

## SOFTWARE LICENSE AND SERVICES AGREEMENT

### ACCEPTANCE OF TERMS

By clicking "AGREE", Customer agrees to license the Field Collection System software ("FCS Software") and to purchase the FCS Software maintenance and support services described in the quote provided by Itron, Inc. or by Itron, Inc.'s distributor (the "Quote"), subject to the terms and conditions of this Agreement.

By clicking "Agree," Customer also acknowledges that it has read and accepts the terms and conditions of this Agreement in their entirety. Customer should print a copy of this Agreement for its records.

If Customer has chosen to purchase Itron Mobile in addition to licensing FCS Software and purchasing that will be reflected in Quote, the Itron Mobile terms and conditions of this Agreement also apply. If Customer has not chosen to purchase Itron Mobile, then the Itron Mobile terms and conditions of this Agreement concerning do not apply.

If Customer does not click "Agree," Customer will not be provided the FCS Software, FCS Software maintenance services, or Itron Mobile for FCS.

### TERMS & CONDITIONS SPECIFIC TO FCS, MAINTENANCE & SUPPORT, AND ITRON MOBILE

#### 1. FCS Software.

1.1 License. Itron grants Customer a perpetual, non-exclusive and non-transferable license to use the FCS Software and FCS Software documentation for Customer's internal business purposes in connection with the number of endpoints or other devices specified in the Quote, subject the restrictions described below.

1.2 License Restrictions. The FCS Software is only permitted to be installed on one production environment and one test environment on Customer premises. Customer is not permitted to copy the FCS Software other than to make one machine readable copy for disaster recovery or archival purposes. Customer is not permitted to (i) modify or create any derivative works from the FCS Software, (ii) include or combine the FCS Software with any software, equipment, or hardware other than as authorized by Itron, (iii) use the FCS Software to provide services to third-parties, (iv) reverse assemble, decompile, reverse engineer the FCS Software or otherwise attempt to derive its source code, (v) export the FCS Software, or (iv) use the FCS Software to create products or services that compete with any of Itron's products or services. Customer's breach of these restrictions shall constitute a material breach of this Agreement and shall result in revocation and immediate termination of all rights and licenses granted under this Agreement. Revocation does not preclude Itron from pursuing any legal and equitable remedies for Customer's breach of these restrictions.

1.3 Limited Itron FCS Software Warranty. For a period of ninety (90) days from the date of shipment, Itron warrants to Customer that the FCS Software will substantially conform in all material respects with the applicable Itron published specifications. As Customer's sole and exclusive remedy for any breach of this warranty, Itron will, at its option, during the warranty period set forth in this Section, repair or replace non-conforming FCS Software to substantially conform to the foregoing warranty. After the ninety (90) day period, any Itron FCS Software non-conformities will be addressed under maintenance services terms. This software warranty does not apply to non-conformities due to: (i) modifications not made or approved by Itron in writing; (ii) Customer's or any third party's negligence or intentional acts; (iii) misuse or abuse, including the failure to use or install FCS Software in accordance with the FCS Software documentation; (iv) incorrect data, or data entry or output by Customer or a third party; (v) third party software, hardware or firmware not provided or authorized by Itron in writing; (vi) a force majeure event; or (vii) viruses or security vulnerabilities introduced into the Itron FCS Software or Customer's systems through no fault of Itron.

1.4 Invoicing. Customer will be invoiced for FCS Software upon the date of shipment.

#### 2. Itron Mobile for FCS.

2.1 Annual Subscription Term Commitment. Itron Mobile requires a minimum one-year subscription commitment. The initial Itron Mobile subscription term begins upon completion of Itron Mobile set-up, as validated by Itron. The Itron Mobile subscription term will renew automatically for one-year terms, unless either Itron or Customer gives ninety (90) days' prior written notice of intent not to renew.

2.2 Itron Mobile Set-Up. Itron Mobile set-up is an activity separate and distinct from FCS software installation. In all cases where a Customer subscribes to Itron Mobile, Itron will perform Itron Mobile set-up, for which Itron will charge a one-time set-up fee.

2.3 Relationship to Licensed FCS Software and Maintenance & Support. In order to ensure full functionality of Itron Mobile, Customer may be required to update or upgrade its licensed FCS Software from time to time. In the event of termination of Customer's FCS Software license, Customer's subscription and right to use Itron Mobile will terminate.

2.4 Fee Adjustments. The Itron Mobile subscription fee is subject to annual adjustment. In addition because the Itron Mobile subscription fee is charged on the number of provisioned meters or endpoints in Customer's system (i.e., the tier limitation), any increase in that number during an Itron Mobile subscription term outside of Customer's tier limitation will result in additional charges. The additional charges will be invoiced to Customer normally within thirty (30) to sixty (60) days depending on when provisioning occurs.

2.5 Compatible Mobile Devices. Itron Mobile 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 Itron Mobile work with any other mobile devices.

2.6 Customer's Obligation to Protect Customer Information on Mobile Devices. Customer must take steps to protect Customer information stored on mobile devices, including secure access to mobile devices whether purchased through Itron or a third-party. User identification codes, passwords, and any information provided to Customer as part of Itron's security procedures must be treated as confidential and must not be disclosed to any third party. Customer is at all times responsible for its employees and subcontractors' use of Itron Mobile. Itron has the right to disable any user identification codes or passwords if, in Itron's opinion, Customer or its employees and contractors have failed to comply with any of the provisions of this Agreement.

2.7 Internet Connectivity. Itron Mobile requires Internet connectivity. Customer is solely responsible for obtaining and paying for Internet connectivity.

2.8 Disclaimer of Liability. 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.

### **3. FCS Maintenance & Support.**

**3.1 Technical Support Services.** Itron will provide Technical Support Services to include troubleshooting, problem diagnosis, release or system management, and recommendations for fully utilizing the FCS system. Customer acknowledges and agrees that Technical Support Services are not intended as a substitute for training of Customer personnel and will insure principal FCS resources are trained and qualified on the FCS system via Itron provided or Itron approved FCS training programs.

**3.2 Maintenance & Support Year.** Maintenance and support services are offered as an annual service, billable in advance and renewable annually. Each annual term is referred to as a "Maintenance & Support Year."

**3.3 Annual Adjustment.** Maintenance and support services fees are subject to an annual adjustment upon renewal. Additionally, Maintenance fees may be further adjusted upon an increase in Customer's endpoint count which exceeds their current licensed meter / endpoint tier.

**3.4 Renewals.** Itron will provide Customer with a renewal notice at least one-hundred twenty (120) days prior to the end of the Maintenance & Support Year. Customer must notify Itron within thirty (30) days after receiving Itron's renewal notice if Customer wishes to change service coverage or does not wish to renew services. Otherwise, maintenance and support services will automatically renew, and Customer will be obligated to pay for the new Maintenance & Support Year.

**3.5 Effect of Early Termination by Customer.** Itron will not refund prepaid fees if Customer terminates maintenance and support services without cause prior to the expiration of Maintenance & Support Year.

**3.6 Restoring Maintenance & Support Services.** If Customer discontinues maintenance and support services and thereafter wishes to resume them, Customer must notify Itron in writing of its request and pay Itron's then-current re-initiation fee.

**3.7 Effect of Termination for Cause by Itron.** Itron will not refund prepaid maintenance and support services fees if Itron terminates maintenance and support services for cause prior to the expiration of Maintenance & Support Year.

**3.8 Working Level Documents.** Itron maintains working level documents to help Customer work effectively with Itron's Global Support Service team. Itron will instruct Customer on how to obtain those documents. Customer will adhere to Working Level Document processes to insure prompt and accurate service.

**3.9 Itron Support Priorities & Service Levels.** Itron uses a five severity level category system to prioritize support services requests,

described in the Support Priorities & Service Levels Table below.

**3.10 Customer Obligation to Install Releases.** Itron will only provide support services for Itron software that is kept current by Customer. Customer must be operating the most recent system release. Customer must have installed and tested one of the two (2) prior service pack releases. Customer will test and install system releases and service pack releases within twelve (12) months of being made available to Customer.

**3.11 Installation Support.** Support services for installation of Itron software by Customer include limited remote phone support for Itron certified, production server configurations licensed by Customer, during standard business hours. At Customer's request, Itron may provide additional installation services under Itron Enhanced Maintenance Service program.

**3.12 Mandatory Revisions.** Customer must install all mandatory revisions. Mandatory revisions will be determined by Itron. Mandatory revisions are intended to address a material software error, a material security breach, or a third party infringement claim or suit of any kind. Itron disclaims all liability related to or arising out of customer's failure to install a mandatory revision in a timely fashion.

**3.13 Exclusions.** Itron shall have no obligation to provide maintenance and support services for, or liability to, Customer for Itron software adversely affected by (i) use of Itron software in combination with software, equipment, or communications networks not authorized by Itron or referenced in the Itron software documentation as compatible; (ii) modification to Itron software by anyone other than Itron, (iii) failure to perform customer responsibilities described describe in these maintenance and support services terms, (iv) the use of a version of Itron software that is not supported by Itron; (v) Customer's failure to implement a hot fix or mandatory revision provided by Itron; (vi) maintenance and/or support of Itron software other than by Itron; or (vii) viruses introduced through no fault of Itron.

**3.14 End of Maintenance & Support.** Itron has the right to discontinue maintenance and support services for Itron software. Itron will normally discontinue maintenance and support services at the end of the current Maintenance Year, in which case Itron will give Customer written notice no less than ninety (90) days prior to expiration of the Maintenance Year. In some cases, Itron may decide to discontinue maintenance and support services in a future Maintenance Year, and if the end of support date takes effect prior to the end of that future Maintenance Year, maintenance and support services fees will be pro-rated through the appropriate end of support date.

**3.15 Optional Support for Discontinued Itron Software.** At Customer's request, Itron may elect to provide custom support for discontinued Itron software under a written and negotiated Enhanced Maintenance Services statement of work, but Itron is under no obligation to do so.

**3.16 Itron Support Priorities & Service Levels Table.** Parties shall work cooperatively to address reported errors in accordance with these Priorities and Service levels.

#### Severity Level 1

<b>Definition</b>	<b>Critical Business Impact / System Down:</b> An error for which there is no work-around, which causes the software or a critical business function / process of the Itron system to be unavailable. System use and operation cannot continue. An "error" means a failure of the software to substantially comply with the applicable published specifications.
<b>Reporting</b>	Severity 1 errors must be reported by phone to initiate the Severity 1 response process. A Severity 1 Service Request ("SR") initiated by email or web interface are logged as a Severity 3 until reviewed by Itron Technical Support Services and validated as a higher priority.
<b>Responses</b>	<p>During after-hour periods, Itron will respond to a critical support voice message within 15 minutes by a return call to Customer, which will validate receipt of the critical support call and begin the SR process. During regular business-hours Itron will begin the SR process during Customer's initial call.</p> <p>Following the start of the SR process Itron will respond to Customer's SR within 2 business hours with an investigation response.</p> <p>Following the investigation response, Itron will update Customer at three hour intervals during each day the SR remains unresolved, or as otherwise agreed by Itron and Customer.</p> <p>Customer will respond to an Itron inquiry or request within three hours.</p>

<b>Effort Level / Escalation Path</b>	<p>Itron will make diligent efforts on a 24x7 basis*, or as otherwise agreed by Itron and Customer. An SR shall be escalated to Itron's Global Support Service ("GSS") management team if a fix is not provided within 1 business day of Itron's receipt of the Customer's call and creation of the SR. A fix is a correction of an error, including a work-around, in order for the software to function in accordance with the applicable published specifications.</p> <p>*24X7 support for Severity Level 1 errors is not currently available for Itron meter products, energy forecasting and load research products, and distribution products.</p>
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### Severity Level 2

<b>Definition</b>	<b>Moderate Business Impact / Degraded Operation:</b> An error other than a Severity Level 1 error, for which there is no work-around, which limits access or use of the software or a business function, causing the system to miss required business interface or deadlines. The system remains available for operation but in a restricted fashion.
<b>Reporting</b>	Severity 2 errors must be reported by phone to initiate the Severity 2 response process. SRs initiated by email or web interface are logged as a Severity 3 until reviewed by Itron Technical Support Services and validated as a higher priority.
<b>Responses</b>	<p>Customer SR within 1 business day and will update the SR at least every other day.</p> <p>Customer will respond to an Itron inquiry or request within 1 business day.</p>
<b>Effort Level / Escalation Path</b>	Itron will make diligent efforts during normal business hours. SRs shall be escalated to Itron's GSS management team if a fix is not provided within 3 business days of Itron's receipt of Customer's call and creation of the SR.

### Severity Level 3

<b>Definition</b>	<b>Minor Business Impact / Compromised Operation:</b> An error other than a Severity Level 1 or Severity Level 2 error that has an inconvenient use of or access to a software function. (e.g., a feature is not working as documented but a work-around is available and significant business functions are not materially impaired).
<b>Reporting</b>	
<b>Responses</b>	Itron will respond to Customer SR within 2 business days.
<b>Effort Level / Escalation Path</b>	Itron technical representatives will make diligent efforts during normal business hours.

### Severity Level 4

<b>Definition</b>	<b>No Business Impact / Standard Operation:</b> An error other than a Severity Level 1, Severity Level 2 or Severity Level 3 error. Generally a cosmetic error or an error which has not degraded Customer's use of the system
<b>Reporting</b>	
<b>Responses</b>	Itron will respond to Customer SR within 3 business days, or as otherwise agreed by Itron and Customer.

**Effort Level / Escalation Path**

Itron support representatives will devote commercially reasonable efforts during normal business hours.

**Severity Level 5**

<b>Definition</b>	<b>No Business Impact.</b> Customer SR for an enhancement or new functionality.
<b>Reporting</b>	
<b>Responses</b>	Not applicable.
<b>Effort Level / Escalation Path</b>	The SR will be evaluated as a potential, future product enhancement. If the enhancement or new functionality requires more immediate attention for Customer, Itron will engage Itron's professional services group to create a customized proposal for Customer, at Itron's then-current services rates.

**GENERAL TERMS & CONDITIONS OF SALE**

**4. Purchase Orders.** Purchase orders are required to order Itron products and services. Purchase orders are subject to Itron credit approval. Pre-printed terms and any contingencies, additions, or conflicting terms on a purchase order submitted by a customer will be null and void.

**5. Fees, Taxes, and Payment.** Fees and charges for Itron products and services identified in the Quote are exclusive of transaction taxes and duties. Transaction taxes and duties will be invoiced in the absence of a valid customer tax exemption certificate or direct pay permit. Payment terms are net thirty days from the date of invoice. All payments must be made in US currency. Interest will accrue on late payments at the rate of 1.0% of the outstanding balance per month, or the maximum rate permitted by law until paid. In the event of late payments, Itron may condition future purchases on prepayment or payment in less than thirty (30) days.

**6. Confidentiality.** All oral or written information exchanged between Itron and Customer in connection with performance under this Agreement is regarded as confidential information. All such information must be treated as confidential and must not be disclosed to any third parties without obtaining the written consent of the party that provided the information, unless such information: (a) is or will be in the public domain (other than through the receiving party's unauthorized disclosure); or (b) is under the obligation to be disclosed pursuant to the applicable laws or regulations, or rules of any stock exchange, or orders of the court or other government authorities. This section shall survive the termination of this Agreement for any reason.

**7. Customer Data.** All data about Customer's existing or prospective end users that Itron acquires, develops, or derives in connection with performance under this Agreement will be treated by Itron as confidential information. Itron will use safeguards reasonably designed to prevent unauthorized collection, access, disclosure, and use of the data while in Itron's custody. Customer agrees to cooperate to investigate and remedy any safeguards breach and any related disputes, inquiries, or claims.

**8 Indemnification Against Third Party Claims.** Itron will defend and indemnify Customer and Customer's successors and assigns, officers, directors, employees, representatives, and agents from and against any and all claims, demands, suits, actions, or causes of action of any kind whatsoever for damages, losses, costs and/or expenses (including legal fees and disbursements) by an unaffiliated third party (each a "Claim") to the extent resulting from (a) damages to persons or real or tangible property, bodily injury or death arising in connection with this Agreement and caused by Itron's gross negligence or intentional misconduct, or (b) any allegation that any Itron product or service infringes upon any such third party's intellectual property. Itron's obligation to defend and indemnify does not apply to equipment or software that is not manufactured or developed by or on behalf of Itron, unless the third party equipment or software has been embedded in Itron products or services.

**9. Conditions to Infringement Claim Defense.** Itron's infringement defense obligation is conditioned on Itron's right to (a) procure the rights for its customer to continue using allegedly infringing products and services, (b) replace them with functionally equivalent alternatives, or (c) modify them to become non-infringing. If those options are not commercially reasonable in Itron's sole judgment, Itron shall have the right to require its customer to cease using the products and services, and Itron will refund the depreciated value of the affected product and the unused portion of the service.

**10. Exclusions to Infringement Claim Defense.** Itron shall have no obligation under this Agreement to the extent any claim of infringement results from: (i) use of an Itron product or service, other than as permitted under this Agreement or as intended by Itron, if the infringement would not have occurred but for such use; (ii) use of any Itron product or service in combination with any other product, equipment, software or data, if the infringement would not have occurred but for such combination; (iii) any use of any release of Itron software or any firmware other than the most current release made available to Customer, (iv) any infringement claims resulting from the customer's refusal to implement, or delay in implementing, modifications recommended by Itron to avoid or mitigate such claim, (v) any modification to an Itron product or services by a person other than Itron or an authorized representative of Itron, or (vi) specific instructions to Itron by its 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 its customer.

**11. Right to Defend Infringement Claims.** Customer must provide prompt written notice of a claim alleging infringement by Itron products and services. Itron has the right to control the defense, settlement, adjustment or compromise of the claim. Itron's customer will reasonably assist Itron with the defense. Itron shall not consent to any judgment or settlement of an infringement claim that creates an obligation on its customer without first obtaining the customer's prior written consent.

**12. THIRD PARTY CLAIM DISCLAIMER.** SECTIONS 8 THROUGH 11 CONSTITUTE ITRON'S SOLE AND EXCLUSIVE OBLIGATION WITH RESPECT TO THIRD PARTY CLAIMS BROUGHT AGAINST ITS CUSTOMER.

**13. NO CONSEQUENTIAL DAMAGES.** NEITHER PARTY WILL BE LIABLE HEREUNDER FOR CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES (INCLUDING LOST PROFITS OR SAVINGS) FOR ANY CAUSE OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, EVEN IF THE PARTY WAS OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF THESE DAMAGES.

**14. FEE LIMITATION.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR DAMAGES IN EXCESS OF ONE-HUNDRED PERCENT (100%) OF THE FEES PAID BY CUSTOMER UNDER THIS AGREEMENT APPLICABLE TO PERFORMANCE OR DELIVERABLE TO WHICH THE CLAIM IS RELATED.

**15. Reservation of Intellectual Property.** Itron reserves all rights, title and interest in and to all of its intellectual property. Customer reserves all rights, title and interest in and to all of its intellectual property.

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

**17. Waivers.** No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision. No waiver granted as to any one provision of this Agreement shall constitute a subsequent waiver of such provision or of any other provision thereof, nor shall it constitute the waiver of any performance other than the actual performance specifically waived.

**18. No Assignment.** This Agreement is personal to each party and is not permitted to be assigned in whole or in part, except that Itron has the right to assign, by contract or by operation of law, all or part of this Agreement to any entity controlled by or under common control with Itron.

**19. Section Numbers.** 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.

**20. Compliance with Law.** Itron and Customer will at all times perform their respective obligations under this Agreement in compliance in all material respects with all applicable foreign, domestic, state, and local laws and regulations of all applicable foreign and domestic jurisdictions.

**21. Notices.** All notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by overnight delivery, (iv) the second business day after sending by confirmed facsimile, or (v), except for legal notices, the first business day after sending by email.

**22. Severability.** If any provisions of this Agreement or its application to particular circumstances is determined by a court to be invalid or unenforceable, those provisions (or its application to those circumstances) will be deemed stricken and the remainder of the provisions will continue in effect.

**23. Force Majeure.** Except for the obligation to pay monies due and owing, neither party shall be liable for any delay or failure in performance due to events outside the defaulting party's reasonable control, including without limitation acts of God, earthquake, labor disputes, industry wide shortages of supplies, actions of governmental entities, riots, war, terrorism, fire, epidemics, or delays of

common carriers or other circumstances beyond its reasonable control. The obligations and rights of the defaulting party shall be extended for a period equal to the period during which such event prevented such party's performance.

**24. No Third Party Rights.** This Agreement is entered into only for the benefit of Customer and Itron, and no other person or entity shall have the right to enforce any of its terms.

**25. Entire Agreement.** This Agreement constitutes the entire agreement between Itron and Customer with respect to the subject matter hereof. All prior agreements, representations, warranties, statements, negotiations, understandings, and undertakings are superseded, and Customer represents and acknowledges that it has not relied on any representation or warranty other than those explicitly set forth in this Agreement.