any capacity of any data, including Avista's or Avista's customers or employees.
- 9.5 Other Insurance Policy and Endorsement Requirements.**
- 9.5.1** The insurance coverages set forth above may be met by a combination of the dollar limit of the specified insurance type and an excess or umbrella insurance policy, provided that the excess or umbrella policy includes coverage for the specified insurance types to achieve the appropriate minimum coverages.
- 9.5.2** With the exception of Workers Compensation/Employer's Liability insurance coverage, the insurance policies set forth above must include (i) provisions or endorsements naming Avista, including its directors, officers, and employees, as additional insureds, and (ii) a provision that states that such insurance is primary insurance with respect to Avista's interests and that any other insurance maintained by Avista is excess and not contributory with the required insurance. Contractor shall notify Avista within 30 days of any cancellation or change in limits of liability of any required insurance coverage.
- 9.5.3** Unless specifically waived by Avista, in writing, a certificate of insurance and its respective endorsement(s) certifying the issuance of the insurance coverage and endorsements required above must be provided to Avista prior to the start of Work pursuant to this Agreement. Contractor shall email all insurance questions and insurance certificates to: InsuranceCerts@avistacorp.com. The acceptance of the certificate of insurance by Avista is not intended to and will not reduce, limit, affect, or modify the primary obligations and liabilities of Contractor under the provisions of this Agreement. Noncompliance with the insurance requirements of this Agreement may, at Avista's option, be deemed a material breach of this Agreement.
- 9.5.4** Contractor shall ensure that any policy of insurance that Contractor or any subcontractor carries as insurance against property damage or against liability for property damage or bodily injury (including death) shall include a provision providing a waiver of the insurer's right to subrogation against Avista as the additional insured. To the extent permitted by the policies of insurance, Contractor hereby waives all rights of subrogation against Avista as the additional insured.
- 9.6** Contractor shall require all subcontractors performing Work under this Agreement to secure and, for the duration of this Agreement, continuously carry with insurance carriers licensed to conduct business in the state in which the Work is to be performed, insurance policies in the levels set forth above. Nothing in this subsection shall relieve Contractor of its obligations under this Agreement and Contractor's responsibility for all subcontractors performing Work under this Agreement.

10. INDEMNITY

- 10.1 Indemnity by Contractor – General.** Contractor shall indemnify and, upon request, defend Avista, and its directors, officers, employees, and agents, from and against all third party claims, demands, suits, losses, expenses (including court costs and reasonable attorneys' fees), and damages for bodily injury, physical property damage (individually or collectively, "Loss"), brought against or incurred by Avista resulting from, arising out of, or in any way connected with Contractor's, or Contractor's employees, agents, suppliers or Subcontractors, negligence, intentional actions, and performance or

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nonperformance of Contractor's obligations under this Agreement. In the event that any such Loss is caused by the concurrent negligence of both Avista and Contractor, including their respective employees, agents, and subcontractors, the Loss will be borne by Contractor and Avista in the proportion that their respective negligence bears to the total negligence causing such Loss.

- 10.2 Indemnity by Avista – General.** Avista shall indemnify and, upon request, defend Contractor, and its directors, officers, employees, and agents, from and against all third party claims, demands, suits, losses, expenses (including court costs and reasonable attorneys' fees), and damages for bodily injury or physical property damage (individually or collectively, "Loss"), brought against or incurred by Contractor resulting from, arising out of, or in any way connected with Avista's, or Avista's employees' gross negligence, intentional actions, and performance or nonperformance of Avista's obligations under this Agreement. In the event that any such Loss is caused by the concurrent negligence of both Avista and Contractor, including their respective employees, agents, and subcontractors, the Loss will be borne by Contractor and Avista in the proportion that their respective negligence bears to the total negligence causing such Loss.
- 10.3 Indemnity – Claims by Government Authorities.** Contractor shall indemnify and, upon request, defend Avista, its officers, directors, employees, and agents, from any liability, damage, suit, penalties, demand, and expense (including without limitation, reasonable attorney's fees and court costs) for claims by governmental authorities or others (including Contractor's employees, subcontractors and subcontractor employees) of any actual or asserted failure of Contractor to comply with any Applicable Law or order of any governmental or quasi-governmental body including without limitation, actual or asserted failure of Contractor to comply with employee safety and health regulations, environmental regulations or employment laws in connection with the Work or Warranty Repair performed pursuant to this Agreement.
- 10.4 Indemnity – Infringement or Wrongful Use.** Contractor shall indemnify and, upon request, defend Avista, its officers, directors, employees, and agents, from all claims, suits, losses, liabilities, damages, expenses (including court costs and reasonable attorneys' fees) and royalties, based upon infringement (or alleged infringement) of any Intellectual Property rights of any third-party or upon the Contractor's or its subcontractor's wrongful access, use, or disclosure (or alleged wrongful access, use, or disclosure), even if unintentional, of any Confidential Information, confidential or proprietary concept, method, process, product, writing, and information or other item arising out of or in connection with this Agreement, performance of the Work or Warranty Repair, or the use of any of the Work or Warranty Repair. Furthermore, if any of the Work or Warranty Repair or any use of the Work or Warranty Repair in the reasonable determination of Avista constitutes an infringement of any Intellectual Property rights of any third-party, Contractor shall, at its expense, either: (i) procure for Avista the right to use the infringing item, (ii) replace the infringing item with a substantially equal but non-infringing item, or (iii) modify the infringing item so that it becomes non-infringing and, in the case of wrongful access, use, or disclosure of information, pay for all reasonable expenses associated with making any notifications and providing identity theft or other remediation services available to impacted individuals for a period of at least two (2) years or such longer period required by Applicable Law.
- 10.5 Waiver of Immunity.** To the extent permitted by law, Contractor and Avista waive any immunity, defense or other protection that may be afforded by workers' compensation, industrial insurance or similar laws in each state where Work or Warranty Repair are performed pursuant to this Agreement (including but not limited to, the Washington Industrial Insurance Act, Title 51 RCW) to the extent Contractor and Avista are required under the indemnity provisions of this Agreement to indemnify and defend one another with respect to any claim or action brought against either Party. *The Parties have specifically negotiated this Section and the Parties make the foregoing waiver with the full knowledge of the consequences.*
- 10.6 Obligation to Defend.** If Avista requests that Contractor defend Avista, its directors, officers, employees, and/or agents pursuant to this Section, Contractor shall be entitled to control the defense and resolution of such claim; provided that Avista shall be entitled to be represented in the matter by counsel of its choosing, at Avista's sole expense. If Contractor requests that Avista defend Contractor, its directors, officers, employees, and/or agents pursuant to this Section, Avista shall be entitled to control the defense and resolution of such claim; provided that Contractor shall be entitled to be represented in the matter by counsel of its choosing, at Contractor's sole expense.
- 10.7 Claims or Actions Subject to Indemnification.** Promptly after the receipt by a Party of notice or otherwise becoming aware of (a) any claim or (b) the commencement of any action or proceeding which may give rise to a claim for indemnification pursuant to this Section, such Party (the "Indemnified Party") will, if a claim with respect thereto is to be made against the Party obligated to provide indemnification pursuant to this Section (the "Indemnifying Party"), give such Indemnifying Party written notice of such claim or the commencement of such action or proceeding and shall permit the Indemnifying Party to assume, at its own expense, the defense of any such claim, action or proceeding, or any litigation resulting from such claim, and, upon such assumption, shall cooperate fully with the Indemnifying Party in the conduct of such defense. The Indemnified Party shall permit the Indemnifying Party, at its discretion, to settle any such claim, action or proceeding, provided, however, that such settlement does not include an admission of liability or wrongdoing or otherwise adversely affect the Indemnified Party's rights hereunder or impose any obligations on the Indemnified Party in addition to those set forth herein in order for it to exercise such rights. No such claim, action or proceeding shall be settled

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without the prior written consent of the Indemnifying Party and the Indemnified Party shall not be responsible for any Losses incurred other than as provided herein. The Indemnified Party and its directors, officers, employees and agents shall cooperate fully with the Indemnifying Party and its legal representatives in the investigation and defense of any claim, action or proceeding covered by this indemnification. The Indemnified Party shall have the right, but not the obligation, to be represented by counsel of its own selection and expense.

- 10.8 Defense and Settlement of Claims.** If the Indemnifying Party does not assume the defense of any such claim or litigation resulting therefrom, the Indemnified Party may defend against such claim or litigation in such manner as it may deem appropriate and the Indemnified Party may settle such claim or litigation on such terms as it may deem appropriate unless such settlement would have an adverse effect on the Indemnifying Party's interests, in which case Indemnified Party may not settle such claim or litigation without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld, delayed or conditioned, and the Indemnifying Party shall promptly reimburse the Indemnified Party for the amount of all Losses incurred by the Indemnified Party in connection with the defense against or settlement of such claim or litigation. If no settlement of such claim or litigation is made, the Indemnifying Party shall promptly reimburse the Indemnified Party for the amount of any Losses incurred by the Indemnified Party in the defense against such claim or litigation.

11. DISPUTE RESOLUTION

- 11.1 Negotiation.** If any dispute arises between the Parties regarding: (i) any issue of interpretation of this Agreement, (ii) any issue regarding the Work or any Warranty Repair, or (iii) any claim for payments due, the Parties shall first negotiate informally, in good faith, to resolve such dispute or claim. Such informal negotiations will be conducted between each Party's Representatives.
- 11.2 Escalation.** If the Representatives are unable to resolve the dispute after five (5) days of negotiations then, upon the written request of either Party, each of the Parties shall designate an officer or other senior official with authority to resolve the dispute on behalf of the Party he or she represents (each an "Officer"): (i) to meet at a mutually agreed to time and place to evaluate the position or contention of each Party, and (ii) endeavor to negotiate a resolution of the dispute. If the dispute is not resolved in the meeting between the Parties' Officers, the Parties may, subject to Sections [11.3](#) and Section [11.4](#), seek to have such disputes resolved in a court of competent jurisdiction.
- 11.3 Governing Law and Venue.** Any action at law or in equity to enforce the terms of this Agreement will be brought in Spokane County, Washington. This Agreement will be construed and interpreted in accordance with the laws of the State of Washington, excluding any choice of law rules that may direct the application of laws of a jurisdiction other than Washington.
- 11.4 Jury Waiver.** TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE, OR TO REQUEST THE CONSOLIDATION OF, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THIS JURY TRIAL WAIVER SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.
- 11.5 Attorney's Fees.** If any legal action or proceeding is brought by either Party against the other in connection with this Agreement, the prevailing Party will be entitled to recover from the other Party, reasonable attorney fees fixed by the court, together with all costs incurred by the prevailing Party in connection with such action or proceeding.
- 11.6 Limitation of Liability.** EXCEPT FOR EVENTS INVOLVING GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD, OR A PARTIES INDEMNITY OBLIGATIONS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF OR, DIRECTLY OR INDIRECTLY, TO THIS AGREEMENT, WHETHER OR NOT EITHER PARTY HAS PREVIOUSLY BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; PROVIDED, HOWEVER, THAT THIS PROVISION SHALL NOT APPLY TO DAMAGES ARISING FROM CONTRACTOR'S OBLIGATIONS UNDER SECTIONS 5 AND SECTION 6.
- 11.7 Cumulative Rights and Remedies.** All rights and remedies of either Party under this Agreement, at law and in equity, are cumulative and not mutually exclusive; the exercise of one right or remedy will not be deemed a waiver of any other right or remedy.

12. PARTY REPRESENTATIVES AND NOTICES

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- 12.1** Except as otherwise provided for in this Agreement (or as otherwise specified in the applicable Work Authorization or Change Order), Avista's Representative, will be the point of contact for Avista in all matters requiring Avista's approval, acceptance, authorization, and/or notice in connection with the Contractor's performance under this Agreement.
- 12.2** Except as otherwise provided for in this Agreement (or as otherwise specified in the applicable Work Authorization or Change Order), Contractor's Representative, will be the point of contact for Contractor in all matters in connection with Contractor's performance under this Agreement.
- 12.3** All notices, demands, requests, and other communications under this Agreement must be in writing and shall be effective upon delivery by hand or facsimile, one (1) Business Day following the day when deposited with a reputable, established overnight courier service for delivery to the intended addressee, or five (5) Business Days after deposited in the United States mail, postage prepaid, certified or registered, and addressed to Avista or to Contractor at the corresponding address set forth below. Alternatively, the parties may utilize email as the method of delivery of any such notice to be provided hereunder. Any notices sent by email shall be delivered to the email addresses set forth below, or such other email address as designated by a party during the Term. Notices sent by email shall be deemed effective upon confirmation of delivery by a "read receipt" or other such notice generated by the applicable email system, but in any event, by reply of the recipient of such notice.
- 12.4 Notices to Avista:** Unless otherwise noted in a written Work Authorization notices shall be sent to Avista as follows:
- 12.4.1** Insurance: E-mail all insurance questions and insurance certificates to: InsuranceCerts@avistacorp.com
- 12.4.2** Project/Technical Communications (including any change of Contractor's Representative): As set forth in an applicable Work Authorization or Change Order.
- 12.4.3** Legal, Contractual, and Other Notices:
- Avista Corporation
Attn: Supply Chain Management
PO Box 3727, MSC-33
Spokane, WA 99220-3727
Ref.: Avista Contract R-44477
- With copy to:
- Avista Corporation
Attn: General Counsel
PO Box 3727, MSC-10
Spokane, WA 99220-3727
Ref.: Avista Contract R- 44477
- 12.5 Notices to Contractor shall be sent as follows:**
- Open Energy Solutions Inc.
5201 Great America Parkway
Suite 320
Santa Clara, CA 95054
Attention: Wade Malcolm (wade@openenergysolutionsinc.com) / (408) 850-7219
- 12.6** Either Party may change its address, designated Representative, or other point-of-contact or delegate by providing written notice to the other Party as set forth above.

13. MISCELLANEOUS PROVISIONS

- 13.1 Assignment by Contractor.** Contractor shall not assign this Agreement, or any right or interest in this Agreement, without the prior written consent of Avista. Assignment without Avista's prior written consent will be voidable at Avista's sole option. No such assignment, with or without Avista's prior written consent, will relieve Contractor from its obligations under this Agreement.
- 13.2 Assignment by Avista.** Avista shall not assign this Agreement, or any right or interest in this Agreement, without the prior written consent of Contractor, which consent will not be unreasonably withheld or delayed; provided, however, that Avista may assign this Agreement, without Contractor's consent, to an affiliate or subsidiary, or to a successor that acquires all or substantially all of Avista's property and assets.
- 13.3 Assignment Generally.** If this Agreement is assigned by either Party, this Agreement will be fully binding upon, inure to the benefit of, and be enforceable by the successors, assigns, and legal representatives of the respective Parties.
- 13.4 Non-Solicitation.** Unless otherwise specified to the contrary in this Agreement, neither Party, as a "Hiring Party", may directly solicit to hire any employee of the other Party (the "Employer") without the express written consent of such

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Employer; provided, however, that the Hiring Party may employ an individual who applies for employment, independently, in response to general advertising or other general recruitment campaigns.

- 13.5 Outstanding Legal Claims.** Each Party certifies that there are no outstanding legal claims, suits, or proceedings that would in any way conflict with such Party's performance of its obligations set forth in this Agreement. If any legal claim, suit, or proceeding, that is reasonably likely to affect such Parties ability to perform its obligations under this Agreement, is instituted against a Party, such Party shall promptly notify the other of the same.
- 13.6 Publicity/Advertising.** Contractor shall not issue any public statements, announcements, advertisements, or publications relating to this Agreement or its subject matter without the express, prior written consent of Avista. Contractor shall not display or use, in advertising or otherwise, any of Avista's trade names, logos, trademarks, service marks, or other indicia of origin without Avista's express, prior written consent.
- 13.7 Codes and Standards.** References to standards, specifications, manuals or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such references are specific or by implication, mean the latest version in effect of such standard, specification, manual, code or laws or regulations.
- 13.8 Severability and Waiver of Provisions.** The invalidity or unenforceability of any provision of this Agreement will not affect any other provisions; this Agreement will be construed in all respects as if such invalid or unenforceable provisions were omitted. The failure of a Party to insist upon or enforce strict performance by the other Party of any of the provisions of this Agreement, or to exercise any rights under this Agreement, will not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provisions or rights in that or any other instance; rather, the same will be and remain in full force and effect.
- 13.9 Incorporation of Other Documents; Order of Precedence.** Any executed Amendments, Work Authorizations and Change Orders pertaining to the subject matter of this Agreement, are incorporated into this Agreement as if set forth in full herein. If there is a conflict between the terms of this Agreement and any Work Authorizations or Change Orders (including all applicable exhibits and attachments), the order of precedence shall be as follows: (1) Data and System Privacy and Security Exhibit; (2) Amendments; (3) Change Orders; (4) Work Authorizations; (5) Statements of Work; (6) this Agreement.
- 13.10 Entire Agreement; No Third-Party Beneficiaries.** This Agreement is the entire agreement between the Parties and supersedes all prior agreements and understandings between the Parties concerning its subject matter whether or not written. Nothing in this Agreement is intended to confer any right or benefit on a person or entity not a party to this Agreement.
- 13.11 Time is of the Essence.** Whenever this Agreement sets forth a time for an act to be performed by Contractor, such time will be deemed "of the essence" and Contractor's failure to perform within the time allotted will be sufficient grounds for Avista to invoke any appropriate remedy including, without limitation, termination of this Agreement.
- 13.12 Survival.** Any provisions of this Agreement that, by their sense and context, are intended to survive performance by either or both Parties pursuant to this Agreement, will survive the completion of performance of the Work, and termination or expiration of this Agreement. All representations, indemnifications, warranties and guarantees, and confidentiality and security commitments made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in this Agreement, will survive final payment, completion and Acceptance of the Work, and termination or expiration of this Agreement.
- 13.13 Headings.** Section headings are for convenience, only, and will not be given effect in interpretation of this Agreement.
- 13.14 Force Majeure.** Neither Party shall be liable to the other for any delay or failure in performance hereunder if and to the extent such delay or failure is a result of Force Majeure.
1. Settlement of strikes, lockouts, or other industrial disturbances shall be entirely within the discretion of the Party experiencing such situations, and nothing herein shall require such Party to settle industrial disputes by yielding to demands made on it when it considers such action inadvisable.
 2. No Force Majeure shall relieve, suspend, or otherwise excuse Contractor from performing any obligation to indemnify, reimburse, or hold harmless Avista under this Agreement.
 3. A Force Majeure event shall take effect at the moment such an event or circumstance occurs. Upon the occurrence of a Force Majeure event that prevents, interferes with or delays the performance by either Party, in whole or in part, of any of its obligations hereunder, the Party affected shall promptly give notice thereof to the other Party of the occurrence of the Force Majeure event describing such event and stating the obligations that will be affected by the Force Majeure event (either in the original or in supplemental notices) and stating, as applicable: The estimated period during which performance may be prevented, interfered with or delayed, including, to the extent known or ascertainable, the estimated extent of such reduction in performance; the particulars of the program to be implemented to resume normal performance hereunder; and the anticipated portion of the Work that will be impacted or that will not be received, as the case may be, by reason of Force Majeure.

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5. Such notices shall thereafter be updated at least monthly during the period of such claimed Force Majeure specifying the actions being taken to remedy the circumstances causing such Force Majeure.
 6. In order to resume normal performance of this Agreement within the shortest time practicable, the Party affected by the Force Majeure shall take all measures to this end which are commercially reasonable under the circumstances, taking into account the consequences resulting from such event of Force Majeure. Prior to resumption of normal performance, the Parties shall continue to perform their obligations under this Agreement to the extent not excused by such event of Force Majeure.
 7. Unless specifically agreed to in writing by the Parties, the Term shall not be extended as a result of or by the duration of an event of Force Majeure.
 8. Avista may terminate this Agreement, without penalty with respect to a period that is either projected to extend for three (3) months or has in fact extended three (3) months.
- 13.15 Jointly Negotiated and Prepared.** This Agreement was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this Agreement and none of the provisions of this Agreement shall be construed against one Party on the ground that such Party is the author of this Agreement or any part of this Agreement.
- 13.16 Amendments.** No change, amendment or modification of any provision of this Agreement shall be valid unless set forth in writing signed by both Parties.
- 13.17 Conflict Minerals Compliance.** If applicable, Contractor (and any subcontractor providing products that may contain the conflict minerals defined in this Section) shall conduct commercially reasonable “due diligence”, as required by §1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Conflict Minerals Rule”), to ensure that any “Conflict Minerals” (defined as gold, tin, tantalum, and tungsten, as well as their derivatives, cassiterite, columbite-tantalite and wolframite) used in products supplied to Avista or incorporated into the Work are not sourced from the Democratic Republic of Congo or other adjoining countries as may be identified in the Conflict Minerals Rule.
- 13.18 Waiver of Sovereign Immunity.** To the extent that Contractor has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution or otherwise) with respect to Contractor or Contractor’s property, Contractor agrees that, should any proceedings be brought against it or its assets in any jurisdiction in relation to this Agreement, Contractor is not entitled to sovereign immunity in respect of its obligations under this Agreement, and no sovereign immunity from such proceedings (including, without limitation, immunity from service of process from suit, from the jurisdiction of any court, from an order or injunction of such court or the enforcement of same against its assets) shall be claimed by or on behalf of Contractor or with respect to its assets. With respect to any proceedings brought against Contractors or its assets in relation to this Agreement, Contractor explicitly waives to the fullest extent permitted by law, any right of sovereign immunity that Contractor or any of its assets now has or may acquire in the future in any jurisdiction. Contractor further explicitly waives, to the extent permitted by applicable law, the defense of sovereign immunity with respect to the enforcement of any judgment or award against it in proceedings brought against Contractors or its assets in relation to this Agreement or any transaction contemplated hereby (including, without limitation, pre-judgment attachment, post-judgment attachment, the making, enforcement or execution against or in respect of any assets whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).
- 13.19 Further Assurances.** Each Party shall do all things necessary or advisable, including but not limited to, the preparation, execution, delivery, and recording of any instruments or agreements, in order to confirm and assure the intent and purposes of this Agreement.
- 13.20 Authority.** The signatories represent that they are authorized to enter into this Agreement on behalf of the Party for which they sign on the date(s) set forth below.
- 13.21 Counterparts.** This Agreement, Work Authorizations, and/or Change Orders may be signed in any number of counterparts, each of which when signed will be an original, but all such counterparts will constitute one and the same instrument. The term "counterparts" includes full copies of such signed instruments delivered electronically.
- 13.22 Commission Approval Contingency.** This Agreement is subject to the approval of the Washington Utilities and Transportation Commission (the “Commission”). This Agreement will not be effective until such time as the Commission chooses to either approve the Agreement or otherwise chooses not to act. Should the Commission disapprove, this Agreement will be null and void.

Signature Page Follows

AVISTA PROFESSIONAL SERVICES AGREEMENT R- 44477

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below:

“AVISTA”

“CONTRACTOR”

Avista Corporation

Open Energy Solutions Inc.

Jason Thackston

Wade Malcolm

EC91BEE0033645C...

33594633007E44D...

(Signature)

(Signature)

JASON Thackston

Wade Malcolm

(Printed Name)

(Printed Name)

Sr VP Ch Strat & Clean Enrgy Ofcr

CEO

Jan-17-2023 | 5:56 PM PST

Jan-17-2023 | 6:10 PM PST

(Date Signed)

(Date Signed)

Attached:

Exhibit A – Acceptance Record

Exhibit B – Background Verification Form

Exhibit C – Sample Work Authorization

Exhibit D – Data and System Privacy and Security

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Exhibit A

Acceptance Record

Task/Deliverable/Milestone

Avista Contract No.	R-
Contractor:	
Project:	
Work Authorization No.	
Task/Deliverable/Milestone	
Submitted By:	
Submission Date:	
<u>Task/Deliverable/Milestone Description and Completion Statement:</u>	
Acceptor Signature:	
Acceptor Name :	
<input type="checkbox"/> Accepted <input type="checkbox"/> Not Accepted	Comments:

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Exhibit B

BACKGROUND CHECK VERIFICATION FORM

(This document must be provided by an authorized representative of Contractor)

Individual's Name: _____

Individual's Mother Maiden Name:* _____

Contractor (company) Name: _____

Background Check Company Name: _____

Background Check Company Address/Phone: _____

Report Start Date: _____

Report Completion Date: _____

Pass or Fail (according to criteria listed below): _____

Verification

The background check referenced above was performed and is in accordance with the criteria required by Avista Corporation as set forth in the Agreement with the Contractor's company including:

- Confirmation of the identity of the Individual.
- Completion of a seven (7) year criminal history record check that includes the following information: current residence, regardless of duration and other locations where, during the seven years immediately prior to the date of Report the Individual has resided for six consecutive months or more.
- Indication of whether the Individual has been convicted of a felony in the seven (7) years prior to the Report Completion Date set forth above (Pass/Fail).

Signature of Contractor's Authorized Representative: _____

Date: _____

Title: _____

Telephone _____

Send completed form to Avista's HR Compliance Administrator at HRCompliance@avistacorp.com

*Used as a unique identifier since Avista will not be collecting personal identification numbers such as Social Security numbers or birth dates for Individuals working for Contractor's company.

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Exhibit C

Avista Contract No. R-
Work Authorization No.

This Work Authorization is governed by the Professional Services Agreement identified by the Avista Contract Number (the "Agreement") above and all Services must be performed in accordance with the terms of the Agreement and this Work Authorization.

Contractor:**Effective Date:****Expiration Date:****Project Location/Description:****Organization Code ("Org Code"):****Avista's Representative/Department:****Contractor's Representative:****Description of Requested Services:****Schedule and Deliverables:****Compensation:**

1. Avista agrees to pay Contractor for the Services provided under this Work Authorization on a fixed fee basis in the amount of _____ in accordance with the Payment Schedule set forth in this Work Authorization.

OR

1. Avista agrees to pay Contractor for the Services applicable under this Work Authorization on a time and materials basis at the rate of \$ _____ per hour with a total not to exceed amount of \$ _____. In the event Contractor is compensated on a time and materials basis, Avista shall only be responsible for paying Contractor for the actual number of hours worked by Contractor to complete the Services up to the total not to exceed amount as set forth herein.
2. Payment for applicable taxes will be made in accordance with the terms of Section 3 of the Agreement.
3. Expenses shall be incurred and paid in accordance with the terms of Section 3 of the Agreement.
4. Avista agrees to compensate Contractor for the Services provided upon completion and written acceptance of the deliverables provided in this SOW in accordance with the Acceptance Process outlined in the Agreement.
5. **Invoicing:** Contractor shall submit invoices to Accounts Payable at accountspayable@avistacorp.com (or mail to Avista Corporation; Accounts Payable, MSC 30; PO Box 3727; Spokane, WA 99220-3727). **Please Note:** References to *Org Code* and *Contract No. R- (WA #)* must be placed on all invoices; failure to include these references and submitting invoices as set forth in this paragraph *will delay payment*.

Attachment(s): Attachment A – Statement of Work

Other:

Prior to assigning resources to provide the Services applicable under this Work Authorization, Contractor shall ensure that all resources:

1. Meet the Background Check Requirements set forth in Section 8 of the Agreement; and
2. Have been informed of and shall abide by the confidentiality requirements applicable under the Agreement.

Except as set forth in this Work Authorization, all other terms of the Agreement remain in full force and effect.

This Work Authorization has been authorized and signed by each Party's authorized representative on the date(s) set forth below.

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Avista Corporation:

:

BY:

Signature

BY:

Signature

Printed Name

PrintedName

Title

Title

Date Signed

DateSigned

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Exhibit D
Data and System Privacy and Security Exhibit

Reference is made to the [INSERT AGREEMENT TYPE/NAME] [INSERT DATE OF AGREEMENT] (the "Agreement"), between Avista, and Open Energy Solutions ("Contractor"), the terms and conditions of which are incorporated by this reference. Unless otherwise specified, all capitalized terms used in this Data and System Privacy and Security Exhibit (the "Security Exhibit") have the same meaning as used in the Agreement.

1. Definitions. The following definitions apply only to the terms and conditions in this Security Exhibit:

- 1. Avista Data** means any and all information data, materials, works, expressions or other content, including any that are (a) uploaded, submitted, posted, transferred, transmitted or otherwise provided or made available by or on behalf of Avista or any authorized user for Processing, or (b) collected, downloaded or otherwise received by Contractor directly or indirectly from Avista or any authorized user pursuant to the Agreement or any Work Authorization or at the written request or instruction of Avista or such authorized user. All output, copies, reproductions, improvements, modifications, adaptations, translations and other derivative works of, based on, derived from or otherwise using any Avista Data are themselves also Avista Data. For the avoidance of doubt, Avista Data includes all Avista's Confidential Information, user data and Personal Information.
- 2. Avista Systems** means any computer, computer network, computer application, imaging device, storage device, mobile computing device, product or software owned, licensed or leased by Avista, or operated by a third party on behalf of Avista, that: (i) connects to or otherwise interacts with Contractor Systems; or (ii) is enabled or intended to access or interact with Avista Data that could be Processed in connection with the Agreement.
- 3. Contractor Systems** means any computer, computer network, computer application, imaging device, storage device, mobile computing device, product or software owned, leased or controlled by Contractor, or operated by a third party on behalf of Contractor, that: (i) connects to or otherwise interacts with Avista Systems; or (ii) is enabled or intended to access or interact with Avista Data that could be Processed in connection with the Agreement.
- 4. Disclosed** means any circumstance when the security, integrity, or confidentiality of any Avista Data has been compromised, including but not limited to incidents where Avista Data has been damaged, lost, corrupted, destroyed, or accessed, acquired, modified, used, or disclosed by any unauthorized person, by any person in an unauthorized manner, or for any unauthorized purpose.
- 5. Industry Standards** means industry standards and best practices of Contractor's industry relating to the privacy, confidentiality or security of products, systems, data and Personal Information, including standards and best practices employed by Contractor's industry peers (e.g., ISO-27001, SOC2, NIST Special Publication 800-53 (Rev. 4) and 800-61 (Rev. 2) (2012), or FedRAMP, all as may be amended.)
- 6. Information Security Program** means Contractor's technological, physical, administrative and procedural safeguards, including without limitation, policies (e.g., physical security, cybersecurity, and privacy policies), procedures, guidelines, practices, standards and controls that (i) ensure the confidentiality, security, integrity and availability of Personal Information and other Avista Data; (ii) protect against any anticipated threats or hazards to the security and integrity of Avista Data, Avista's Systems and Contractor Systems; and (iii) protect against, investigate and respond to any Security Incident. Contractor will provide to Avista the Contractor's Information Security Program documentation which shall be consistent with industry standard practices (e.g., NIST Special Publication 800-53 (Rev. 4) as may be amended). Contractor will implement, maintain, and comply with its established Information Security Program. Any changes to Contractor's Information Security Program as applied to products and services provided to Avista under the Agreement or Avista Data shall not decrease the protections afforded to Avista or Avista Data and any material changes shall be communicated to Avista in writing by Contractor prior to implementation.
- 7. Personal Information** means any Avista Data that identifies, relates to, describes, or is capable of being associated with, any particular individual, household, or Avista account, including, but not limited to, his or her name, signature, social security number, physical characteristics or description, address, telephone number, passport or other government identification number, driver's license or state identification card number, insurance policy number, medical information or health insurance information, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, unique identifiers, or information regarding the individual's electric energy usage or electric service, including, without limitation, service account number, electricity demand (in kilowatts), monthly billed revenue, credit history, rate Exhibit(s), or number or type of meters at a premise.
- 8. Privacy and Security Laws** means U.S. federal, state and local, as well as foreign, laws and government-issued rules, regulations, guidelines, directives and requirements currently in effect and as they become effective that relate in any way to the privacy, confidentiality or security of Avista Data or Personal Information and apply to Avista, Contractor

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directly, or apply indirectly because of Contractor's Processing of Personal Information and other Avista Data on Avista's behalf.

9. **Process or Processing or Processed** means any operation or set of operations performed upon Personal Information or other Avista Data, such as accessing, obtaining, storing, hosting, transmitting, using, maintaining, disclosing or disposing of the information.
10. **Security Incident** means any circumstance when (i) Contractor knows or reasonably believes that loss or theft of Personal Information or other Avista Data Processed by the Contractor or Contractor's subcontractor; or (ii) Contractor knows or reasonably believes that (A) an act, omission, unauthorized use, disclosure, acquisition of or access to, or other unauthorized Processing of Personal Information or other Avista Data that has compromised or reasonably may compromise the confidentiality, integrity, or availability of Personal Information or Avista Data; or (B) an act, omission, unauthorized access to or use of, inability to access, or malicious infection of, Avista Systems or Contractor Systems that has compromised or reasonably may compromise the confidentiality, integrity, or availability of the products and services provided to Avista by Contractor or the physical, technical, administrative, or organizational safeguards protecting Contractor Systems Processing Avista Data; or (iii) Contractor receives any complaint, notice, or communication which relates directly or indirectly to a Security Incident involving (A) Contractor's handling of Avista Data or Contractor's compliance with the data safeguards in this Security Exhibit or the Privacy and Security Laws; in connection with Avista Data or (B) the security of the products and services provided to Avista by Contractor.

2. Contractor's Obligations

1. Authority to Process Avista Data

1. Contractor shall Process Avista Data only on behalf of and for the benefit of Avista to carry out its obligations pursuant to the Agreement.
2. As between Contractor and Avista, Avista is the owner of any and all Avista Data, and Contractor will have no ownership rights or interest therein.
3. Contractor shall not Process for marketing purposes, sell, disclose, aggregate, create derivatives, analyze, or anonymize Avista Data unless expressly authorized by an authorized representative of Avista and set forth in the Agreement or in a separate signed writing.

2. Disclosure of Avista Data; Access to Avista Data and Avista Systems

1. Contractor shall hold confidential any and all Avista Data, using such degree of care as is appropriate to avoid unauthorized access, use or disclosure, but in no event less than reasonable care.
2. Contractor shall limit access to Avista Data and Avista Systems to its personnel that have a need to know the Avista Data or access the Avista Systems as a condition to Contractor's performance of services under the Agreement.
3. Except with respect to disclosures required by this Security Exhibit or by law to government or other regulatory entities, prior to providing access to Avista Data to any subcontractor, vendor, or other third party, Contractor shall (i) take reasonable steps to verify that the third party is capable of maintaining the privacy, confidentiality and security of Avista Data; and (ii) contractually require the third party to maintain adequate safeguards for Avista Data. If Contractor is required to disclose Avista Data by an order or lawful process of a court or governmental body, Contractor will notify Avista upon receipt of the request and will reasonably cooperate with Avista in seeking reasonable protective arrangements before any Avista Data is produced or in opposing the disclosure, as determined by Avista in its sole but reasonable discretion.
4. Contractor shall develop, implement, and maintain policies and procedures to address the security of Contractor's remote and onsite access to Avista Data, Avista Systems, and Avista property (an "Access Control Policy") that is consistent with the personnel management requirements of Industry Standards and also meets the following requirements:

2.2.4.1 **Avista Authority Over Access:** In the course of furnishing products and services to Avista under the Agreement, Contractor shall not access, and shall not permit its employees, agents, contractors, and other personnel or entities within its control ("Contractor Personnel") to access Avista's property, Avista Systems or Avista Data without Avista's prior express written authorization. Such written authorization may subsequently be revoked by Avista at any time in its sole discretion. Further, any Contractor Personnel access shall be consistent with, and in no case exceed the scope of, any such approval granted by Avista. All Avista-authorized connectivity or attempted connectivity to Avista's Systems or networks

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shall be in conformity with Avista's security policies as may be amended from time to time with notice to the Contractor.

2.2.4.2 Contractor Review of Access: Contractor will review and verify Contractor Personnel's continued need for access and level of access to Avista Data and Avista Systems, and Avista property on a quarterly basis and will retain evidence of the reviews for two years from the date of each review.

2.2.4.3 Notification and Revocation: Contractor will immediately notify Avista within 24 hour(s) in writing (no later than close of business on the same day as the day of termination or change set forth below) when:

(i) any Contractor Personnel no longer requires such access in order to furnish the services or products provided by Contractor under the Agreement,

(ii) any Contractor Personnel is terminated or suspended or his or her employment is otherwise ended,

(iii) Contractor reasonably believes any Contractor Personnel poses a threat to the safe working environment at or to any Avista property, including to employees, customers, buildings, assets, Avista Systems, networks, trade secrets, confidential data, and/or Avista Data,

(iv) there are any material adverse changes to any Contractor Personnel's background history, including, without limitation, any information not previously known or reported in his or her background report or record,

(v) any Contractor Personnel loses his or her U.S. work authorization, or

(vi) Contractor's provision of products and services to Avista under the Agreement is either completed or terminated, so that Avista can discontinue electronic and/or physical access for such Contractor Personnel.

2.2.4.4 Contractor will take all steps reasonably necessary to immediately revoke such Contractor Personnel electronic and physical access to Avista Data, Avista Systems, and Avista property, including, but not limited to, removing and securing individual credentials and access badges, multifactor security tokens, and laptops, as applicable. Further, for such revoked Contractor Personnel, Contractor will return to Avista any Avista-issued property including, but not limited to, Avista photo ID badges, keys, parking passes, documents, or electronic equipment in the possession of such Contractor Personnel. Contractor will notify Avista at security@avistacorp.com once access to Avista Data, Avista Systems, and Avista property has been removed.

2.2.5 Controls for Remote Access: Contractor shall coordinate with Avista on all remote access to Avista's Systems and networks, regardless of interactivity, and shall comply with any controls for interactive remote access and system-to-system remote access sessions requested by Avista. Contractors that directly, or through any of their affiliates, subcontractors, or service providers, connect to Avista's Systems or networks agree to the additional following protective measures:

2.2.5.1 Contractor will not access, and will not permit any other person or entity to access, Avista's Systems or networks without Avista's written authorization and any such actual or attempted access will be consistent with any such written authorization.

2.2.5.2 Contractor shall implement processes designed to protect credentials as they travel throughout the network and shall ensure that network devices have encryption enabled for network authentication to prevent possible exposure of credentials.

2.2.5.3 Contractor shall ensure Contractor Personnel do not use any virtual private network or other device to simultaneously connect machines on any Avista System or network to any machines on any Contractor System or third-party systems, without

(i) using only a remote access method consistent with Avista's remote access control policies,

(ii) providing Avista with the full name of each individual who uses any such remote access method and the phone number and email address at which the individual may be reached while using the remote access method, and

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(iii) ensuring that any computer used by Contractor Personnel to remotely access any Avista System will not simultaneously access the Internet or any other third-party system or network while logged on to Avista System.

2.2.5.4 Contractor shall ensure Contractor Personnel accessing Avista Systems are uniquely identified and that accounts are not shared between Contractor Personnel.

2.3 Contractor Vulnerabilities

2.3.1 Contractor shall develop and implement policies and procedures to address the disclosure and remediation by Contractor of vulnerabilities and material defects related to the products and services provided to Avista under the Agreement including the following:

2.3.1.1 Prior to the delivery of the procured product or service, Contractor shall provide or direct Avista to an available source of summary documentation of publicly disclosed vulnerabilities and material defects in the procured product or services, the potential impact of such vulnerabilities and material defects, the status of Contractor's efforts to mitigate those publicly disclosed vulnerabilities and material defects, and Contractor's recommended corrective actions, compensating security controls, mitigations, and/or procedural workarounds.

2.3.1.2 Contractor shall provide or direct Avista to an available source of summary documentation of vulnerabilities and material defects in the procured product or services within thirty (30) calendar days after such vulnerabilities and material defects become known to Contractor. The summary documentation shall include a description of each vulnerability and material defect and its potential impact, root cause, and recommended corrective actions, compensating security controls, mitigations, and/or procedural workarounds (e.g., monitoring).

2.3.1.3 Contractor shall disclose the existence of all known methods for bypassing computer authentication in the procured product or services, often referred to as backdoors, and provide written attestation that all such backdoors created by Contractor have been permanently remediated.

2.3.1.4 Contractor shall implement a vulnerability detection and remediation program consistent with industry standards (e.g., ISO-27417 Vulnerability Disclosure, NIST Cybersecurity Framework v1.1, as may be amended.)

2.3.2 Disclosure of Vulnerabilities by Avista: Whether or not publicly disclosed by Contractor and notwithstanding any other limitation in the Agreement, Avista may disclose any vulnerabilities, material defects, and/or other findings related to the products and services provided by Contractor to (a) the Electricity Information Sharing and Analysis Center ("E-ISAC"), the United States Cyber Emergency Response Team ("CERT"), or any equivalent U.S. governmental entity or program, (b) to any applicable U.S. governmental entity when necessary to preserve the reliability of the bulk electric system ("BES") as determined by Avista in its sole discretion, or (c) any entity required by applicable law.

2.4 Contractor System Integrity and Authenticity

2.4.1 Contractor shall establish, document, and implement risk management practices for supply chain delivery of hardware, software (including patches), and firmware provided under the Agreement. Contractor shall provide documentation on its: chain-of-custody practices, inventory management program (including the location and protection of spare parts), information protection practices, integrity management program for components provided by sub-suppliers, instructions on how to request replacement parts, and commitments to ensure that for a period of one year spare parts shall be made available by Contractor.

2.4.1.1 Contractor shall specify how digital delivery for procured products (e.g., software and data) including patches will be validated and monitored to ensure the digital delivery remains as specified. If Avista deems that it is warranted, Contractor shall apply encryption technology to protect procured products throughout the delivery process.

2.4.1.2 If Contractor provides software or patches to Avista, Contractor shall publish or provide a hash conforming to the Federal Information Processing Standard (FIPS) Security Requirements for Cryptographic Modules (FIPS 140-2) or similar standard information on the software and patches to enable Avista to use the hash value as a checksum to independently verify the integrity of the software and patches.

2.4.1.3 Contractor shall identify or provide Avista with a method to identify the country (or countries) of origin of the procured Contractor product and its components and subcomponents (including hardware,

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software, and firmware). Contractor will identify the countries where the development, manufacturing, maintenance, and service for the Contractor product are provided. Contractor will notify Avista of changes in the list of countries where product maintenance or other services are provided in support of the procured Contractor product. This notification in writing shall occur at least 180 days prior to initiating a change in the list of countries.

- 2.4.1.4 Contractor shall provide a software bill of materials for procured (including licensed) products consisting of a list of components and associated metadata that make up a component.
- 2.4.1.5 Contractor shall use or arrange for the use of trusted channels to ship procured products, such as U.S. registered mail and/or tamper-evident packaging for physical deliveries.
- 2.4.1.6 Contractor shall demonstrate a capability for detecting unauthorized access throughout the delivery process.
- 2.4.1.7 Contractor shall demonstrate chain-of-custody documentation for procured products as determined by Avista in its sole discretion and require tamper-evident packaging for the delivery of this hardware.

2.4.2 Patching Governance:

- 2.4.2.1 Prior to the delivery of any products and/or services to Avista or any connection of electronic devices, assets, or equipment to Avista's electronic equipment, Contractor shall provide documentation regarding the patch management and vulnerability management/mitigation programs and update process (including third-party hardware, software, and firmware) for products, services, and any electronic device, asset, or equipment required by Contractor to be connected to the assets of Avista during the provision of products and services under the Agreement. This documentation shall include information regarding:
 - (i) the resources and technical capabilities to sustain this program and process such as the method or recommendation for how the integrity of a patch is validated by Avista; and
 - (ii) the approach and capability to remediate newly reported zero-day vulnerabilities for Contractor products.
- 2.4.2.2 Unless otherwise approved by the Avista in writing, the current or supported version of Contractor products and services supplied by Contractor shall not require the use of out-of-date, unsupported, or end-of-life version of third-party components (*e.g.*, Java, Flash, Web browser, etc.).
- 2.4.2.3 Contractor shall verify and provide documentation that procured products (including third-party hardware, software, firmware, and services) have appropriate updates and patches installed prior to delivery to Avista.
- 2.4.2.4 In providing the products and services described in the Agreement, Contractor shall provide or arrange for the provision of appropriate software and firmware updates to remediate newly discovered vulnerabilities or weaknesses for Contractor products for thirty 30 days after completion of the Work as detailed in a Work Authorization ("Remediation Period". During the Remediation Period, updates to remediate critical vulnerabilities shall be provided within a shorter period than other updates, within 7 days. If updates cannot be made available by Contractor within these time periods, Contractor shall provide mitigations, methods of exploit detection, and/or workarounds within 3 days during the Remediation Period. If the vulnerability or weakness is associated with third party software utilized within Contractor's provided software, and no immediate tested remediation is available, then Avista and Contractor will jointly determine the appropriate resolution within 2 days or at a later date as determined by Avista. After the Remediation Period, Avista will take over the responsibility for managing updates.
- 2.4.2.5 When third-party hardware, software (including open-source software), and firmware is provided by Contractor to Avista, Contractor shall provide or arrange for the provision of appropriate hardware, software, and/or firmware updates to remediate newly discovered vulnerabilities or weaknesses, if applicable to the Avista's use of the third-party product in its system environment, upon availability from the original supplier and/or patching source during the Remediation Period. During the Remediation Period, updates to remediate critical vulnerabilities applicable to the Contractor's use of the third-party product in its system environment shall be provided within a shorter period than

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other updates, upon availability from the original supplier and/or patching source. If applicable third-party updates cannot be integrated, tested, and made available by Contractor during the Remediation Period, Contractor shall provide or arrange for the provision of recommended mitigations and/or workarounds. After the Remediation Period, Avista will take over the responsibility for managing updates.

2.4.3 Viruses, Firmware and Malware:

- 2.4.3.1 Contractor will use reasonable efforts to investigate whether computer viruses or malware are present in any software or patches before providing such software or patches to Avista. To the extent Contractor is supplying third-party software or patches, Contractor will use reasonable effort to ensure the third-party investigates whether computer viruses or malware are present in any software or patches providing them to Avista or installing them on Avista's Systems.
- 2.4.3.2 Contractor represents and warrants that it has no knowledge of any computer viruses or malware coded or introduced into any software or patches, and Contractor will not insert any code which would have the effect of disabling or otherwise shutting down all or a portion of such software or damaging information or functionality. To the extent Contractor is supplying third-party software or patches, Contractor will use reasonable efforts to ensure the third-party will not insert or allow the insertion of any code which would have the effect of disabling or otherwise shutting down all or a portion of such software or damaging information or functionality.
- 2.4.3.3 When install files, scripts, firmware, or other Contractor-delivered software solutions (including third-party install files, scripts, firmware, or other software) are flagged as malicious, infected, or suspicious by an anti-virus vendor, Contractor must provide or arrange for the provision of technical justification as to why the "false positive" hit has taken place to ensure their code's supply chain has not been compromised.
- 2.4.3.4 If a virus or other malware is found to have been coded or otherwise introduced as a direct result of Contractor's breach of its obligations under this Security Exhibit, Contractor shall upon written request by Avista and at its own cost:
 - (i) Take all necessary remedial action and provide assistance to Avista to eliminate the virus or other malware throughout Avista's Systems; and
 - (ii) If the virus or other malware causes a loss of operational efficiency or any loss of data (A) where Contractor is obligated under this Security Exhibit to back up such data, take all steps necessary and provide all assistance required by Avista and its affiliates, or (B) where Contractor is not obligated under this Security Exhibit to back up such data, use commercially reasonable efforts, in each case to mitigate the loss of or damage to such data and to restore the efficiency of such data.

4. End of Life Operating Systems:

1. Contractor-delivered solutions will not be required to reside on end-of-life operating systems, or any operating system that will go end-of-life six (6) months from the date of installation.

5. Cryptographic Requirements:

1. Contractor shall document how the cryptographic system supporting the Contractor's products and/or services procured under this Agreement protects the confidentiality, data integrity, authentication, and non-repudiation of devices and data flows in the underlying system. This documentation shall include, but not be limited to, the following:
 - (i) The cryptographic methods (hash functions, symmetric key algorithms, or asymmetric key algorithms) and primitives (*e.g.*, Secure Hash Algorithm [SHA]- 256, Advanced Encryption Standard [AES]-128, RSA, and Digital Signature Algorithm [DSA]-2048) that are implemented in the system, and how these methods are to be implemented.
 - (ii) The preoperational and operational phases of key establishment, deployment, ongoing validation,

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and revocation.

- 2.4.5.2 Contractor will use only “approved” cryptographic methods as defined in the FIPS 140-2 Standard when enabling encryption on its products.
- 2.4.5.3 Contractor shall provide or arrange for the provision of an automated remote key-establishment (update) method that protects the confidentiality and integrity of the cryptographic keys.
- 2.4.5.4 Contractor shall ensure that:
 - (i) The system implementation includes the capability for configurable cryptoperiods (the life span of cryptographic key usage) in accordance with the Suggested Cryptoperiods for Key Types found in Table 1 of NIST 800-57 Part 1, as may be amended.
 - (ii) The key update method supports remote re-keying of all devices within 30 days as part of normal system operations.
 - (iii) Emergency re-keying of all devices can be remotely performed within thirty (30) days.
- 2.4.5.5 Contractor shall provide or arrange for the provision of a method for updating cryptographic primitives or algorithms.

2.5 Compliance with Privacy and Information Security Requirements

- 2.5.1 Contractor shall comply with all Privacy and Security Laws, Industry Standards, and requirements contained in this Security Exhibit.
- 2.5.2 Contractor shall promptly notify Avista in writing if Contractor cannot comply with its obligations under this Security Exhibit. Avista may, in its sole discretion and without penalty of any kind to Avista, suspend the transfer or disclosure of Avista Data to Contractor or access to Avista Data by Contractor, terminate any further Processing of Avista Data by Contractor, and terminate the Agreement or applicable Work Authorization, if doing so is necessary to comply with applicable Privacy and Security Laws, is required or requested by a regulator or other governmental body, or is necessary in Avista’s sole discretion to mitigate material risks to Avista.
- 2.5.3 Contractor is responsible for the security of Contractor Systems and any Avista Data that it Processes. Contractor agrees that beginning on the date that the services commence under the Agreement and without limiting any of the obligations contained within this Security Exhibit, Contractor shall implement administrative, physical and technical safeguards to protect Avista Data from unauthorized access, acquisition or disclosure, destruction, alteration, accidental loss, misuse or damage that are no less rigorous than accepted Industry Standards, and shall ensure that all such safeguards, including the manner in which Personal Information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable Privacy and Security Laws, as well as the terms and conditions of this Security Exhibit.
- 2.5.4 During the term of the Agreement, Contractor shall implement and maintain any additional privacy and security safeguards, as directed by Avista, in the event of (i) a relevant material change in the types of Personal Information that Contractor Processes; or (ii) a Security Incident.
- 2.5.5 Contractor will implement and maintain sufficient processes and procedures to satisfy Avista’s requests related to consumers’ rights to opt-out, access, and/or erase their Personal Information as required by all applicable Privacy and Security Laws. Within ten (10) days of a written request from Avista (email sufficient), Contractor will, as applicable, (a) implement any requested opt-outs and cease any use of identified consumers’ Personal Information; (b) provide information requested by Avista regarding Contractor’s Processing of the Personal Information; (c) provide the specific pieces of Personal Information including any other associated data elements; (d) if the Personal Information is maintained in an electronic format, provide it in a portable and, if technically feasible, in a readily usable format that allows the consumer to transmit the information to another entity without hindrance; and (e) securely erase or destroy the Personal Information as required by Section 2.6, including any copies maintained by any Contractor subcontractor.

2.6 Information Management

- 2.6.1 Contractor shall take reasonable steps to collect and preserve any information related to its obligations under this Security Exhibit and Process Avista Data in the care, custody or control of Contractor or Contractor’s authorized subcontractors in accordance with any retention agreements or litigation hold orders provided to Contractor by Avista. Upon Avista’s request, Contractor shall provide the preserved information to Avista or its designee in a format requested by Avista.

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2.6.2 When Personal Information is no longer necessary for the performance of services for or on behalf of Avista, or promptly upon the expiration or earlier termination of the Agreement, whichever is earlier, or at an earlier time as Avista requests, Contractor shall securely destroy or, at Avista's written request, return to Avista or its designee, in the format determined by Avista, each and every original and copy in every media (including both active data and backup data) of all Personal Information in Contractor's possession, custody or control. In the event applicable law does not permit Contractor to comply with the delivery or destruction of the Personal Information, Contractor shall ensure that it will not use or disclose any Personal Information after termination of the Agreement, except as required by law, and that the terms and conditions of this Security Exhibit will continue to apply so long as the information is retained by Contractor. Upon Avista's request, Contractor shall provide written certification by one of its senior officers that Personal Information has been returned or securely destroyed in accordance with this Security Exhibit.

7. Security Incident Response

1. Contractor shall notify Avista within twenty four (24) hours of the discovery of any reasonably suspected Security Incident by contacting Avista's Security Team at security@avistacorp.com and its Privacy Team at privacy@avistacorp.com. Such notice will summarize in reasonable detail the effect on Avista, if known, of the Security Incident and the corrective action taken or to be taken by Contractor; provided, however, notification may not be delayed by Contractor as it investigates or remediates the Security Incident.
2. Immediately following Contractor's notification to Avista of a Security Incident Contractor shall conduct a reasonable investigation of the reasons for and circumstances of the Security Incident, and take all necessary and advisable actions to rectify, prevent, contain and mitigate the impact of the Security Incident, and remediate the Security Incident.
3. Contractor shall collect, preserve and document all information regarding the discovery and cause of, any vulnerabilities, response, remedial actions and impact related to the Security Incident and provide such documentation to Avista upon request.
4. If requested by Avista, Contractor shall provide notice to individuals whose Personal Information was affected by the Security Incident in a manner and format determined by Avista, in its sole discretion. In the event that the Security Incident relates to the access or acquisition of Personal Information that may be used to commit identity theft, financial theft or fraud, or other consumer harm, said notice will include an offer of free identity theft or other appropriate monitoring service for a period of no less than twelve (12) months or such longer period as required by the Privacy and Security Laws or governmental regulator.
5. Contractor hereby authorizes Avista, in Avista's sole discretion, to provide notice of any reasonably required information and documents concerning any Security Incident, to individuals or third parties that may have been affected by the Security Incident.
6. Contractor agrees that Avista retains the sole authority and discretion to contact and involve law enforcement agencies in connection with a Security Incident when the decision whether to involve such agencies is discretionary (that is, when no legal obligation, statutory or otherwise, requires one of the parties to contact law enforcement). If Avista elects to contact law enforcement agencies regarding a Security Incident, Contractor agrees to cooperate fully with such law enforcement agencies and any decision made by Avista regarding the scope and goals of any investigation undertaken by such agencies.

8. Periodic Reporting and Assessments

1. Upon Avista's written request, to confirm compliance with this Security Exhibit, as well as any applicable laws and industry standards, Contractor shall promptly and accurately complete a written information security questionnaire provided by Avista regarding Contractor's business practices and information technology environment in relation to all Avista Data being Processed and/or services being provided by Contractor to Avista pursuant to this Security Exhibit. Contractor shall fully cooperate with such inquiries. Avista shall treat the information provided by Contractor in the security questionnaire as Contractor's Confidential Information.
2. Upon the provision of reasonable notice to Contractor, Avista or its designee may undertake a security assessment, pen test, network scan, forensic investigation and/or audit of Contractor Systems, Contractor's Processing of Avista Data, and Information Security Program.
3. Contractor agrees that any regulator or other governmental entity with jurisdiction over Avista or its affiliates may examine Contractor's activities relating to the performance of its obligations under the Agreement to the extent such authority is granted to such entities under the law. Contractor shall promptly cooperate with and provide all information reasonably requested by the regulator or other governmental entity in connection with

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any such examination and provide reasonable assistance and access to all equipment, records, networks, and systems reasonably requested by the regulator or other governmental entity. Contractor agrees to comply with all reasonable recommendations that result from such regulatory examinations within reasonable timeframes.

- 3 **Notices.** Except as specified in the Information Security Incident Response Section of this Security Exhibit, the following individuals shall be the primary contacts for the parties for any coordination, communications or notices with respect to Personal Information, this Security Exhibit, or any Information Security Incident: **Contractor:** [Don Evans at don@openenergysolutionsinc.com]; **Avista:** Information Security Team at security@avistacorp.com and the Privacy Office at privacy@avistacorp.com. Each party shall promptly notify the other if any of the foregoing contact information changes.
- 4 **Indemnification.** Contractor shall defend, indemnify and hold harmless Avista and its officers, directors, employees, agents, and successors from and against all losses, liabilities, damages and expenses of whatever kind, including reasonable attorneys' fees, arising out of or resulting from any third-party claim against Avista arising out of or resulting from Contractor's failure to comply with any of its obligations under this Security Exhibit.
- 5 **Miscellaneous.**
 1. Contractor's compliance with this Security Exhibit, and any actions required of Contractor herein (including without limitation responding to any Avista requests authorized by this Security Exhibit), shall be at Contractor's sole and exclusive expense and shall be included as part of the price of the services provided by Contractor pursuant to the Agreement.
 2. This Security Exhibit is the complete agreement between Contractor and Avista and supersedes any prior oral or written agreement between the parties concerning the privacy and security of Avista Data and Avista Systems. This Security Exhibit supersedes any provision of the Agreement to the extent such provision conflicts with the provisions of this Security Exhibit.
 3. The rights and obligations of the parties under this Security Exhibit survive the termination, cancellation, or expiration of the Agreement.
 4. Avista and its affiliates, subsidiaries, successors and assigns (and their affiliates, subsidiaries, successors and assigns, etc.) are intended third party beneficiaries of this Security Exhibit, the provisions set forth in this Security Exhibit, and other rights and Contractor's obligations set forth in this Security Exhibit, and this Security Exhibit is intended to inure to the benefit of those affiliates, subsidiaries, successors and assigns. Avista affiliates, subsidiaries, successors and assigns are entitled to enforce the terms and obligations of this Security Exhibit as if each was a signatory to this Security Exhibit, the Agreement, statements of work or other relevant documents, and Avista may enforce the terms and obligations regarding Avista Data that are contained in this Security Exhibit, the Agreement, Work Authorizations, statements of work or other relevant documents on their behalf.

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