

# DISTRIBUTED INTELLIGENCE APPLICATION ADDENDUM

## 1 Relationship to Terms of Sale.

This Addendum contains the terms governing the supply of DI Platform Services and the DI Platform by the Itron entity determined in accordance with the Terms of Sale ("Itron"), to the Customer named in the Proposal that applies to this Addendum ("Customer").

This Addendum forms part of the Agreement, also containing the Terms of Sale (found at <http://na.itron.com/terms-of-sale>) and the applicable Proposal.

If there is any inconsistency between the Terms of Sale, and this Addendum, this Addendum shall control, but only to the extent of such inconsistency.

## 2 Additional Definitions.

The following defined terms are in addition to those defined in the Terms of Sale:

**DI** means distributed intelligence technology.

**DI Application** means an application capable of distribution to and use by a Target DI Device. DI Applications covered by this Addendum are identified in the Proposal.

**DI Application License Term** means the license term for each DI Application set forth in the Proposal, which commences when the DI Application is allocated on the DI Platform for Customer endpoint download following receipt of an accepted Purchase Order.

**DI Platform** means Itron's cloud-based Distributed Intelligence platform. The DI Platform includes the EAC and infrastructure necessary to distribute DI Applications.

**DI Platform Services** means the SaaS services provided by Itron to Customer with respect to the DI Platform.

**DI Documentation** means Documentation (as defined in the Terms of Sale) relating to DI Applications and/or the DI Platform.

**Itron DI Application** means a DI Application that is owned or branded by Itron.

**Itron Enterprise Application Center or EAC** means applications and/or services for the management and distribution of DI Applications as well as resource usage tracking and health tracking of DI Applications.

**Maintenance Services** has the meaning set forth in the Maintenance and Support Services Addendum.

**Minimum DI Subscription Term** means the minimum number of years during which Customer is required to subscribe for DI Platform Services, which shall be five (5) years following the DI Platform Services Commencement Date (as defined below in Section 7.2), unless otherwise stated in the Proposal.

**Target DI Device** means, in general, any device or device type that is capable of receiving and executing DI Applications from the DI Platform. Target DI Devices for each DI Application are identified in the Proposal.

**Third-Party DI Application** means a DI Application that is owned or branded by a third party.

## 3 Access to DI Platform, DI Documentation, and Use Restrictions.

### 3.1 Access and Use of DI Platform and DI Documentation.

Subject to and conditioned on Customer's and its authorized users' compliance with the Agreement, including this Addendum, and payment of applicable Fees, Itron hereby grants Customer a non-exclusive, non-transferable (except in compliance with Section 23 of the Terms of Sale), right to access and use the DI Platform Services for the management and distribution of DI Applications as well as resource usage tracking and health tracking of DI Applications. Such use is limited to Customer's internal use. Itron shall use commercially reasonable efforts to make the DI Platform available through the DI Platform Services purchased by Customer at least 99.5% of the time, excluding any downtime resulting

from maintenance or circumstances beyond Itron's reasonable control. Customer shall have and maintain sole and exclusive control of authorization, approval and access to DI Applications on Customer's systems and Target DI Devices. Without limiting the generality of the foregoing, Customer's end-users and other third parties shall not be able to directly purchase and/or install DI Applications on Customer's systems and Target DI Devices. Customer will only be entitled to access and deploy DI Applications which are owned by or properly licensed by Customer. Itron hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 23 of the Terms of Sale) license to use and make a reasonable number of copies of the DI Documentation solely for Customer's internal business purposes in connection with its permitted use of the DI Platform Services and DI Applications.

### **3.2 Use Restrictions.**

Customer shall not, and shall not permit any other person to, access or use the DI Platform Services or DI Documentation except as expressly permitted by Section 3.1 above. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as Section 3.1 expressly permits: (a) copy, modify, or create derivative works or improvements of the DI Platform Services or DI Documentation; (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any DI Platform Services or DI Documentation to any person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service; (c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the DI Platform Services or DI Documentation, in whole or in part; (d) bypass or breach any security device or protection used by the DI Platform Services or DI Documentation or access or use the DI Platform Services or DI Documentation other than by an authorized user through the use of his or her own then valid access credentials; (e) input, upload, transmit, or otherwise provide to or through the DI Platform Services or Itron systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any harmful code; (f) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the DI Platform Services, Itron systems, or Itron's provision of services to any third party, in whole or in part; (g) remove, delete, alter, or obscure any trademarks, specifications, documentation, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any DI Platform Services or DI Documentation, including any copy thereof; (h) access or use the DI Platform Services or DI Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property or other right of any third party, or that violates any applicable law; (i) access or use the DI Platform Services or DI Documentation for purposes of competitive analysis of the DI Platform Services or DI Documentation, the development, provision, or use of a competing software service or product or any other purpose that is to Itron's detriment or commercial disadvantage; or (j) otherwise access or use the DI Platform Services or DI Documentation beyond the scope of the authorization granted under Section 3.1. Customer's breach of the restrictions set forth in this section shall constitute a material breach of the Agreement and shall result in revocation and immediate suspension or termination, as determined by Itron in its sole discretion, of all rights granted under this Addendum with respect to DI Platform. Revocation does not preclude Itron from pursuing any legal and equitable remedies for Customer's breach of these restrictions.

## **4 Itron DI Application License and Restrictions.**

### **4.1 Itron DI Application License.**

Subject to and conditioned on Customer's and its authorized users' compliance with the Agreement, including this Addendum, and payment of applicable Fees, Itron hereby grants Customer a non-exclusive, non-transferable (except for a duly performed assignment), license to download and use Itron DI Applications on Target DI Devices up to the number of Target DI Devices specified in the Proposal during the applicable DI Application License Term for Customer's internal business purposes.

### **4.2 Restrictions.**

Customer shall not, and shall not permit any other person to, access or use Itron DI Applications except as expressly permitted by Section 4.1 above. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as Section 4.1 expressly permits: (a) copy any Itron DI Application; (b) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of any Itron DI Application; (c) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of any Itron DI Application 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 any Itron DI Application; (e) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Itron DI Application, or any features or functionality of any Itron DI Application, to any third party for any reason; (f) include or combine Itron DI Applications with any software, equipment, or hardware, or (g) use any Itron DI Application 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 the Agreement and shall result in revocation and immediate termination of all rights and licenses

granted under the Agreement with respect to the affected Itron DI Application. Revocation does not preclude Itron from pursuing any legal and equitable remedies for Customer's breach of these restrictions.

## **5 Maintenance Services.**

Itron will provide Maintenance Services for DI Applications in accordance with the Maintenance and Support Services Addendum. Unless otherwise expressly provided in the Proposal, Fees for such Maintenance Services are not included in the fees for DI Applications or DI Platform Services and must be purchased and paid for in accordance with the Maintenance and Support Services Addendum. As the term is used in the Maintenance and Support Addendum, the "M&S Commencement Date" for Maintenance Services for DI Applications shall be the date upon which the initial DI Application licenses are allocated on the DI Platform for download to the Target DI Devices. In addition to other terms and conditions set forth in Maintenance and Support Services Addendum, Itron's obligation to provide Maintenance Services for DI Applications is contingent upon Customer downloading and installing all updates to DI Applications made available by Itron, and providing Itron with access to Customer's systems and Target DI Devices as reasonably requested by Itron to perform Maintenance Services.

## **6 Fees.**

Fees for DI Platform setup, DI Platform Services, DI Application licenses, and Maintenance Services for DI Applications are set forth in the Proposal. To the extent expressly provided in the Proposal, Fees for DI Application licenses and Maintenance Services for DI Applications may be included within the fees for DI Platform Services. Unless otherwise provided in the Proposal, all Fees are valid for one (1) year following the effective date of the Proposal.

## **7 Invoicing, Renewal, Discontinuance.**

### **7.1 DI Applications.**

Itron will invoice Customer for DI Application license fees when they are allocated on the DI Platform for Customer endpoint download following receipt of an accepted Purchase Order.

### **7.2 DI Platform Services.**

Customer shall pay DI Platform Services Fees annually in advance for each year in which it purchases DI Platform Services. Unless otherwise provided in an applicable Statement of Work or Order Document, Itron will invoice Customer for DI Platform implementation services, one-time setup fees and initial DI Platform Services fees when the initial DI Applications are allocated on the DI Platform for Customer endpoint download following receipt of an accepted Purchase Order (the "**DI Platform Services Commencement Date**"). Itron may discontinue DI Platform Services by providing Customer with written notice of discontinuance no less than one-hundred and eighty (180) days prior to any anniversary of the DI Platform Services Commencement Date; provided, however, that Itron will not discontinue DI Platform Services under this sub-section during the Minimum DI Subscription Term or any DI Application License Term purchased by Customer. For the avoidance of doubt, the foregoing sentence does not prevent Itron from exercising any right of suspension or termination under the Agreement. Unless Itron discontinues DI Platform Services in accordance with this sub-section, Itron will provide Customer with a renewal notice for DI Platform Services at least one-hundred and twenty (120) days prior to each anniversary of the DI Platform Services Commencement Date. Customer may discontinue DI Platform Services by providing Itron with written notice of non-renewal no less than ninety (90) days prior to any anniversary of the DI Platform Services Commencement Date. Otherwise, approximately twenty (20) days prior to each anniversary of the DI Platform Services Commencement Date, Itron will provide Customer with an invoice for DI Platform Services fees payable by Customer for the forthcoming year. If Customer discontinues DI Platform Services prior to expiration of the Minimum DI Subscription Term, Itron will invoice Customer, and Customer will pay, for any unpaid fees for DI Platform Services through the end of the Minimum DI Subscription Term. Itron has the right to adjust DI Platform fees at any time if Customer's use of the DI Platform exceeds the pricing tier set forth in the Proposal. Subscription Fees adjusted as a result of Customer exceeding the applicable tier are typically invoiced within thirty (30) to sixty (60) days after provisioning of each respective Endpoint occurs.

### **7.3 Maintenance Services.**

Fees for Maintenance Services for DI Applications will be invoiced in accordance with the Maintenance and Services Addendum.

## **8 Itron DI Application Warranty and Exclusions.**

### **8.1 Itron DI Application Warranty.**

For a period of ninety (90) days from the date of initial allocation on the DI Platform for Customer endpoint download, Itron warrants solely to Customer that each Itron DI Application will substantially conform in all material respects to 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, repair or replace non-conforming Itron DI Application to substantially conform to the foregoing warranty. After the warranty period, Itron DI Application errors will be addressed under the Maintenance and Support Services Addendum.

### **8.2 Exclusions.**

The foregoing warranty does not apply to non-conformities in Itron DI Application due to: (a) modifications not made or approved by Itron in writing; (b) Customer's or any third party's negligence or intentional acts; (c) misuse or abuse, including the failure to use or install Itron DI Applications in accordance with the DI Documentation; (d) incorrect data, or data entry or output, as applicable, by Customer or a third party; (e) third party software, hardware or firmware not provided or authorized by Itron in writing; (f) a Force Majeure event; or (g) viruses or security vulnerabilities introduced into an Itron DI Application or Customer's systems through no fault of Itron.

## **9 Third Party DI Application Licensing and Warranty Disclaimer.**

### **9.1 Third Party DI Application Licensing**

All Third-Party DI Applications and related DI Documentation are separately licensed to Customer by the applicable third-party developer, and Customer's rights and responsibilities with respect to such software and documentation shall be governed in accordance with the third-party developer's applicable software license. If Customer chooses to order Third-Party DI Applications through Itron, Customer shall enter into or accept one or more separate third-party agreements as part of the ordering, fulfilment, installation and/or download processes for such Third-Party DI Applications. The terms of any such third-party agreements may also be incorporated into the applicable Order Document.

### **9.2 Warranty Disclaimer.**

Itron is not the owner of Third-Party DI Applications and 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 any Third-Party DI Applications or related third-party platforms or systems. Third-Party Software shall be subject to any warranties provided by the Third-Party DI Application provider. 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 DI Application provider.

## **10 Relationship to Equipment Warranties.**

Nothing in this Addendum is intended to modify or expand warranties on any equipment that Customer purchases directly or indirectly from Itron.

## **11 Modifications.**

Itron may modify this Addendum from time to time by posting updated versions at <https://na.itron.com/terms-of-sale>; provided, however, that the version of this Addendum that is posted on the Acceptance Date will continue to apply to the Agreement notwithstanding any such update. Prior versions of this Addendum are available at <http://na.itron.com/terms-of-sale>.

## **12 Survival.**

The following sections of this Addendum shall survive termination or expiration of the Agreement: 1 (Relationship to Head Agreement), 2 (Additional Definitions), 3.2 (Use Restrictions), 4.2 (Restrictions), 7 (Invoicing, Renewal, Discontinuance), 8 (Itron DI Application Warranty and Exclusions), 9 (Third Party DI Application Licensing and Warranty Disclaimer), 10 (Relationship to Equipment Warranties), and 12 (Survival).