



## NORTH AMERICAN TEMETRA SOLUTION AGREEMENT

**THIS NORTH AMERICAN TEMETRA SOLUTION AGREEMENT (THIS “AGREEMENT”) GOVERNS YOUR USE OF AND ACCESS TO THE SERVICES AND EQUIPMENT DESCRIBED IN A QUOTE THAT ARE PROVIDED BY ITRON, INC. OR ANY OF ITS SUBSIDIARIES (EACH “ITRON”). THE TERMS “SERVICES”, “EQUIPMENT” AND “QUOTE” ARE DEFINED IN THE DEFINITIONS SECTION BELOW.**

This Agreement is made by and between Itron, Inc. (“Itron”), and entity organized under the laws of Washington having an address at 2111 N. Molter Road, Liberty Lake, WA 99019 and The Corporation of the Town of Goderich, an entity organized under the laws of Ontario, having an address at 57 West Street, Goderich, Ontario, N7A2K5 (“Customer”) and is effective as of the date of the last signature (the “**Effective Date**”).

### **1. Definitions.**

**Affiliate** means any legal entity that directly or indirectly controls, is controlled by, or is under common control with, a Party to this Agreement, where "control" means ownership of at least fifty (50) percent of the equity having the power to vote on or direct the affairs of the entity.

**Annual Adjustment** means Itron’s annual price increase.

**Billing Cycle** means a period of one year beginning on the Effective Date or any anniversary thereof.

**Claim** means an unaffiliated third-party claim, action, cause of action, or demand for damages, cost, or expense (including reasonable attorney’s fees) or other relief.

**Channel Partner** means a third-party authorized by Itron to distribute Services and/or Equipment to Customer.

**Client Services Guidelines Documents** means the following documents as they may be updated by Itron from time to time: “Product Contact Information Sheet”, “After Hours Support”, “Itron Equipment Repair Center Locations”, and “Working Effectively with Itron Global Services”. Copies of the Client Services Guidelines Documents may be obtained by calling (877) 487-6602 or such other number or process provided by Itron to Customer.

**Confidential Information** means any confidential, trade secret or other proprietary information disclosed by a Party or a Party’s Affiliate related to its business that is designated as “confidential” or which a reasonable person knows or should understand to be confidential, regardless of the form of disclosure and whether of a technical, business or financial nature, including but not limited to processes and methods, product design and details of operation, product plans, prototypes, schedules, results, reports, computer programs, databases, compilations of data, engineering activity, manufacturing activity, analytical methods, strategies, and the like, but excluding information that: (i) is now or becomes generally available to the

public through no fault or breach of the receiving Party; (ii) is rightfully in the receiving Party's possession, or known by it, prior to its receipt from the disclosing Party; (iii) is rightfully disclosed to the receiving Party by a third-party, free of any obligation of confidentiality; (iv) is developed by the receiving Party independently and without reference to the disclosing Party's Confidential Information, or (v) is rightfully disclosed pursuant to the applicable laws or regulations, or rules of any stock exchange, or orders of the court or other government authorities with notice to the disclosing Party.

**Covered Itron Equipment** means Itron Equipment for which Customer has purchased Maintenance Services.

**Covered Third-Party Equipment** means Third-Party Equipment for which Customer has purchased Maintenance Services.

**Covered Products** mean Software, Covered Itron Equipment and Third-Party Covered Equipment.

**Customer** means you or, if you are accepting on behalf of your employer or another entity, such employer or entity.

**Customer Data** means all data about Customer's existing or prospective end users that Itron acquires, develops, or derives in connection with performance under this Agreement. Such customer data may include, without limitation, any personally identifying information relating to a Customer's existing or prospective end user, or any other information that, either individually or when combined with other information could be used to identify a particular Customer end user or a prospective Customer end user, which information is not generally available to the public.

**Defended Party** means a Party entitled to defense and indemnification from the other Party under Section 12 ("Third-Party Claims") of this Agreement.

**Defending Party** means a Party obligated to provide defense and indemnification to the other Party under Section 12 ("Third-Party Claims") of this Agreement.

**Documentation** means user manuals, training materials, product descriptions and specifications, technical manuals, supporting materials and other information relating to Services and Equipment provided by Itron, which Itron customarily makes available to its customers.

**Endpoint** means an electric meter, gas or water endpoint receiver-transmitter, battery-powered device, or any other device from which Customer Data will be collected and managed as part of a Service Offering.

**Error** means a material failure of Software to comply with applicable published Itron specifications.

**Equipment** means Itron Equipment and Third-Party Equipment.

**Equipment Maintenance Fees** mean the annual fees identified in a Quote or, if no Quote, Itron's then-current list price at the time of Purchase Order acceptance by Itron, for each category of Covered Itron Equipment and Covered Third-Party Equipment, plus the Annual Adjustment, if any.

**Fees** means all amounts payable to Itron by Customer for Services and Equipment provided under this Agreement, as set forth in a Quote or, if no Quote, Itron's then-current list price at the time of Purchase Order acceptance by Itron.

**Fix** means a correction or workaround for an Error.

**Global Support Services** means those support services provided by Itron technical representatives via telephone, email, website or other means to assist Customer's Primary Service Contacts with questions or issues related to the operation of Covered Products.

**Improvement** means an update, modification, enhancement and/or extension to Software functionality that is included in

a Release.

**Intellectual Property** and **Intellectual Property Rights** mean all industrial and intellectual property, including, without limitation, patents, patent applications, invention registrations, and all other rights in inventions, copyrights in published and unpublished works, whether registered or unregistered, know-how, trade secrets, and confidential and proprietary information, whether such intellectual property has been created, applied for or obtained anywhere throughout the world.

**Itron Equipment** means equipment listed on a Purchase Order for sale to Customer under this Agreement that is manufactured by or on behalf of Itron.

**M&S Commencement Date** means the date upon and after which a Covered Product will be entitled to receive Maintenance Services purchased by Customer, which unless otherwise specified in a Quote provided by Itron, will be as follows:

Covered Product	M&S Commencement Date
Software	Service Offering Commencement Date
Covered Itron Equipment	End of warranty period
Covered Third Party Equipment	Per applicable third-party service provider terms and conditions

**Maintenance Services** means maintenance and support services described in Section 8 (“Maintenance Services”) of this Agreement.

**Mobile Device Software** means Itron’s Temetra Mobile application.

**One-Time Setup Fee** means the one-time setup fee(s) for each Service Offering identified in the applicable Quote or, if no Quote, Itron’s then-current list price at the time of Purchase Order acceptance by Itron.

**Operating Condition** means performance in accordance with applicable published Itron specifications.

**Party** means Customer or Itron and **Parties** means Customer and Itron.

**Primary Services Contacts** means Customer’s primary support staff who provides internal support to Customer’s operations personnel and who are key interface to Itron for all Maintenance Services.

**Quote** means a quote for Services and/or Equipment provided to Customer by Itron or a Channel Partner.

**Release** means a collection of Fixes and/or Improvements made available by Itron to Customer.

**Service Offering** means the Temetra software-as-a-service offering identified on the applicable Purchase Order whereby Itron or its designated provider hosts and provides Customer with access to SaaS Software on Servers via the internet.

**SaaS Software** means the Itron proprietary data collection and management computer program(s) for the Service Offering(s) purchased by Customer.

**Servers** means the physical computer hardware owned by Itron or its designated provider on which SaaS Software will be installed, operated, and maintained by or on behalf of Itron.

**Service Offering Commencement Date** means, with respect to each Service Offering, the date Itron makes access credentials for the Service Offering available to Customer.

**Service Levels** means the defined level of impact and associated response time, effort level, and escalation path procedures and guidelines described in Attachment A to this Agreement.

**Services** mean the Service Offering(s) and Maintenance Services.

**Software** means Mobile Device Software and SaaS Software.

**Subscription Fees** means annual fees identified in the applicable Quote or, if no Quote, Itron's then-current list price at the time of Purchase Order acceptance by Itron, for each Service Offering, plus the Annual Adjustment, if any.

**Subscription Term** means the subscription term purchased by Customer for each Service Offering, which begins upon the applicable Service Offering Commencement Date.

**Territory** means the country in which Itron provides Services and/or Equipment to Customer.

**Third-Party Equipment** means equipment listed on a Purchase Order for sale to Customer under this Agreement that is not manufactured by or on behalf of Itron.

**2. Purchase Order Requirement.** Customer shall purchase Services and any Equipment by issuing a purchase order or similar ordering document accepted by Itron ("Purchase Order") indicating specific Services and Equipment, Itron part numbers, quantity, unit price, total purchase price, shipping instructions, requested shipping dates, bill-to and ship-to addresses, tax exempt certifications, if applicable, and contract reference. No contingency contained on any Purchase Order shall be binding upon Itron. The terms of this Agreement shall apply, regardless of any additional or conflicting terms of any Purchase Order or other correspondence or documentation submitted by Customer to Itron, and any such additional or conflicting terms are deemed rejected by Itron.

**3. Term.** The initial term of this Agreement begins on the Effective Date and expires one (1) year following the Effective Date. Thereafter, the term of this Agreement will automatically renew for successive one-year periods, unless either Party provides the other with written notice of its intent not to renew at least ninety (90) days prior to commencement of the next renewal period. Any accepted Purchase Orders as of the expiration date of this Agreement shall be completed by the Parties and the term of this Agreement will be extended solely for that purpose until completion. This Section is subject to Section 15 ("Termination") of this Agreement.

#### **4. Fees, Invoicing, Taxes and Payment.**

**4.1. Fees.** Initial fees for Services and Equipment are set forth in the Quote or, if no Quote, Itron's then-current list price at the time of Purchase Order acceptance by Itron. If the Territory is the United States, Customer will issue its Purchase Order to Itron, Inc. and pay Fees to such entity in USD. If the Territory is Canada, Customer will issue its Purchase Order to Itron Canada, Inc. and pay Fees to such entity in CAD.

#### **4.2. Invoicing.**

**4.2.1.** Customer shall pay Subscription Fees in advance for each Billing Cycle for which it has purchased a Service Offering. Itron will invoice Customer for the One-Time Setup Fee and initial Subscription Fees for each Service Offering upon the Service Offering Commencement Date. Initial Subscription Fees shall be prorated based on the number of months remaining in the current Billing Cycle following the Service Offering Commencement Date. Itron may discontinue a Service Offering by providing Customer with written notice of discontinuance no less than 180 days prior to the commencement of a Billing Cycle. Otherwise, Itron will provide Customer with a renewal notice for the Service Offering at least 120 days prior to the commencement of each Billing Cycle. Customer may discontinue a Service Offering by providing Itron with written notice of

non-renewal no less than 90 days prior to the commencement of a Billing Cycle. Otherwise, approximately 20 days prior to the commencement of each Billing Cycle, Itron will provide Customer with an invoice for Subscription Fees payable by Customer for the forthcoming Billing Cycle.

**4.2.2 Equipment.** Itron will invoice Customer for Equipment and related shipping costs on or after the date of shipment.

**4.2.3 Maintenance Services.** Fees for Software Maintenance Services are included in the Subscription Fee for the applicable Service Offering. As compensation for Maintenance Services for Equipment, Customer shall, in advance, pay Equipment Maintenance Fees for each Billing Cycle in which it receives such Maintenance Services. Itron shall invoice Customer for Equipment Maintenance Services to be provided during the first Billing Cycle as soon as practicable following the M&S Commencement Date. For Equipment Maintenance Services provided during any subsequent Billing Cycle, Itron shall provide Customer with a renewal notice at least 120 days prior to the commencement of each Billing Cycle. Customer may discontinue Maintenance Services for any Covered Itron Equipment or Covered Third-Party Equipment by providing Itron with written notice of non-renewal for such Covered Product(s) no less than 90 days prior to the commencement of any subsequent Billing Cycle. Otherwise, approximately 20 days prior to the commencement of each subsequent Billing Cycle, Itron shall provide Customer with an invoice for Equipment Maintenance Fees payable by Customer for the forthcoming Billing Cycle. Itron may, in its discretion, invoice Customer for Maintenance Services for Covered Itron Equipment or Covered Third-Party that is added during any Billing Cycle as soon as such Maintenance Services have been added (at a prorated amount) or at the beginning of the next Billing Cycle. The Equipment Maintenance Fee for any partial Billing Cycle (i.e., for Covered Itron Equipment or Covered Third-Party Equipment with a M&S Commencement Date falls after the beginning of the Billing Cycle) shall be prorated based on the applicable M&S Commencement Date and the remaining number of months Customer is to receive Maintenance Services during the Billing Cycle.

**4.3. Payment.** Customer must pay each invoice within thirty (30) days of the invoice issuance date. Payment must be made by electronic transfer to a bank account designated by Itron.

**4.4. Invoice Disputes.** Customer shall notify Itron in writing of any dispute with any invoice (along with substantiating documentation and a reasonably detailed description of the dispute) within ten (10) days from the original invoice date. Invoices for which no such timely notification is received shall be deemed accepted by Customer as true and correct, and Customer shall pay all amounts due under such invoices within the period set forth in Section 4.3. The Parties shall seek to resolve all such disputes expeditiously and in good faith in accordance with the dispute resolution provisions set forth in Section 18 ("Disputes"). Notwithstanding anything to the contrary, each Party shall continue performing its obligations under this Agreement during any such dispute, including, without limitation, payment by Customer of all undisputed amounts due and payable under this Agreement.

**4.5. Late Payment.** Except for invoiced payments that Customer has timely disputed, all late payments shall bear interest at the lesser of the rate of one percent (1%) per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer shall also reimburse Itron for all reasonable costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at law (which Itron does not waive by the exercise of any rights hereunder), Itron shall be entitled to suspend the provision of any Services and/or delivery of any Equipment if Customer fails to pay any undisputed amounts when due hereunder and such failure continues for fifteen (15) days following written notice thereof.

**4.6. No Setoff.** Customer shall not withhold payment of any amounts due and payable under this Agreement by reason of any setoff of any claim or dispute with Itron, whether relating to Itron's breach, bankruptcy, or otherwise.

**4.7. Taxes.** All prices are exclusive of any taxes, however designated, including without limitation value added, sales and withholding taxes which are levied or based upon the prices, charges or upon this Agreement. Customer shall pay any taxes related to products and services provided pursuant to this Agreement (except for taxes based on Itron's net income) or shall present an exception certificate acceptable to all relevant taxing authorities. Applicable taxes shall, to the extent practical, be billed as a separate item on the invoice. The Parties agree to fully cooperate with one another regarding taxes and any related issues arising from this Agreement. Customer will reimburse Itron for sales and use tax liability assessed against Itron but rightfully owed by Customer arising from or related to transactions set forth herein.

**5. Documentation.** Subject to Customer's compliance with this Agreement, including payment of all applicable Fees, Itron hereby grants to Customer a non-exclusive, non-transferable, non-assignable, limited right to access and use the Documentation with the Services and Equipment for its internal business purposes in the Territory. Itron will make its standard Documentation available via download. Itron will provide Customer with download instructions.

## **6. Service Offerings**

### **6.1. Access Rights and Restrictions.**

**6.1.1. Access Rights.** Subject to Customer's compliance with this Agreement, including payment of all applicable Fees, Itron hereby grants to Customer, for the Subscription Term(s) purchased, a non-exclusive, non-transferable, non-assignable, limited right to access and use the Service Offering(s) for its internal business purposes in the Territory.

**6.1.2. Restrictions on Use.** Customer and its authorized users may not: (a) modify, translate or create derivative works of any Service Offering or related Documentation; (b) copy, reproduce, distribute, republish, download, display, post or transmit any portion of a Service Offering or related Documentation in any form or by any means; (c) sell, assign, transfer, lease or sublicense any Service Offering; (d) allow any third party, other than authorized users, to access any Service Offering or related Documentation without Itron's prior written consent; (e) use any Service Offering or related Documentation to provide services to third parties, or otherwise use any Service Offering on a "service bureau" or "timesharing" or subscription basis; (f) reverse engineer, disassemble, decrypt, extract or otherwise reduce any Service Offering to a human perceivable form or otherwise attempt to determine the source code or algorithms of any Service Offering (except to the extent the foregoing restriction is expressly prohibited by applicable law); (g) infringe any of Itron's or its providers' Intellectual Property Rights; (h) publicly publish the results of any benchmark tests run on any Service Offering; (i) use any Service Offering or related Documentation to engage in any fraudulent, illegal or unauthorized act; (j) introduce into or transmit through any Service Offering any material containing software viruses, worms, trap doors, back doors, Trojan horses or other harmful or malicious computer code, files, scripts, agents or programs; (k) remove, alter or obscure any titles, product logo or brand name, trademarks, copyright notices, proprietary notices or other indications of Itron's or its providers' Intellectual Property Rights, whether such notice or indications are affixed on, contained in or otherwise connected to a Service Offering; (l) attempt to gain unauthorized access to a Service Offering or Itron's or its providers' systems or networks; (m) merge any Service Offering with any other product or service without Itron's prior written



consent and the payment of any additional fees; or (n) access or use any Service Offering or related Documentation to build or support, and/or assist a third-party in building or supporting, products or services competitive to Itron or its providers. **Content Restrictions.** Customer may not distribute, download, or place on any Itron or its providers' website or Server, or use with any Service Offering, any content that: (a) Customer knows or has reason to believe infringes the Intellectual Property Rights of any third party or violates any rights of publicity or privacy; (b) violates any applicable law, statute, ordinance; (c) is defamatory, trade libelous, unlawfully threatening or unlawfully harassing; or (d) is obscene, pornographic or indecent (items (a) – (d) are collectively referred to as “**Prohibited Content**”). Itron reserves the right to remove any Prohibited Content from the Server without prior notice to Customer. Customer will indemnify, defend and hold Itron and its providers harmless for any claims, liabilities, losses, causes of action, damages, settlements, and costs and expenses (including, without limitation attorneys' fees and costs) arising from any third-party claims related to or generated by any Prohibited Content distributed, downloaded, or placed on any Itron or its providers' website or Server or used with any Service Offering by Customer.

**6.2. Breach of Restrictions.** Customer's breach of the restrictions set forth in Section 6.1.2 (“Restrictions on Use”) or Section 6.1.3 (“Content Restrictions”) shall constitute a material breach of this Agreement and shall result in revocation and immediate suspension or termination, as determined by Itron in its sole discretion, of all rights and licenses granted under this Agreement with respect to the Service Offerings. Revocation does not preclude Itron from pursuing any legal and equitable remedies for Customer's breach of these restrictions.

**6.3. SaaS Software Availability.** Itron will endeavor to make the SaaS Software available to Customer through the Service Offering(s) purchased by Customer at least 99.5% of the time, excluding any downtime resulting from maintenance or circumstances beyond Itron's reasonable control.

**6.4. Third-Party Radio Devices.** Customer may use a Service Offering to collect Customer Data from Endpoints equipped with radio communication devices not manufactured or provided by Itron (“Third- Party Radio Device”). Itron makes no representations or warranties whatsoever, directly or indirectly, express or implied, as to the suitability, durability, and fitness for use, merchantability, condition, quality, performance or non-infringement of, and disclaims all liability with respect to, Third-Party Radio Devices. Without limiting the foregoing, Itron shall have no liability (a) if a Third-Party Radio Device is not responding or communicating or (b) for unread Endpoints due to defective or unreachable Third-Party Radio Devices. Customer shall contact the supplier of such device for support.

**6.5. Sizing of Software-as-a-Service.** Itron will size Service Offerings, Servers, and systems for Customer's specific deployment. System sizing depends upon the Service Offering and types of devices and sensors and may be a factor in determining Subscription Fees. Sizing criteria may include number of system endpoints, number of network devices, residential meter configuration, commercial and industrial meter configuration, desired data collection intervals, storage duration for historical data, and the number of concurrent and total users of the application. Any sizing changes during a Subscription Term will require a written agreement of the Parties and may result in a change in Subscription Fees.

**6.6. Application Upgrade and Fixes.** SaaS Software is updated regularly using a continuous delivery method.

**6.7. Conditions on Use of Service.** Customer will use of the Service Offerings only in accordance with the Documentation, this Agreement, and applicable laws and government regulations. The rights of any user to access and use the Service Offerings cannot be shared or used by more than one individual (unless such license is

reassigned in its entirety to another authorized user), and Customer shall make every reasonable effort to prevent unauthorized third parties from accessing the Service Offerings.

**6.8. Suspension or Restriction of Service.** Itron may suspend or restrict all or part of the Service Offerings at any time to protect the integrity and functionality of the Software, Servers, platforms, and systems, or for a breach of Section 6.1.2 (“Restrictions on Use”), Section 6.1.3 (“Content Restrictions”) or Section 6.7 (“Conditions on Use of Service”), until such breach is cured to Itron’s reasonable satisfaction.

**6.9. Incident Management.** Itron will provide Customer support and incident and problem management services, which include responding to alerts, tracking the issue, troubleshooting the problem and escalating to Itron subject matter experts or third-party providers.

**6.10. Customer Technical Responsibilities.** Customer is responsible for selecting, acquiring, securing and maintaining all equipment and ancillary services needed to connect to, access, or otherwise use and maintain compatibility with the Service Offerings, at Customer’s sole expense.

**6.11. User IDs and Passwords.** Itron shall provide Customer with a user identification and password (“User ID”) to access each Service Offering. Customer shall be solely responsible for all use of Customer’s subscriptions and accounts. Customer shall maintain the confidentiality of all User IDs assigned to or created by Customer. User IDs may not be shared or used by more than one user.

**6.12. Maintenance.** System maintenance, whenever reasonably practicable, will be performed during off- business hours based on the regions covered by the Service Offering. Itron will minimize Service Offering disruptions to the extent reasonably practical.

**6.13. Business Continuity.** Itron uses streaming replication to keep a hot failover database always available, with automatic switch over in the event of failure. Application data is automatically backed up every night.

**6.14. Recovery of Customer Data.** At the end of the Term of the Agreement or SaaS service (unless the Agreement or SaaS service is renewed pursuant to duly executed amendment or a new agreement), or in the event of its early termination in accordance with the terms of the Agreement, Customer will confirm to Itron in writing, no later than on the effective date of expiration or termination, its decision to close the SaaS service (“Closure Confirmation”). Provided that Itron has received the Closure Confirmation from Customer within the aforementioned period, Itron will maintain Customer's access to the system for a maximum period of three (3) months from receipt of the Closure Confirmation, for the sole purpose of enabling Customer to retrieve the following Customer data: access account information, meter details, history of index reading data and photographs. Customer may, at no additional cost, export said system data in the standard file format used by the SaaS service, or the format already supported by the SaaS service. At the end of this three (3) month period, the Customer data will be permanently deleted and will no longer be recoverable.

**6.15. Mobile Device Software License.** License Grant. Subject to the terms of this Agreement, Itron grants Company a limited, non- exclusive, and non-transferrable license to download, install, and use the Mobile Device Software on Itron-approved mobile devices owned or otherwise controlled by Customer (each a “Mobile Device”) strictly in accordance with the Documentation.



**6.16. License Restrictions.** Customer shall not: (a) copy the Mobile Device Software; (b) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Mobile Device Software; (c) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Mobile Device Software or any part thereof; (d) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from the Mobile Device Software, including any copy thereof; or (e) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Mobile Device Software, or any features or functionality of the Mobile Device Software, to any third party for any reason.

**6.17. Updates.** Itron may from time to time in its sole discretion develop and provide Mobile Device Software updates, which may include upgrades, bug fixes, patches, other error corrections, and/or new features (collectively, including related documentation, “**Updates**”). Based on Customer’s Mobile Device settings, when Customer’s Mobile Device is connected to the internet either: (a) the Mobile Device Software will automatically download and install all available Updates; or (b) Customer may receive notice of or be prompted to download and install available Updates. Customer shall promptly download and install all Updates and acknowledge and agree that the Mobile Device Software, the Service Offering, or portions thereof may not properly operate should Customer fail to do so. Customer further agrees that all Updates will be deemed part of the Mobile Device Software and be subject to all terms and conditions of this Agreement.

**6.18. Compatible Mobile Devices.** Mobile Device Software is designed to work in connection with Mobile Devices that meet Itron minimum requirements. Itron will provide the minimum specifications to Customer. Itron is not required to make Mobile Device Software work with any other mobile devices.

**6.19. Disclaimer of Liability.** Mobile Device Software requires Internet connectivity, which Customer is solely responsible for procuring. Itron accepts no responsibility for any internet services failure, Mobile Device failure, or for any loss or damage of any kind caused by such failure.

## **7. Equipment**

**7.1. Ordering, Lead Time & Ship Date.** Scheduled shipping dates will be assigned by Itron as close as possible to Customer’s requested date based on Itron’s then-current lead times for the Equipment. Upon Customer’s request, Itron will communicate current lead times. Itron will also communicate scheduled shipping dates in the order acknowledgment or on Itron’s customer portal.

**7.2. Order Cancellation & Rescheduling.** Purchase Orders for Equipment may not be canceled or rescheduled by Customer, unless agreed to by Itron.

**7.3. Shipment, Title & Risk of Loss.** For shipments within the United States, Itron will ship Equipment FOB Origin, production facility. Customer must pay for all costs associated with delivery of Equipment to the final destination. Title and risk of loss of Equipment will pass to Customer upon tender to the carrier at the production facility. For shipments outside the United States, Itron will ship Equipment FCA Origin (Incoterms 2020). Equipment will be delivered export cleared to Customer at the production facility. Customer will act as the Importer of Record (IOR) for Equipment and assumes all costs associated with delivery of Equipment to the final destination, including transportation after delivery to carrier and any licensing, certifications, permits, customs fees, import/local taxes, provincial/national tax, and value added tax related to importation of Equipment. Itron will provide all necessary information required for Customer to import Equipment. Title to and risk of loss for Equipment passes to

Customer upon tender to the carrier at the production facility.

**7.4. Itron Equipment Warranty.** Itron warrants solely to Customer that Itron Equipment will be free from defects in materials and workmanship and will conform in all material respects to the applicable Itron published specifications for one (1) year following the original shipment date. As Customer's sole and exclusive remedy for a breach of the foregoing warranty, Itron will, at its option and expense: (i) repair or replace faulty Itron Equipment under warranty after it has been returned to an Itron-designated repair facility during the Warranty Period in accordance with Itron's then current RMA policy and procedures, (ii) provide Customer with a Firmware or software fix to correct the nonconformity, or (iii) if Itron determines (in its reasonable judgment) that it is unable to provide a remedy specified in item (i) or (ii) of this section, Itron will provide Customer with a depreciated refund of the purchase price for the applicable Itron Equipment. Customer will pay the cost of returning Itron Equipment to the Itron designated repair facility and Itron will pay the cost of returned repaired or replacement Itron Equipment to Customer. Customer is responsible for any labor costs associated with removal or reinstallation of Itron Equipment. Repaired and replacement Itron Equipment will be warranted for the remainder of the Warranty Period, or sixty (60) days from the ship date of the repaired or replaced Itron Equipment, whichever is longer.

**7.5. Itron Equipment Warranty Exclusions.** The above warranty does not cover Itron Equipment in poor operating condition due to: (a) changes made to Itron Equipment without Itron's prior written consent; (b) use with cables, mounting kits, antennas, battery backups and other devices, third party software or firmware that Itron has not provided to Customer or approved in writing for use with Itron Equipment; (c) Customer's or a third party's misuse, abuse, negligence, or failure to install, test, handle or operate Itron Equipment in accordance with its Documentation; (d) a Force Majeure event; or (e) incorrect data, or data entry or output by Customer or a third party not under Itron's control. Additional warranty exclusions for specific Itron Equipment may be specified in the attached Itron Equipment Warranty Table. Customer may request that Itron repair Itron Equipment damaged by any of the foregoing; if Itron agrees to make such repairs, Customer may be charged additional Fees.

**8. Third-Party Equipment Warranty.** Itron is not the manufacturer of the Third-Party Equipment and makes no representations or warranties whatsoever, directly or indirectly, express or implied, as to the suitability, durability, fitness for use, merchantability, condition, quality, performance or non-infringement of Third-Party Equipment. Third Party Equipment shall be subject to any warranties provided by the Third- Party Equipment manufacturer. Itron will pass through to Customer, or make commercially reasonable efforts to enforce on Customer's behalf, any warranties and remedies received from the Third-Party Equipment manufacturer. Maintenance Services

#### **8.1. Primary Services Contacts.**

**8.1.1. Designation by Customer.** Customer shall designate a minimum of one and not more than two Primary Services Contacts for each Covered Product line, to serve as administrative liaisons for all matters pertaining to Maintenance Services for such Covered Product line and shall provide their contact information to Itron's customer account representative. Primary Services Contacts shall promptly report problems with Covered Products by submitting a Service Request for entry into Itron's support tracking system. Although it is Customer's sole right to choose its Primary Services Contacts, Customer and Itron acknowledge that each Primary Services Contact must have the appropriate technical skills and training for the position. If Customer replaces a Primary Services Contact, Customer will provide updated contact information to Itron's customer account representative, and the new Primary Services Contact will be properly trained prior to interfacing with Itron support personnel.

**812 Training of Principal Services Contacts.** Before a Primary Services Contact interfaces with Itron support personnel, he/she will attend training sessions offered by Itron, an Itron-approved trainer, or Customer's training program approved by Itron to ensure that the Primary Services Contact is (i) knowledgeable about operation of the applicable Covered Products, and (ii) qualified to perform problem determination and remedial functions with respect to such Covered Products. Customer may perform Itron-approved training or may engage Itron to perform training of Primary Services Contacts at Itron's then current rates. Itron will make training sessions available by remote video conference or training will be made available at a location or in a manner mutually agreed by the Parties. Customer shall be responsible for all Customer's associated travel-related expenses and, if the Parties agree that training will be provided at a location other than an Itron-designated facility (e.g., at a Customer-proposed facility), Customer will also reimburse Itron's travel-related expenses. The Primary Services Contacts must have the skills and capabilities to train other Customer personnel on Covered Products. Itron may update Covered Product training from time to time and, upon receiving notice of such updates from Itron, Customer shall promptly provide such training to its Primary Services Contacts in accordance with this Section.

## **8.2. Global Support Services & Service Requests.**

**821. Global Support Services.** Itron will make support representatives available to provide technical support during its then current normal business hours as set forth in the Product Contact Information Sheet included within the Client Services Guidelines Document. Global Support Services include troubleshooting & problem diagnosis relating to Covered Products; release or system management consulting; and recommendations for fully utilizing Covered Products. Customer acknowledges and agrees that Global Support Services are not intended as a substitute for training of Customer personnel, field support, or Itron professional services. Nor will Customer use Global Support Services in lieu of having qualified and trained support personnel of its own.

**822. Service Request Process.** Customer shall submit Service Requests in the manner required by the Client Services Guidelines Documents and Service Levels. Customer may submit Service Requests on a 24/7/365 basis and Itron will respond to such Service Requests in accordance with the Service Levels. When Customer submits a Service Request, Customer will reasonably assess its urgency according to the appropriate Severity Level in Attachment A to this Agreement. Itron will designate the initial Severity Level and the Parties will resolve any perceived gap regarding the Severity Level designation as soon as is reasonably practical.

**823. Field Support.** At Customer's request, and Itron's approval, Itron will dispatch support personnel to Customer's location to provide onsite Global Support Services ("*Requested Field Support*") related to a reported problem which cannot be addressed remotely. Requested Field Support will be billed at Itron's then-current rates, and Customer will reimburse Itron's travel-related expenses, unless the cause of the reported problem is found to be the fault of Itron.

## **8.3. Software Maintenance**

**831. Fixes.** Itron shall provide Fixes in accordance with the Service Levels. Itron's obligations with respect to Service Levels are contingent upon Customer (i) devoting the same level of effort to resolving the Error as is required of Itron, (ii) responding to requests made by Itron within the applicable Response Time, (iii) assigning only qualified personnel to help Itron address the Error, and (iv) providing all information, access, and assistance reasonably requested by Itron to address the Error.

**832 Improvements.** Itron shall provide Improvements, if any, at no charge to Customer if such Improvements are made within the current product specifications and are made available to Itron customers generally at no charge. Improvements created as new add-on modules/features and not part of the products original specifications, will be created at Itron's discretion and will be billable at Itron's then current rates. Access to new add-on modules may also require additional licensing and subscription fees.

**833 Exclusions.** Itron shall have no obligation to provide Maintenance Services for, or liability to Customer for Software adversely affected by (i) use of Software by anyone other than Itron in combination with software, equipment, or communications networks not referenced in the Documentation as being compatible with the Software; (ii) failure to perform customer responsibilities describe in this Agreement, (iii) viruses introduced through no fault of Itron.

**834 Customer Responsibilities.** Customer will support Itron investigation and restoration efforts as defined in the Service Level table and will act upon / implement support solutions and workarounds recommended by Itron in a timely fashion. When escalating a Service Request with Itron, Customer's Primary Service Contact shall collect and provide all data logs, findings, analysis, and any relevant forensic information pertaining to the issue as outlined in Client Services Guideline Documents.

#### **8.4. Equipment Maintenance.**

**841 Preventive and Corrective Maintenance.** Upon receipt of an item of Covered Itron Equipment, Itron shall (i) perform preventative Maintenance Services necessary to maintain the Covered Itron Equipment in Operating Condition, and (ii) diagnose and correct any failure in the Covered Itron Equipment as necessary to meet Operating Condition, excluding minor cosmetic deficiencies such as blemishes, dents or scratches.

**842 Maintenance Procedures.** Customer shall initiate a request for Maintenance Services for Covered Itron Equipment by delivering the Covered Itron Equipment to the applicable Itron Certified Repair Center identified on the Itron Equipment Repair Table. Return of Covered Equipment shall be at Customer's expense and in accordance with Itron's then-current Return Material Authorization ("RMA") procedures. Upon receipt of Covered Itron Equipment (with the required information) under Itron's RMA procedures, Itron shall assess the item to determine (a) whether it is in fact Covered Itron Equipment and (b) whether the maintenance requested is included within the Maintenance Services ordered by Customer and not otherwise excluded from coverage. If the returned equipment is determined to be Covered Itron Equipment and the maintenance requested is included in the Maintenance Services ordered by Customer, Itron shall provide the applicable Maintenance Services and return the item of Covered Itron Equipment to Customer at Itron's expense within the applicable turnaround time identified on the Itron Equipment Repair Table. If Itron determines that returned equipment is not Covered Itron Equipment or is excluded from the Maintenance Services ordered by Customer, then Itron will proceed in accordance with the estimation fees section below.

**843 Exclusions.** Covered Itron Equipment Maintenance Services do not include repairs related to: (i) damage due to accident, abuse, misuse, inadequate maintenance, problems caused by electrical power surges or acts of God outside of the tolerances set forth in the applicable published Itron specifications; (ii) service or repair processes (including installation or de-installation of equipment, parts, or firmware/software) not performed or authorized by Itron; (iii) use of parts, configurations or repair depots not certified or authorized by Itron; or (iv) Customer's failure to perform material Customer responsibilities in accordance with this Addendum, including caring for Covered Itron Equipment in accordance with applicable Documentation.

**844. Estimation Fees.** Itron will provide Customer with a price quote for the estimated cost (including current inspection fees), including labor, materials and shipping, for any repairs to equipment that are requested, which Itron determines are excluded from or not included within the Maintenance Services ordered by Customer. If Customer elects not to proceed with the requested repair, Itron will return the item of equipment at Customer's expense and Itron may charge Customer its then-current inspection fee.

**845. Adding/Restoring Equipment to Maintenance Services.** Following the Effective Date, additional Covered Itron Equipment purchased by Customer, of a similar type and model already covered under this Agreement, shall automatically be deemed to be Covered Itron Equipment following the M&S Commencement Date. If Customer declines or discontinues Maintenance Services for any Covered Itron Equipment and thereafter wishes to add or restore such equipment as Covered Itron Equipment, Itron may, prior to such equipment being included as Covered Itron Equipment, inspect such equipment at Itron's then current rates to determine whether it is in Operating Condition and/or charge Itron's then current re-certification fee, in addition to prorated Equipment Maintenance Fees for the then-current Billing Cycle (the "Re-initiation Costs"). At Customer's request, Itron will provide Customer with a quote for estimated Re-initiation Costs for equipment that Customer wishes to add or restore as Covered Itron Equipment under this section.

**846. Equipment Responsibilities.** Itron shall make available, and Customer shall obtain, a copy of the Documentation for Covered Itron Equipment and Customer will be responsible to perform preventive maintenance for each such item in accordance with such Documentation. Customer shall also keep accurate records of Covered Itron Equipment serial numbers and locations to assist Itron with performing Maintenance Services.

**847. Support for Third Party Equipment.** Itron shall provide first tier Global Support Services for Third Party Covered Equipment by handling all Customer inquiries, attempting to identify the component involved in the problem and obtaining appropriate documentation of such inquiry or problem. In addition, Itron shall make commercially reasonable efforts to facilitate Customer's receipt of maintenance and support for such Third-Party Covered Equipment consistent with the third-party maintenance terms made available to Customer by Itron. Notwithstanding anything else to the contrary, Itron's sole obligation under this Addendum with respect to Third Party Covered Equipment shall be as set forth in this section.

**8.5. End of Support.** Itron may discontinue Maintenance Services for any Covered Itron Equipment, effective as of the end of the applicable Billing Cycle, by giving Customer written notice of such discontinuance no less than one hundred eighty (180) days prior to the end of such Billing Cycle. The end of support date for a Covered Third-Party Equipment shall be the date specified by the applicable third-party service provider, which date will be promptly communicated by Itron to Customer following the date of receipt. If the end of support date is scheduled within a subsequent Billing Cycle, Equipment Maintenance Fees for that subsequent Billing Cycle will be pro-rated through the end of support date. At Customer's request, Itron may elect to provide custom support for Equipment for which Maintenance Services have been discontinued at Itron's then-current rates. Unless otherwise agreed by the Parties in accordance with the foregoing sentence, Itron shall have no obligation to provide Maintenance Services with respect to Equipment for which Itron has discontinued Maintenance Services. Periodically, Itron will make available product plan publications, including product information letters (PIL), product newsletters or written technology roadmaps which outline Itron's general plans for continued support and end of support of applicable Covered Products. Product publications are used as general guidelines for Customer communications and planning, which may be updated from time to time.



**9. Warranty Disclaimer.** EXCEPT FOR THE LIMITED ITRON EQUIPMENT WARRANTIES SET FORTH IN SECTION 8.4 (“ITRON EQUIPMENT WARRANTY”), ITRON MAKES NO WARRANTY OF ANY KIND RELATING TO SERVICES AND EQUIPMENT AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, (I) IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (II) WARRANTIES OF TITLE AND AGAINST INFRINGEMENT, AND (III) WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. TO THE EXTENT ANY IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. ITRON AND ITS SUPPLIERS DO NOT WARRANT OR REPRESENT THAT SERVICES OR EQUIPMENT WILL BE FREE FROM BUGS, ERRORS OR THAT THEIR USE WILL BE UNINTERRUPTED OR ERROR-FREE. ITRON ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM ITS DATA CENTERS OR DATA CENTERS OF ITS VENDORS VIA WAN, CELLULAR OR OTHER PUBLIC COMMUNICATIONS OR BROADBAND SYSTEMS (INCLUDING OUTAGES, DEVICE NON-REACHABILITY, LOSS OR INACCURATE READING) OR FOR ANY CONSEQUENCES, LOSSES, OR DAMAGES ARISING FROM CHANGES MADE BY CUSTOMER TO THE CONTENT OR PROGRAMMING OF EQUIPMENT (UNLESS CAUSED BY A DEFECTIVE PRODUCT). THESE DISCLAIMERS WILL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED UNDER THIS AGREEMENT.

## **10. Intellectual Property.**

**10.1. Reservation of Intellectual Property.** Subject to the limited rights expressly granted by Itron to Customer under this Agreement: (i) Itron reserves all rights, title and interest in and to all of its Intellectual Property, and (ii) as between the Parties, Itron owns all rights, title and interest in and to its Confidential Information and the products, services and related deliverables provided by Itron under this Agreement. Subject to the limited rights expressly granted by Customer to Itron under this Agreement, Customer reserves all rights, title and interest in and to all of its Intellectual Property, and (ii) as between the Parties, Customer owns all right, title and interest in and to its Confidential Information and Customer Data. All rights, titles, and interests not specifically and expressly granted by either Party hereunder are hereby reserved.

**10.2. Customer Suggestions.** Itron shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into any products and services any suggestions, enhancement requests, recommendations or other feedback provided by Customer.

## **11. Third-Party Claims.**

**11.1. General Claims.** The Defending Party will defend the Defended Party from and against Claims arising from personal bodily injury, death, or damage to tangible personal property or real property, and will indemnify the Defended Party from resulting settlements approved by the Defending Party and final judgments entered against the Defended Party, to the extent caused by the negligence of the Defending Party.

**11.2. Infringement Claims.** Itron, as the Defending Party, will defend Customer, as the Defended Party, from and against Claims alleging that any Itron-branded products or services, as delivered to Customer, infringe upon any third party’s Intellectual Property Rights within the Territory (“**IP Claims**”). Itron will also indemnify Customer for settlements approved by Itron and final judgments entered against Customer to the extent resulting from IP Claims. If Itron receives notice of an alleged infringement by any products or services provided to Customer under this



Agreement, or if Itron reasonably believes that an IP Claim is likely, Itron may stop delivery of the affected products or services without liability for failure to deliver them. Itron will have the right, at its sole option, to obtain the right for Customer to continue use of the affected products or services, or to replace or modify the affected products or services so that they are no longer alleged or believed to infringe, if it can be done without significant loss of functionality. If neither of the foregoing options are available to Itron on commercially reasonable terms, Itron may terminate Customer's use of the affected products or Services without further liability under this section, in which case Itron will refund to Customer the depreciated value of the affected product and any prepaid unused portion of the service.

**11.3. Conditions to Defense.** As a condition to the Defending Party's obligations under Section 12.1 or Section 12.2 above, the Defended Party must: (i) promptly notify the Defending Party in writing of the Claim; (ii) give the Defending Party all reasonably requested information and assistance in connection with the Claim in a timely manner; and (iii) give the Defending Party the sole right to control the defense and settle of the Claim. The Defending Party shall not enter into any settlement of a Claim against a Defended Party without the Defended Party's prior written consent unless: (a) there is no admission of fault of the Defended Party; (b) there is no injunctive or other non-monetary relief against the Defended Party; and, (c) the settlement includes the claimant's or plaintiff's release of the Defended Party from all liability in respect of the Claim.

**11.4. Exclusions to Infringement Claim Defense.** Itron will have no obligation under Section 12.2 above for any infringement Claim in which infringement is alleged or caused by (i) the combination, operation or use of any product or service provided by Itron with any product or service (including third-party software and equipment) not provided by Itron, (ii) any modification to products or services made either without Itron's prior written consent or by a person other than Itron or an authorized representative of Itron, (iii) failure to use updated or modified products or services as provided by Itron, (iv) use of any release of Itron software or any firmware other than the most current release made available to Customer, (v) use of products or services not in accordance with this Agreement and applicable Documentation, or (vi) Itron's compliance with any designs, specifications, or instructions provided by Customer. In addition, Itron shall not be liable for enhanced or punitive damages that could have been avoided or reduced by actions within the control of Customer.

**11.5. EXCLUSIVE REMEDY.** THIS SECTION 12 CONSTITUTES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO THIRD PARTY CLAIMS BROUGHT AGAINST CUSTOMER.

**12. Data Protection.** The Parties must implement and establish reasonable security protocols for the protection and retention of Customer Data. As between Customer and Itron, Customer will retain its rights in Customer Data; provided, however, Customer hereby grants Itron a non-exclusive, royalty-free, perpetual, worldwide license to copy, modify, use, sublicense, distribute, display, create derivative works of all Customer Data for the purposes of (i) providing products and services to Customer, (ii) testing, troubleshooting, and optimizing performance and quality of Itron's products and services, and (iii) so long as Customer is not identifiable and all personally identifiable information is either removed or anonymized, developing new products and services. Itron assumes no responsibility for Customer or third-party content carried on Customer's or Itron's systems. Customer warrants and represents that, during the term of this Agreement, (a) it has the legal right and authority to grant Itron access to view, store, and use the Customer Data to provide products and services, and (b) Itron's transmission, use and storage of any such Customer Data in accordance with this Agreement will not violate any applicable laws or regulations or cause a breach of any agreement or obligation between Customer and any third-party.

**13. Confidentiality.** Each Party receiving, possessing, accessing or otherwise acquiring Confidential Information of the other Party acknowledges that the disclosing Party's Confidential Information is the property of and confidential to, or a trade secret of, the disclosing Party. The receiving Party: (a) must keep the disclosing Party's Confidential Information confidential and may not directly or indirectly disclose, divulge or communicate that Confidential Information to, or otherwise place that Confidential Information at the disposal of, any other person without the disclosing Party's prior written approval; (b) must take all reasonable steps to secure and keep secure all disclosing Party's Confidential Information coming into its possession or control; (c) may not disclose any Confidential Information to anyone other than the receiving Party's employees, agents, contractors or subcontractors and professional advisors, or those of its Affiliates, who have a need to know such Confidential Information; (d) must use the Confidential Information solely for purposes related to the subject matter of this Agreement or for potential future commercial transactions between the Parties not otherwise covered by a separate agreement; and (e) must ensure that any person to whom it discloses Confidential Information in accordance with this provision is subject to binding confidentiality obligations that are at least as restrictive as those set forth in this Agreement.

**14. Termination.** Either Party may terminate this Agreement by providing the other Party with written notice if the other Party (i) becomes insolvent, executes a general assignment for the benefit of creditors or becomes subject to bankruptcy or receivership proceedings, or (ii) commits a material breach of this Agreement that remains uncured for thirty (30) days following delivery of written notice of such breach. Any notice of breach must specify (a) the nature of the breach, and (b) the specific act or acts that the non-breaching Party contends would correct such breach. For the avoidance of doubt, Customer's failure to pay invoices timely will be deemed a material breach of this Agreement.

**15. Survival.** The following sections of this Agreement shall survive termination or expiration of this Agreement: 1 ("Definitions"), 3 ("Term"), 4 ("Fees, Invoicing, Taxes and Payment"), 10 ("Warranty Disclaimer"), 11 ("Intellectual Property"), 14 ("Confidentiality"), 16 ("Survival"), 17 ("Limitation of Liability"), 18 ("Disputes"), 19 ("Governing Law"), and 25 ("Miscellaneous").

**16. Limitation of Liability.** Except for Customer's violation of Itron's Intellectual Property Rights, neither Party will be liable to the other Party for any consequential, indirect, special, incidental, punitive or exemplary damages arising out of this Agreement or products or services provided hereunder (including, but not limited to, damages for loss of data, goodwill, profits other than amounts payable by Customer to Itron hereunder, investments, use of money or facilities; interruption in use or availability of data; stoppage of other work or impairment of other assets), whether or not foreseeable and even if such Party has been advised of the possibility of such damages. Except for Customer's payment obligations hereunder or violation of Itron's Intellectual Property Rights, neither Party's total, aggregate liability to the other Party arising out of or related to this Agreement or any products or services provided hereunder shall exceed the amounts paid and payable by Customer under the applicable Order Document or Statement of Work during the twelve month period immediately preceding the date upon which the liability arose, regardless of whether any action or claim is based on contract, warranty, indemnity, negligence, strict liability or other tort or otherwise.

**17. Disputes.** The Parties shall resolve any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach, termination, or invalidity hereof (each, a "**Dispute**") in accordance with this Section. A Party shall send written notice to the other Party of any Dispute ("**Dispute Notice**"). The Parties shall first attempt in good faith to resolve any Dispute set forth in the Dispute Notice by negotiation and consultation between themselves. In the event that such Dispute is not resolved on an informal basis within thirty (30) Business Days after one Party delivers the Dispute Notice to the other Party, either Party may, by written notice to the other Party ("**Escalation to Executive Notice**"), refer such Dispute to the executives of each Party designated by such Party in a written notice to the other Party

(**“Executive(s)”**). If the Executives cannot resolve any Dispute during the period ending thirty (30) Business Days after the date of the Escalation to Executive Notice (the last day of such time period, the **“Escalation to Mediation Date”**), either Party may submit the Dispute to any mutually agreed to mediation service for mediation by providing to the mediation service a joint, written request for mediation, setting forth the subject of the dispute and the relief requested. The Parties shall cooperate with one another in selecting a mediation service and shall cooperate with the mediation service and with one another in selecting a neutral mediator and in scheduling the mediation proceedings. The Parties covenant that they will use commercially reasonable efforts in participating in the mediation. The Parties agree that the mediator’s fees and expenses and the costs incidental to the mediation will be shared equally between the Parties. If the Parties cannot resolve any Dispute for any reason, including, but not limited to, the failure of either Party to agree to enter into mediation or agree to any settlement proposed by the mediator, within sixty (60) Business Days after the Escalation to Mediation Date, either Party may initiate legal proceedings in a court of competent jurisdiction. Notwithstanding the foregoing, nothing in this Section shall be construed as preventing a Party from seeking available equitable relief, including without limitation, specific performance and injunctive relief in a court of competent jurisdiction.

**18. Governing Law.** This Agreement and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the jurisdiction where Customer’s primary business address is located, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any other jurisdiction. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

**19. Legal Compliance.** Each Party must comply with all applicable laws. Itron’s products and services delivered under this Agreement are subject to the U.S. Export Administration Regulations (**“EAR”**; 15 CFR part 730 et seq.) and any applicable laws and regulations of the particular country to which such items are shipped or received. Customer shall comply with all applicable export control laws and shall not cause, directly or indirectly, the export, re-export, or transfer of any such items or services to destinations or persons without obtaining any required prior authorization from the U.S. Government and any other applicable local authorities. Customer shall not do anything to cause Itron to violate such export control laws, including, but not limited to, requesting support for a product that has been unlawfully re-exported or requesting delivery of a product or service intended for a U.S. sanctioned region or person. Each party represents that it is not listed on a U.S. Government restricted party list for export control or trade sanctions purposes, and is not 50% or more owned, in the aggregate, by one or more restricted parties. Customer shall maintain any required export records related to Itron’s products or services and make such records available to Itron upon request. The Parties must comply with all anti-bribery laws and may not make any payments or transfer any item of any value for the purpose of bribing any individual or group, or accepting or participating in any extortion, kickbacks, or other unlawful or improper means to obtain business related to this Agreement or products and services orderable under this Agreement.

**20. Publicity.** Neither Party may issue a press release related to this Agreement or their relationship without the other Parties’ prior written consent. The Parties will create and approve for publication a press release announcing their relationship under this Agreement. Itron may use Customer’s name and logo as a part of Itron’s normal marketing materials.

**21. Sub-contractor and Outsourcer.** Itron may hire, engage, or retain the services of one or more subcontractors and/or outsourcing providers to perform any or all of its obligations related to its product development, network operations, and/or any portion of services provided under this Agreement. Subcontractors and outsourcing providers that have access to Customer Data will be bound by written obligations of confidentiality and data security requirements as restrictive as those required under this Agreement.

**22. Independent Contractor.** This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties. The Parties are independent contractors. Neither Party has any authority to act on behalf of, or to bind the other to any obligation.

**23. Force Majeure.** Neither Party (the “Impacted Party”) shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for Customer’s obligations to make payments to Itron under this Agreement), when and to the extent such failure or delay is caused by or results from acts or omissions (whether in effect on or after the Effective Date of this Agreement) beyond the Impacted Party's reasonable control and without the Impacted Party’s negligence, including, without limitation: (a) acts of God; (b) severe weather, flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) changes in applicable laws or regulations; (e) embargoes or blockades; (f) action or inaction by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages, or slowdowns or other industrial disturbances; (i) shortage of adequate materials, qualified labor, power or transportation; (j) epidemics, pandemics or quarantines; and (k) other similar or dissimilar circumstances outside the Impacted Party’s reasonable control and without the Impacted Party’s negligence (each a "Force Majeure").

**24. Miscellaneous.** (a) If any provision of this Agreement is found to be unenforceable by a court of competent jurisdiction or arbitration panel, such provision will be deleted and the remaining terms will be construed so as to give maximum lawful effect to any such deleted terms. (b) Section numbers and captions are provided for convenience of reference and do not constitute a part of this Agreement. Any references to a particular section of this Agreement will be deemed to include reference to any and all subsections thereof. (c) No waiver by either Party of any breach under this Agreement will constitute a waiver of any other breach. (d) This Agreement is not made for the benefit of any third parties. (e) All notices under this Agreement must be sent to such other address as such Party has notified the other in writing, will be effective on the date received (unless the notice specifies a later date) and must be sent by a courier service that confirms delivery in writing, or by certified or registered mail, postage prepaid, return receipt requested. All communications and notices to be made or given pursuant to this Agreement must be in English. (f) Customer may not assign this Agreement or any of its rights hereunder without Itron’s prior written consent. Subject to the foregoing, this Agreement will bind and inure to the benefit of the Parties and their respective successors and permitted assigns, but any assignment in violation of this provision will be void.

**Approvals**

Approved and Agreed to:

Itron, Inc.	Customer	Customer
Signature	Signature	Signature
	Myles Murdock	Andrea Fisher
Printed Name	Printed Name	Printed Name
	Mayor	Clerk
Title	Title	Title
	March 13, 2023	March 13, 2023
Date	Date	Date



## Attachment A

### – Software Maintenance & Support Service Levels –

Severity Level	Response Times	Effort Level and Restoration	Escalation
<b>Security Level 1*. Business Impact: Critical Impact / System Down.</b> A Production System Error for which there is no work-around, which causes Software or a critical business function / process of said product to be unavailable such that system operation cannot continue. <b>Example:</b> a) Billing cannot be completed, b) Major documented function not working, c) System hung or completely down	During regular business- hours Itron will begin the Service Request process during Customer's initial call. During after-hour periods, Itron will respond to a critical support voice messages within 15 minutes by a return call to Customer, to validate receipt of the critical support call and begin the Service Request process. Following the start of the Service Request process Itron will respond to Customer's Service Request within two (2) business hours with an investigation response.	Itron will make diligent efforts on a 24x7 basis, or as otherwise agreed by the Parties, to: i) restore Software with a change to eliminate root cause, ii) provide a workaround which restores Software and downgrades the Severity Level to S2, S3, S4. Customer Support Staff must be available 24x7 to work cooperatively with Itron continuously until such time restoration is achieved.	An unresolved Service Request shall be escalated to Itron management as follows: <b>After 30 minutes:</b> Technical Customer Support Team Lead <b>After 8 hours:</b> Manager, Technical Client Services <b>After 16 hours:</b> Director, Global Support Services <b>After 48 hours:</b> Service Request. Vice President, Services and Delivery <b>After 72 hours:</b> President, Itron
	Itron will update Customer at three (3) hour intervals during each day the Service Request remains unresolved, or as otherwise agreed by the Parties.		
	Customer will respond to an Itron inquiry or request within three (3) hours.		



<b>Severity Level 2*</b> <b>Business Impact: Major impact, degraded</b>	During regular business- hours Itron will respond to Customer regarding Service Request within	Itron will make diligent efforts during normal business hours to:	An unresolved Service Request shall be escalated to Itron management as follows:
<b>Operation.</b> An Error other than a Severity Level 1 Error, for which there is no work-around, which degrades or limits operation of major system functions causing Software to miss required business interface or deadlines. Software remains available for operation but in a highly restricted fashion.	one (1) business day. While Service Request remains unresolved, Itron will update the Customer and the Service Request at least every other business day, or as otherwise agreed by the parties. Customer will respond to an Itron inquiry or request within one (1) business day.	i) restore Software with a change to eliminate root cause, ii) a workaround which restores Software and downgrade the Severity Level to S3, S4.	<b>After 1 hours:</b> Technical Customer Support Team Lead <b>After 8 hours:</b> Manager, Technical Client Services <b>After 24 hours:</b> Director, Global Support Services <b>After 30 Days:</b> Vice President, Services and Delivery
<b>Example:</b> a) Billing cannot be completed on time, b) Major function is operating outside documented timing / term, c) Software operating slow, missing data, data delivery, daily mission.			

  

<b>Severity Level 3**</b> <b>Business Impact: Minor Business Impact, compromised operations.</b> An Error other than a Severity Level 1 or Severity Level 2 Error that has moderate impact on use of or access, with low business impact, but not preventing Customer from performing daily activities.  Example: The Service Request affects use by Software users, allowing Customer's functions to continue to meet daily business needs.	During regular business- hours Itron will respond to Customer regarding Service Request within two (2) business days. While Service Request remains unresolved, Itron will update the Service Request weekly, or as otherwise agreed by the parties. Customer will respond to an Itron inquiry or request within two (2) business days.	Itron will work during normal business hours to: i) restore Software with a change to eliminate root cause, ii) a workaround which restores Software and downgrades the Severity Level to S4	
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<p><b>Severity Level 4</b>  <b>Business Impact: Standard Operations intact.</b> A low or no- impact Error other than a Severity Level 1, Severity Level 2 or Severity Level 3 Error, or a request for enhancement / new functionality</p> <p>Example:  Generally, a cosmetic Error or an Error which does not degrade Customer's use of the product or system.</p>	<p>During regular business- hours Itron will respond to Customer regarding Service Request within three (3) business days.</p>	<p>Itron GSS Management Team will make commercially reasonable efforts during normal business hours to understand the Service Request and provide applicable recommendations as to when a Fix may be schedule in a future release, or how to proceed with a formal enhancement request to Itron's product and delivery teams.</p>	
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\* Severity Level 1 and Severity Level 2 must be reported by phone to insure they are addressed under the appropriate severity level response process. Service Requests entered by email or Web access are generally addressed as a Severity Level 3.

\*\* Service Request opened on Non-production servers/environments are entered as a Severity Level 3.