

SOFTWARE AS A SERVICE AGREEMENT
Master Terms and Conditions
Online Version

IMPORTANT: PLEASE READ THIS SOFTWARE AS A SERVICE AGREEMENT CAREFULLY. THIS IS A LEGALLY BINDING AGREEMENT BETWEEN FRACTA, INC. AND THE ORGANIZATION THAT YOU WORK FOR OR REPRESENT. BY USING THE FRACTA SOFTWARE SYSTEM YOU AGREE ON BEHALF OF THE ORGANIZATION TO BE BOUND BY THESE TERMS. IF YOU ARE NEITHER AUTHORIZED NOR WILLING TO BIND YOUR ORGANIZATION TO THIS AGREEMENT, DO NOT CONTINUE.

IF YOUR ORGANIZATION HAS ALREADY SIGNED A FRACTA SOFTWARE-AS-A-SERVICE AGREEMENT, THEN THAT SIGNED AGREEMENT APPLIES, AND NOT THIS ONE.

These are the Master Terms and Conditions of an Agreement between Fracta, Inc., a California corporation ("Fracta"), and the water utility identified on a Fracta Quotation or a Fracta Master Agreement Cover Sheet ("Customer"). Under this Agreement, Fracta will provide Customer with online access to one or more modules of the Fracta System on a subscription, Software as a Service ("SaaS"), basis.

1. DEFINITIONS

- 1.1 "Agreement." The complete Agreement between Fracta and Customer consists of the Cover Sheet or Quotation, these Master Terms and Conditions including any Exhibits, the Terms of Use posted online, and any amendments to those documents.
- 1.2 "Software as a Service" or "SaaS" refers to Fracta hosting the software and providing Customer with remote, internet-based access to the System on a subscription basis.
- 1.3 "Normalized Utility Data" is the Utility Data after it has been assessed and cleaned by Fracta to operate properly in the System.
- 1.4 "System. Fracta's proprietary system of software, algorithms, data analysis and machine technology that helps water utilities improve the efficiency of water main pipe management and replacement.
- 1.5 "Updates" are revisions to correct errors or to improve the existing functionality of the System. Updates do not include modules or products that Fracta sells or licenses separately, but Updates do include products that are offered as replacements for the subscribed modules.
- 1.6 "User" is an individual whom the Customer has authorized to use the System on its behalf.



- 1.7 "Utility Data" includes the following information, in machine-readable electronic form: pipe location, age, size, characteristics and installation dates; GIS data; and pipe break data.

2. SUBSCRIPTION SERVICES.

- 2.1 License. Fracta grants to Customer a nonexclusive, nontransferable, non-sublicensable license to use the System, and to authorize Users to use the System, during the term of this Agreement, solely for the benefit of Customer.
- 2.2 Availability. Fracta will use commercially reasonable efforts to make the System available to Customer online 24 hours a day, seven days a week. Fracta may temporarily suspend the System for maintenance, testing, and security purposes. Further, Fracta may be unable to provide access to the System due to actions beyond its reasonable control, such as acts of God, attacks or other interference by third parties, and internet service provider or data center outages. If downtime is planned, Fracta will attempt to inform Users ahead of time, although Fracta is not obligated to do so and will not be liable if it fails to provide advance notice.
- 2.3 System Administrator; User Access. Customer shall designate one or more System Administrators. System Administrators are responsible for managing User access, including adding and subtracting Users.
- 2.4 User Names and Passwords. Customer is responsible for maintaining the security of all User names and passwords, for the security of its information systems used to access the System, and for its Users' compliance with the terms of this Agreement. Customer will immediately notify Fracta if it becomes aware of any loss or theft or unauthorized use of any of Customer's passwords or User names. Fracta has the right at any time to terminate or suspend access to any User or to Customer if Fracta believes in good faith that such termination or suspension is necessary to preserve the security, integrity, or accessibility of the System. Users must not share passwords or user names.
- 2.5 Use Restrictions. Customer and Users may not do any of the following:
- (i) upload any data that is not Customer Data;
 - (ii) access or use the System for the benefit of any third party, or share or re-sell its access to the System;



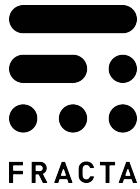
- (iii) copy or reverse engineer the System;
- (iv) modify, create derivative works based upon, or translate the System;
- (v) upload any content that (i) infringes any intellectual property or other proprietary rights of any party; (ii) Customer does not have a right to upload; (iii) contains any code designed to interrupt, destroy or limit the functionality of the System; or (iv) poses or creates a privacy or security risk to any person or entity; or
- (vi) attempt to compromise the security or integrity of the System.

2.6 Customer shall immediately notify Fracta if Customer becomes aware of any unauthorized use of all or any of the Software as a Service.

3. DATA ENTRY

3.1 Customer will electronically transfer the Utility Data to the System using an agreed-upon data transfer method and will provide information regarding the available data and database systems and database structures related to the Utility Data.

- 3.1.1. Customer will provide one pipe data zip file containing one of more the following file extensions: cpg, .dbf, .prj, .shp, .shx. A list of pipe material of construction, year installed and diameter should be included in the data file and the name of the corresponding column of the data clearly denoted.
- 3.1.2. Customer will provide one pipeline break history data file in either shapefile, CSV, or Excel format. If data is in Excel or CSV format, a column corresponding to address or latitude and longitude must be included (as well as the name of that column). The date of the Break, and the name of the column corresponding to this information.
- 3.1.3. Utility Data provided by Customer must be in an electronic format; geospatial data must be in an ArcGIS shapefile or similar format. Other data may be in a tabular Excel or similar format.
- 3.1.4. Fracta will assess and clean the Utility Data as necessary to create Normalized Utility Data.
- 3.1.5. Fracta will load the Normalized Utility Data into the System.



SOFTWARE AS A SERVICE AGREEMENT

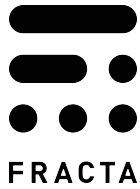
Master Terms and Conditions

Online Version

- 3.2 After the initial load of the Normalized Utility Data into the System, Fracta will provide Customer up to two (2) additional loads of Normalized Utility Data into the System per subscription year. The additional loads do not include an assessment and cleaning. Fracta assumes that Customer will provide updated Utility Data in the Normalized format. If the Normalized Utility Data cannot be loaded because of the format provided by the Customer, Fracta will provide an estimate of fees to the Customer for assessing and cleaning the data. Fracta will not load the data until Customer has agreed in writing to pay the assessment and cleaning fees.
- 3.3 Fracta will provide online access to the Normalized Utility Data, which Customer can view online and download.
- 3.4 Data Responsibility. Responsibility for ensuring that the data entered into the System is accurate and reflects Customer requirements lies solely with Customer.
- 3.5 No Sensitive Data; Customer Responsibilities. The System is not intended for use with protected health information under HIPAA, credit card numbers, financial account numbers, or personally identifiable information. Customer assumes all risk arising from use of any such sensitive information with the System, including the risk of any inadvertent disclosure or unauthorized access thereto. Customer is responsible for ensuring that Customer's use of the System is in compliance with all applicable laws and governmental regulations and Customer assumes all risk arising from any such use that is not compliant with applicable laws and regulations.

4. SUPPORT

- 4.1 System Updates and Changes. Fracta will provide access to Updates at no additional charge, when they are commercially available. Fracta reserves the right to add new features and functions to the System, and the right to discontinue features. Upon Customer's reasonable request and on mutually agreeable terms, Fracta may enable Customer to continue to use discontinued features or functions.
- 4.2 Errors. An Error is a defect in the programming of the System software that causes it to fail to operate properly. Customer acknowledges that the software in general is not error-free and agrees that the existence of errors in the Software shall not constitute a breach of this Agreement.
- 4.3 Error Correction. Fracta will use commercially reasonable efforts to correct all material Errors reported by Customer, or to provide a reasonable workaround using its reasonable efforts during Fracta's normal business hours. Customer will provide



access, information, and assistance as Fracta may reasonably require in the process of resolving any Error. This paragraph is Customer's sole and exclusive remedy for Errors.

- 4.4 Support Requests. During regular business hours (____ am – ____ pm Pacific Time) Customer may email or call Fracta to raise a support issue, using the contact information provided by Fracta. Customer is encouraged to designate Users with authority to make support requests. Fracta reserves the right to limit the number of such Users if support requests are excessive.

5. TERM

- 5.1 Term. The Initial Term of this Agreement shall be the number of years from the Effective Date shown on the Cover Sheet or Quotation. The Agreement will automatically renew for successive Renewal Terms of one (1) year, unless either party gives notice of non-renewal at least sixty (60) days prior to the expiration of the then-current term.
- 5.2 Termination. Either party may terminate this Agreement for a material breach by the other party that is not cured within thirty (30) days after notice of breach. Either Party may immediately terminate this Agreement if the other Party: (a) becomes insolvent and becomes unwilling or unable to meet its obligations under this Agreement; (b) files a petition in bankruptcy; or (c) is subject to the filing of an involuntary petition for bankruptcy that is not rescinded within a period of sixty (60) days.
- 5.3 Obligations Upon Termination. Upon termination of this Agreement: (i) Fracta may immediately terminate Customer's access to the System; (ii) Upon written request from Customer received within 30 days of termination, Fracta will provide access to the System for a period of 48 hours for the limited purpose of exporting Utility Data;
- 5.4 Survival. All provisions of this Agreement which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, and limitations of liability.

6. CONFIDENTIAL INFORMATION

- 6.1 "Receiving" and "Disclosing" Parties. Careful protection and non-disclosure of Confidential Information (as defined below) by the Party receiving Confidential Information ("Receiving Party") from the Party disclosing Confidential Information



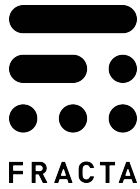
SOFTWARE AS A SERVICE AGREEMENT

Master Terms and Conditions

Online Version

("Disclosing Party") is of importance to both Parties. The terms "Receiving Party" and "Disclosing Party" includes each Party's officers, directors, employees and representatives. As to Customer, the terms "Receiving Party" and "Disclosing Party" also includes all entities controlling, controlled by and under common control with, Customer (each, an "Affiliate") and such Affiliate's representatives.

- 6.2 "Confidential Information." For purposes of this Agreement, "Confidential Information" means all non-public information that a Disclosing Party designates as being confidential, or which, under the circumstance of disclosure, ought to be treated as confidential. Confidential Information includes, without limitation, Fracta's algorithms, Fracta's software system, Customer's pipeline deployment data, and each Party's research, development, trade secrets, product development plans, inventions, and technical data. Confidential Information does not include information which can be shown by the Receiving Party to be: (i) already known or in its possession without an obligation of confidentiality to the Disclosing Party prior to the execution of this Agreement; (ii) rightfully furnished to the Receiving Party by a third party; (iii) publicly available without breach of this Agreement; or (iv) independently developed by the Receiving Party without reliance on the Confidential Information as evidenced by written records of the Receiving Party.
- 6.3 Protection of Confidential Information. During the term of this Agreement, Receiving Party agrees to hold the Disclosing Party's Confidential Information in confidence and to take reasonable precautions to protect such Confidential Information including, without limitation, all precautions that Receiving Party uses for to its own confidential information, but in no event less than reasonable care.
- 6.4 Required Disclosures. If a Receiving Party is legally compelled by a court or governmental body to make any disclosure of Confidential Information, the Receiving Party shall (i) promptly notify the Disclosing Party, unless such notice is prohibited by law; and (ii) consult with and assist the Disclosing Party, at the Disclosing Party's expense, in obtaining an injunction or other appropriate remedy to prevent such disclosure.
- 6.5 Unauthorized Disclosure. If a Receiving Party discovers that the Disclosing Party's Confidential Information has been used or disclosed in violation of this Agreement, the Receiving Party will immediately: (i) notify Disclosing Party; (ii) take reasonable action to minimize the impact of the use or disclosure; and (iii) take necessary steps to prevent a further disclosure of any Confidential Information.



7. FEES and PAYMENT

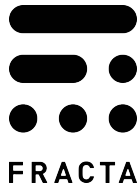
- 7.1 Fracta will invoice Customer annually in advance for SaaS subscriptions ordered by Customer, as shown in any applicable Cover Sheet or Quotation. If Customer orders additional subscriptions during the Term of this Agreement, the first-year subscription fee and first-year term for the additional subscriptions will be prorated to cover the remaining portion of the current year. Invoices are payable net thirty (30) days.
- 7.2 On each anniversary of the Effective Date during the Initial Term, and upon the commencement of any Renewal Term, Fracta may increase the subscription fees for the coming year by five percent (5%) or by the CPI Adjustment, whichever is lower. The CPI Adjustment means the percentage increase (if any) in the year over year average CPI-U (All Urban Consumers, U.S. City Average) for the prior two years, as reported by the US Bureau of Labor Statistics.
- 7.3 For any Data Normalization services that are outside the standard scope, or Customer will be billed on a time-and-materials basis.
- 7.4 All fees quoted to Customer for the provision of the Services by Fracta are exclusive of any sales tax or similar tax or fee.

8. NOTICES.

All written notices required by this Agreement must be delivered to the addresses shown on the Cover Sheet or Quotation by overnight courier or certified mail, and will be effective upon receipt. Either party may change its address for notices by giving written notice of the change to the other party.

9. OWNERSHIP

- 9.1 The System. Fracta owns all right, title and interest and all intellectual property rights in the System. Fracta will also own any suggestions, enhancement requests, feedback or recommendations relating to the System that are provided by Utility or User.
- 9.2 Utility Data. Utility warrants that it either owns all right, title and interest in the Utility Data, or has a license or other legal right to use the Utility Data in the System, including the right to license the use of the Utility Data to Fracta as provided in this Agreement.



9.3 Fracta Use of Utility Data. Utility grants to Fracta a nonexclusive, nontransferable (except in connection with a permitted assignment as set forth below), non-sublicensable license to store, use, copy, transmit, modify and display the Utility Data solely (1) to process the data on Utility's behalf, (2) to improve the System, and (3) to improve Fracta's analytical model or algorithms. Utility understands that due to the nature of the machine learning process, exposure to the Utility Data will inherently improve the System and Fracta's analytical model and algorithms.

10. DISCLAIMERS

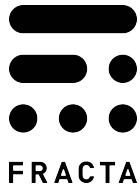
All forms of non-destructive testing involve an inherent and unavoidable level of uncertainty. The results provided by Fracta are therefore not guaranteed. The methods used for leak detection and pipe condition assessment are highly dependent on input parameters. As a result, Fracta is not responsible for any actions taken by Customer based on the System or on Fracta's recommendations.

EXCEPT FOR THE LIMITED ERROR CORRECTION WARRANTY PROVIDED IN THIS AGREEMENT, FRACTA MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, RELATING TO THE SYSTEM, OR TO FRACTA'S SERVICES. FRACTA SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT. FRACTA DOES NOT WARRANT OR REPRESENT THAT THE SYSTEM WILL BE FREE FROM ERRORS OR THAT ITS USE WILL BE UNINTERRUPTED, OR MAKE ANY OTHER REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF THE SYSTEM IN TERMS OF ACCURACY, RELIABILITY, OR OTHERWISE. THESE DISCLAIMERS SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

11. Exclusion of Certain Damages

FRACTA WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR RELIANCE DAMAGES, INCLUDING ANY DAMAGES DUE TO LOST OR CORRUPTED DATA, ARISING FROM OR RELATING TO THIS AGREEMENT OR THE SYSTEM, EVEN IF FRACTA KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF, OR COULD REASONABLY HAVE PREVENTED, SUCH DAMAGES.

WITH THE EXCEPTION OF CUSTOMER'S OBLIGATION TO PAY FEES, EACH PARTY'S TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT OR THE SYSTEM, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID OR PAYABLE TO FRACTA BY CUSTOMER DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT THAT GAVE RISE TO THE LIABILITY. THIS LIMITATION OF DAMAGES



SHALL BE GIVEN FULL EFFECT EVEN IF THE WARRANTIES PROVIDED IN THIS AGREEMENT ARE DEEMED BY AN ARBITRATOR OR COURT TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THE PARTIES ACKNOWLEDGE THAT THE TERMS OF THIS SECTION REFLECT THE ALLOCATION OF RISK IN THIS AGREEMENT AND THAT THE PARTIES WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS OF LIABILITY. This Section does not limit either party's liability for bodily injury, gross negligence or willful misconduct.

12. DISPUTE RESOLUTION

- 12.1 Negotiation. The Parties will make good faith efforts to resolve disputes through informal discussions between the appropriate representatives of the parties. Formal negotiation may be initiated by either party by sending written Notice of the description of the dispute to the other party. Within twenty (20) business days of the Notice, principals of both parties, who have the authority to settle the dispute, will meet to discuss resolution of the dispute.
- 12.2 Arbitration. If a dispute arising out of this Agreement cannot be resolved through formal negotiation, the dispute must be arbitrated according to the Commercial Arbitration Rules of the American Arbitration Association. The dispute shall be determined in accordance with the Agreement and the substantive laws of the State of California. It shall take place in San Mateo County, California, and the result shall be binding on both parties. The cost of the arbitration shall be borne equally by both parties. The parties hereby submit to the jurisdiction of the appropriate court for the purpose of confirming any agreed settlement arrived at during arbitration.

13. INDEMNIFICATION

- 13.1 Indemnification of Customer. Fracta agrees to defend Customer and its directors, officers and employees from and against any and all claims, demands, suits or proceedings made or brought against Customer by third parties, and agrees to pay or reimburse Customer for any and all damages, costs and expenses payable by Customer to such third party to the extent that they are awarded in a final judgment or agreed to in settlement, as a result of a claim against Customer, based upon or arising out of: (i) any dishonest, fraudulent, criminal, or negligent acts committed by Fracta, or any agent or employee of Fracta, acting pursuant to, or in connection with, the Agreement; or (ii) a claim that the use of the Software as a Service or the System as permitted hereunder infringes the intellectual property rights of a third party. As a condition of Fracta's indemnification obligation,



SOFTWARE AS A SERVICE AGREEMENT

Master Terms and Conditions

Online Version

Customer must (i) promptly give written notice of the claim to Fracta, (ii) give Fracta sole control of the defense and settlement of the claim (provided that Fracta may not settle or defend any claim unless it unconditionally releases Customer of all liability), (iii) provide to Fracta all reasonable and available information and assistance, and (iv) not have compromise or settled such claim.

- 13.2 Indemnification of Fracta. Customer agrees to defend Fracta and its directors, officers and employees from and against any and all claims, demands, suits or proceedings made or brought against Fracta by third parties, and agrees to pay or reimburse Fracta for any and all damages, costs and expenses payable by Fracta to such third party to the extent that they are awarded in a final judgment or agreed to in settlement, as a result of a claim against Fracta, based upon or arising out of: (i) any dishonest, fraudulent, criminal, or negligent acts committed by Customer, or any agent or employee of Customer, acting pursuant to, or in connection with, the Agreement; or (ii) a claim the Utility Data infringes the intellectual property rights, privacy rights or publicity rights of a third party. As a condition of Customer's indemnification obligation, Fracta must (i) promptly give written notice of the claim to Fracta, (ii) give Customer sole control of the defense and settlement of the claim (provided that Customer may not settle or defend any claim unless it unconditionally releases Fracta of all liability), (iii) provide to Customer all reasonable and available information and assistance, and (iv) not have compromise or settled such claim.

14. GENERAL

- 14.1 Non-Solicitation. Neither party shall, directly or indirectly, induce or entice any employee of the other to leave such employment, or induce or entice any of the other party's sub-contractors to provide any services other than by an agreement with, and through, such other party. Employees responding to a generally published notice or advertisement shall not fall under this provision.
- 14.2 Assignment. Customer may not assign its rights and/or obligations under this Agreement to any other party without our prior written consent. Fracta may assign its rights and/or obligations under this Agreement to any other party at its discretion.
- 14.3 California Law and Venue. The laws of the State of California (without giving effect to its conflict of laws principles) govern all matters arising out of or relating to this Agreement. Any claims or actions regarding or arising out of this Agreement must be brought exclusively in a court of competent jurisdiction sitting in San Mateo



SOFTWARE AS A SERVICE AGREEMENT

Master Terms and Conditions

Online Version

County, California, and each party to this Agreement submits to the jurisdiction of such courts for the purposes of all claims and actions arising out of or relating to this Agreement.

- 14.4 Force Majeure. Neither Party shall be liable for any failure or delay of performance due any unforeseeable event, such as, but not limited to, fire, strike, inevitable accidents, war, terrorism or any other cause outside the reasonable control of the defaulting Party, and occurring without its fault or negligence.
- 14.5 Entire Agreement. If your organization has already signed a Fracta software-as-a-service agreement, then that signed agreement applies, and not this one. Otherwise, this Agreement constitutes the final, complete and exclusive agreement between the parties as to the subject matter hereof, and supersede any prior or contemporaneous agreement, proposal, warranties and representations.
- 14.6 Conflicting Terms; Amendments. This Agreement prevails over any conflicting or additional terms of any quote, purchase order, invoice or other communication. No modification, amendment or waiver of any provision of this Agreement shall be effective unless in writing and signed by both Parties.