

# ITRON TERMS OF SALE

## 1 General.

### 1.1 Application.

These Itron Terms of Sale ("**Terms of Sale**") govern the sale and licensing of products and services described in a Pricing Summary or Order Acknowledgement, as defined below (each a "**Proposal**") submitted by Itron. Each Proposal is an offer by Itron to sell or license products and/or services to the customer identified in the Proposal (**Customer**) subject to and in accordance with these Terms of Sale. Collectively, Itron and Customer are referred to as the "**Parties**" and individually as "**Party**." The Proposal, these Terms of Sale and any applicable Addenda (collectively, the "**Agreement**") comprise the entire agreement between the Parties and supersede all prior or contemporaneous understanding, agreements, negotiations, representations and warranties, and communications, both written and oral. The Agreement also supersedes any of Customer's general terms and conditions of purchase regardless of whether or when Customer has submitted its purchase order or such terms. Itron expressly rejects Customer's general terms and conditions of purchase, and fulfillment of Customer's order does not constitute acceptance of any of Customer's terms and conditions or serve to modify or amend these Terms of Sale.

### 1.2 Acceptance.

Acceptance of the Agreement by Customer is a prerequisite to the purchase or licensing of products and services. Customer shall be deemed to have made an unqualified acceptance of the Agreement on the earliest of the following dates ("**Acceptance Date**"): (i) Itron's receipt of a copy of any document incorporating the Proposal signed by Customer, (ii) Itron's receipt of Customer's purchase order for products or services after receiving a Pricing Summary, (iii) Customer's payment of any amounts due under the Proposal, (iv) Itron's delivery of products or services following receipt of Customer's purchase order, or (v) any other event constituting acceptance under applicable law.

### 1.3 Existing Agreement.

Notwithstanding anything herein to the contrary, if Itron and Customer enter into or have entered into another agreement (including a written, click-wrap, click-and-accept or electronic agreement) regarding the purchase of the specific products and/or services being purchased and such agreement is in effect at the time the applicable purchase order is received by Itron ("**Existing Agreement**"), the terms and conditions of such Existing Agreement shall govern the purchase of those products and/or services.

### 1.4 General Terms and Addenda.

The terms and conditions set forth in these Terms of Sale apply to all products and services. Addenda can be found at <https://na.itron.com/terms-of-sale>, and contain supplemental terms that apply to certain products and services (each an "**Addendum**" and collectively "**Addenda**"). The Addenda are hereby incorporated into the Agreement as applicable.

### 1.5 Order Documents.

The parties may execute an order document in the form attached to these Terms of Sale that incorporates a Pricing Summary, Statement of Work (if applicable), or other document that references these Terms of Sale, describes the products and services to be provided by Itron to the Customer, and in each case includes any supplemental and/or modified terms and conditions for the applicable products and/or services ("**Order Document**"). The Order Document will only be effective when signed by Itron and Customer.

If there is any inconsistency between the Order Document and these Terms of Sale, these Terms of Sale shall control, unless expressly stated otherwise in the Order Document.

### 1.6 Purchase Order Requirement.

Customer shall purchase or license products and services by issuing a purchase order or similar ordering document ("**Purchase Order**") indicating specific products and services, 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 expressly referencing these Terms of Sale. No Purchase Order is binding on Itron unless accepted by Itron. Once accepted by Itron, no Purchase Order may be cancelled, rescheduled, or otherwise modified without Itron's written consent. No contingency contained on any Purchase Order shall be binding upon Itron. The Parties agree that the terms of the Agreement shall apply to all Purchase Orders.

## 2 Definitions.

The following defined terms are used throughout these Terms of Sale.

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

**Claim** means an unaffiliated third-party claim, action, cause of action, or demand for damages, costs, expenses (including reasonable attorney's fees), and/or other relief.

**Confidential Information** means all information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. The Confidential Information of each party includes the Order Document and other non-public terms agreed between the parties, as well as business and marketing plans, pricing, technology and technical information, trade secrets, product plans and designs, and business processes disclosed by such Party. However, Confidential Information does not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information.

**Customer Data** means all data about Customer's end users that Itron acquires, develops, or derives in connection with the performance of services under the Agreement. Customer Data may include Personally Identifiable Information relating to a Customer end user, which is not generally available to the public. However, Customer Data does not include Deidentified Data.

**Defended Party** means a Party entitled to defense from the other Party under Section 7 ("Third-Party Claims") of the main body of these Terms of Sale.

**Defending Party** means a Party obligated to provide defense to the other Party under Section 7 ("Third Party Claims") of the main body of these Terms of Sale.

**Deidentified Data** means information that cannot reasonably be used to infer information about a Customer end user.

**Documentation** means user manuals, training materials, product descriptions and specifications, technical manuals, supporting materials and other documentation relating to products and services offered by Itron, which Itron has made available to Customer.

**Fees** means all amounts to be paid to Itron by Customer under the Agreement.

**Intellectual Property** means all worldwide rights, title and interest in or relating to any intellectual property or industrial property, whether protected, created or arising under the laws of any jurisdiction, including: (i) all patents, utility models and industrial design registrations and all applications for any of the foregoing (including all continuations, divisionals, continuations-in-part, provisionals, renewals, reissues, re-examinations, substitutions, additions, extensions, inventor's certificates and any foreign equivalents of any of the foregoing), (ii) all trademarks, service marks, brand names, trade dress, logos, corporate names, trade names, and other source of business identifiers and general intangibles of a like nature, in each case, together with all goodwill, registrations and applications for registration, extensions and renewals related to any of the foregoing, (iii) all copyrights and works of authorship, in each case, whether or not registered or published, and all registrations, applications, reversions, extensions and renewals for any of the foregoing, and all moral rights, however denominated, (iv) all Internet domain names, and (v) all trade secrets, and other know-how, ideas, technology, software, discoveries, improvements, formulae, confidential and proprietary information, technical information, techniques, inventions, designs, drawings, procedures, processes, methods and models, in each case, whether or not patentable or copyrightable.

**Itron** means the Itron entity determined in accordance with Section 15.

**Order Acknowledgement** means a written sales order acknowledgement submitted by Itron to Customer in response to a Purchase Order.

**Personally Identifiable Information** means information about an individual, including any information that can be used to reveal an individual's identity or that is linkable to an identifiable individual.

**Pricing Summary** means a valid written price quotation submitted by Itron to Customer for products and/or services.

**Statement of Work** or **SOW** means any document identified as a Statement of Work and describing professional services to be provided by Itron that is attached to an Order Document or references these Terms of Sale and is signed by the parties.

**Territory** means the country in which Itron delivers products and services to Customer.

### **3 Term.**

The Agreement shall commence on the Acceptance Date and continue thereafter until all products and services covered by the Agreement have been provided by Itron, the Proposal expires, or the Agreement is terminated in accordance with Section 11 ("Termination") of the main body of these Terms of Sale, whichever occurs first.

### **4 Warranties and Disclaimer.**

All warranties relating to products and services provided by Itron under the Agreement are set forth in the applicable Addendum or Order Document.

EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED BY ITRON UNDER THE APPLICABLE ADDENDUM OR ORDER DOCUMENT, ITRON MAKES NO WARRANTY OF ANY KIND RELATING TO PRODUCTS AND SERVICES AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING: (I) IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (II) WARRANTIES OF TITLE AND NON-INFRINGEMENT, AND (III) WARRANTIES ARISING FROM STATUTE, OPERATION OF LAW, COURSE OF DEALING, PERFORMANCE, 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 PRODUCTS OR SERVICES WILL BE FREE FROM BUGS OR ERRORS OR THAT THEIR USE WILL BE UNINTERRUPTED. ITRON ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY INTERRUPTION OR CESSATION OF TRANSMISSION VIA CUSTOMER OR THIRD-PARTY WIDE-AREA NETWORK (WAN), CELLULAR OR OTHER PUBLIC COMMUNICATIONS OR BROADBAND SYSTEMS (INCLUDING OUTAGES, DISCONTINUANCE, 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 THE AGREEMENT.

### **5 Intellectual Property.**

#### **5.1 Reservation of Intellectual Property.**

Subject to the limited rights expressly granted by Itron to Customer under these Terms of Sale, Itron reserves all of its Intellectual Property and, 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 the Agreement. Subject to the limited rights expressly granted by Customer to Itron under these Terms of Sale, Customer reserves all of its Intellectual Property and, as between the Parties, Customer owns all right, title and interest in and to its Confidential Information, including Customer Data. All rights, titles, and interests not specifically and expressly granted by either Party hereunder are hereby reserved. Nothing in the Agreement will be understood to preclude or limit Itron from developing or providing products, services, or related deliverables for itself or other customers, irrespective of the possible similarity of such products, services, or related deliverables to those delivered to Customer.

#### **5.2 Customer Feedback.**

Customer hereby grants Itron 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 ("**Customer Feedback**"). As between the Parties, Itron will own all rights, title, and interest in and to any products, services, or enhancements developed by or on behalf of Itron based on any Customer Feedback.

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

### **6.1 Fees.**

Fees for products and services are set forth in the applicable Proposal or Statement of Work. Unless otherwise provided in an applicable Addendum, Proposal, or Statement of Work, Fees for products and services are valid for one (1) year from the effective date of the Proposal or Statement of Work, as applicable.

### **6.2 Invoicing.**

Itron will invoice Customer for products and services in accordance with the applicable Addendum, Order Document or Statement of Work. Itron will issue invoices to Customer via email to an email address, which Customer shall designate. If the designated email address changes, Customer shall notify Itron of that change within three (3) business days after the change.

### **6.3 Payment.**

Unless otherwise specified in an applicable Proposal, Order Document or Statement of Work, Customer must pay each invoice in US dollars (USD) within thirty (30) days from the original invoice date by electronic transfer to a bank account designated by Itron.

### **6.4 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 6.3](#) above. 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 14](#) ("Disputes") of the main body of these Terms of Sale. Notwithstanding anything to the contrary, each Party shall continue performing its obligations under the Agreement during any such dispute, including timely payment by Customer of all undisputed amounts due and payable under the Agreement.

### **6.5 Late Payment.**

Except for outstanding 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 attorney fees. In addition to all other remedies available under the 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 products if Customer fails to pay any undisputed amounts when due hereunder and such failure remains uncured for fifteen (15) days following written notice thereof.

### **6.6 Right to Sell Receivables.**

Customer agrees that Itron is entitled to sell and assign amounts due by Customer related to an undisputed invoice to any third party. Customer agrees to promptly sign all such documents, and take all such further actions, as Itron may reasonably request from time to time to facilitate and/or evidence such sale and assignment.

### **6.7 No Setoff.**

Customer shall not withhold payment of any amounts due and payable under the Agreement by reason of any setoff of any claim or dispute with Itron, whether relating to Itron's breach, bankruptcy, or otherwise.

### **6.8 Payment Assurance**

Notwithstanding [Section 6.3](#) above or anything else to the contrary, as a condition to Itron's acceptance of any Purchase Order for products and/or services under the Agreement, or the delivery thereof, Itron may at its sole discretion require Customer to (a) Prepay all or a portion of the Fees for any such products and/or services, and/or (b) Open an irrevocable and confirmed revolving letter of credit ("**Letter of Credit**") or bank guarantee ("**Bank Guarantee**") through a prime European/Global bank, and in a form, acceptable to Itron in accordance with written instructions provided by Itron. The letter of credit or bank guarantee shall name Itron as the beneficiary and be maintained by Customer at its expense in an amount requested in writing by Itron, provided that such amount shall not exceed the total aggregate unpaid amount of Fees for undelivered products and services associated with all Purchase Orders submitted by Customer under the Agreement, minus the amount of any prepayment made by Customer to Itron for such products and services at Itron's request in accordance with this Section. The Letter of Credit or Bank Guarantee shall allow multiple payments and be

payable in accordance with the following payment terms: (i) Equipment – 100% of amounts due for equipment shall be paid within thirty (30) days (or such other period agreed upon by Itron in writing) after presentation of the bills of lading made out to the order of Customer or Itron, a commercial invoice duly issued by Itron in accordance with the Agreement, and a packing list issued by Itron for the equipment against which Itron seeks payment, and (ii) Software and services – 100% of amounts due for licensed software and/or services shall be paid within thirty (30) days (or such other period agreed upon by Itron in writing) after presentation of a commercial invoice duly issued by Itron in accordance with the Agreement.

## **6.9 Taxes.**

All prices are exclusive of any taxes, however designated, including without limitation sales or use, goods and services, value added, consumption or other similar fees or taxes imposed on it with respect to the payments due to Itron under the Agreement. Customer shall be responsible for and pay on a timely basis any taxes imposed on it related to products and services provided by Itron pursuant to the Agreement (except for taxes based on Itron's net income) or shall present Itron with an exemption certificate or direct pay permit authorized by the relevant taxing authorities. Applicable taxes shall, to the extent practical, be billed as a separate item on each invoice. If Customer determines that any income tax withholding from any payment is required, Customer shall immediately notify Itron in writing of the potential for such withholding tax and shall cooperate with Itron in good faith before undertaking any such withholding so as to reduce or eliminate any potential withholding tax obligation to the greatest extent possible. Where any withholding taxes are required by law, Customer shall gross up the payment to Itron such that, after the tax has been deducted or withheld, Itron receives the same amount as it would have been entitled to receive without any such requirement to make a deduction or withholding. The parties agree to fully cooperate with one another regarding taxes and any related issues arising from the Agreement and to use reasonable efforts to make use of any lawful reliefs or exemptions that could apply. Customer shall indemnify and hold Itron and its Affiliates harmless from any tax liability assessed against Itron or its Affiliates but rightfully owed by Customer arising from or related to any transactions relating to the Agreement.

## **7 Third-Party Claims.**

### **7.1 Claims Against Customer.**

Itron will defend Customer against any Claim, and will pay for the resulting costs and damages finally awarded against Customer to the third-party claimant by a court of competent jurisdiction or agreed to in settlement by Itron, arising from or related to: (i) personal bodily injury, death, or damage to tangible personal property or real property, to the extent caused by the negligence of Itron, or (ii) infringement, misappropriation or violation of any third-party Intellectual Property within the Territory by any products or services developed by Itron and provided to Customer under the Agreement. If Itron receives notice of an alleged infringement by any products or services, or if Itron reasonably believes that an infringement 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 affected service.

Itron will have no obligation under Section 7.1(ii) for any Claim arising from or related to: (a) the combination, operation or use of any product or service provided by Itron with any product or service not provided by Itron, (b) 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, (c) failure to use updated or modified products or services as provided by Itron, (d) any use of any release of Itron software or any firmware other than the most current release made available to Customer, (e) any use of products or services not in accordance with the Agreement and applicable Documentation, (f) Itron's compliance with any designs, specifications, or instructions provided by Customer, or (g) any use of any wireless or satellite data services.

### **7.2 Claims Against Itron**

Customer will defend Itron against any Claim, and will pay for the resulting costs and damages finally awarded against Itron to the third-party claimant by a court of competent jurisdiction or agreed to in settlement by Customer, arising from or related to: (i) personal bodily injury, death, or damage to tangible personal property or real property, to the extent caused by the negligence of Customer, (ii) infringement, misappropriation or violation of any third-party Intellectual Property within the Territory by any Customer Data or other content or information provided by Customer

to Itron, (iii) any privacy or data security law related to Customer's provision of Customer Data to Itron, or (iv) Customer's use of products or services not in accordance with the Agreement and applicable Documentation.

### **7.3 Conditions to Defense.**

As a condition to the Defending Party's obligations under Section 7.1 or Section 7.2 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 settlement 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 relating in any way to the Claim.

### **7.4 EXCLUSIVE REMEDY.**

TO THE EXTENT PERMITTED BY LAW, THIS SECTION 7 CONSTITUTES EACH PARTY'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO THIRD PARTY CLAIMS BROUGHT AGAINST THAT PARTY.

### **8 Insurance.**

Itron will maintain the following minimum levels of insurance: (i) workers' compensation insurance for Itron employees equal to applicable statutory limits and an employer's liability policy in an amount not less than \$1,000,000.00, (ii) an occurrence form commercial general liability policy or policies in an amount not less than \$1,000,000 per occurrence and \$2,000,000.00 aggregate, (iii) where applicable, an automobile liability policy or policies in an amount not less than \$1,000,000.00 combined single limit, and (iv) a professional liability policy or policies insuring against liability for errors and omissions covering professional activities contemplated under the Agreement in an amount not less than \$1,000,000.00. Upon written request, Itron will provide Certificates of Insurance evidencing the coverage described, so long as Itron is providing products or services under the Agreement.

### **9 Customer Data and Deidentified Data.**

Each Party shall comply with applicable data protection laws relating to Customer Data and implement and establish reasonable security measures for the protection and retention of Customer Data. To the extent Customer Data includes Personally Identifiable Information, and Itron processes such Customer Data on behalf of Customer as part of the services provided by Itron under the Agreement, the Parties will comply with the *Itron Data Processing Agreement* (the "**Data Processing Agreement**"). The Data Processing Agreement is available at <https://www.itron.com/legal/privacy/contracts>, is incorporated herein by reference, and will remain in force during the term of the Agreement.

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) generating, storing, distributing, and using Deidentified Data for any lawful purpose. Itron will use reasonable methods, such as anonymization and aggregation, that are designed to ensure that Deidentified Data cannot be associated with any consumer or household, and shall use Deidentified Data only for analysis, reporting, program management, to maintain, improve, and develop its products and services, and other lawful purposes. Itron shall not attempt to reidentify any such Deidentified Data except as necessary to determine that its deidentification processes satisfy the requirements of this Section. Itron's use of Deidentified Data shall not conflict with Itron's obligations under the Agreement.

Customer warrants that: (a) it has the legal right and authority to grant Itron the license rights described above, and (b) Itron's exercise of such rights in accordance with the Agreement will not violate any applicable laws or regulations or cause a breach of any agreement or obligation between Customer and any third-party.

### **10 Confidentiality.**

Each Receiving 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: (i) 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, (ii) must take reasonable steps to secure and keep secure all Disclosing

Party's Confidential Information coming into its possession or control, (iii) 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 legitimate need to know such Confidential Information, (iv) must use the Confidential Information solely for purposes related to the subject matter of the Agreement or for potential future commercial transactions between the Parties not otherwise covered by a separate agreement, and (v) must ensure that any person to whom it discloses Confidential Information in accordance with this Section is subject to binding confidentiality obligations that are at least as restrictive as those set forth in this Section. Notwithstanding any language to the contrary, the Receiving Party may disclose the Disclosing Party's Confidential Information to the extent it is compelled by law to do so, if the Receiving Party gives the Disclosing Party prior written notice of such compelled disclosure (to the extent legally permitted) and provides reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest such disclosure.

### **11 Termination.**

Either Party may terminate the 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 the Agreement that remains uncured for thirty (30) days following delivery of written notice of such breach. Any notice of breach must specify the nature of the breach and the specific act 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 the Agreement.

### **12 Survival.**

The following Sections of these Terms of Sale shall survive termination or expiration of the Agreement: 1 ("Introduction"), 2 ("Definitions"), 3 ("Term"), 4 ("Warranties and Disclaimer"), 5 ("Intellectual Property"), 6 ("Fees, Invoicing, Payment and Taxes"), 9 ("Customer Data and Deidentified Data"), 10 ("Confidentiality"), 11 ("Termination"), 12 ("Survival"), 13 ("Limitation of Liability"), 14 ("Disputes"), 15 ("Governing Law and Venue"), 17 ("Publicity"), 19 ("Independent Contractor"), 20 ("Force Majeure"), 21 ("Notice"), and 22 ("Miscellaneous"). An Addendum or Order Document may also contain provisions that expressly survive termination or expiration of the Agreement.

### **13 Limitation of Liability.**

TO THE GREATEST EXTENT PERMITTED BY LAW, EVEN IF SUCH DAMAGES COULD HAVE BEEN FORESEEN OR IF ITRON HAS BEEN APPRISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF WHETHER SUCH DAMAGES ARE ARISING IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, BREACH OF ANY STATUTORY DUTY OR OTHERWISE: (A) IN NO EVENT WILL ITRON BE LIABLE FOR DAMAGES FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR PERTAINING TO THE AGREEMENT SUFFERED BY CUSTOMER OR OTHERS (INCLUDING ANY LOST PROFITS, LOST REVENUE OR LOSS OF GOODWILL); AND (B) ITRON'S TOTAL AND CUMULATIVE LIABILITY, FOR ALL CLAIMS OF ANY NATURE ARISING OUT OF OR PERTAINING TO THE AGREEMENT WILL NOT EXCEED THE TOTAL FEES PAID OR PAYABLE BY CUSTOMER TO ITRON IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE OCCURRENCE OF THE FIRST EVENT GIVING RISE TO A CLAIM UNDER THE AGREEMENT.

### **14 Disputes.**

The Parties shall attempt in good faith to resolve any dispute, controversy, or claim arising out of or relating to the Agreement, or the breach, termination, or invalidity hereof (each, a "**Dispute**") in accordance with this Section 14. 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 ("**Executive Dispute Notice**"), refer such Dispute to the executives of each Party designated by such Party in a written notice to the other Party ("**Executives**"). If the Executives cannot resolve any Dispute during the time period ending thirty (30) business days after the date of the Executive Dispute Notice (the last day of such time period hereinafter referred to as the "**Escalation Date**"), the Parties 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 and—jointly or individually—a written summary the Dispute and the relief requested in the Dispute. If the Parties decide to mediate the Dispute, they 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 agree that, if they mediate the Dispute, the mediator's fees and expenses and the costs incidental to the mediation will be shared equally between the Parties. Either Party may proceed in accordance with the provisions of Section 15 ("**Governing Law and Venue**") if (i) the Parties mediate the Dispute and cannot resolve the Dispute for any reason within sixty (60) business

days after the Escalation Date, or (ii) no mediation occurs, and the Parties cannot resolve the Dispute for any reason within ten (10) business days after the Escalation Date. Notwithstanding the foregoing, nothing in this [Section 14](#) shall be construed as preventing a Party from seeking available equitable relief, including specific performance, and injunctive relief in a court of competent jurisdiction.

### 15 Itron Contracting Entity, Governing Law, and Venue

The Itron entity entering into the Agreement, the law that will apply in any dispute or lawsuit arising out of or connection with the Agreement, and the courts that have jurisdiction over any such dispute or lawsuit, depend on where Customer is domiciled. If the Customer is domiciled in United States, the governing law is that of the State of Texas, United States of America and the courts with jurisdiction are the Superior Court of Texas, County of Travis and Federal Courts of the Western District of Texas and each Party agrees to the exclusive jurisdiction of those courts. If the Customer is domiciled anywhere except the United States: (i) the governing law is that of England and Wales; and (ii) the following applies: (A) any dispute arising out of or in connection with the Agreement, including any question regarding its existence, validity, or termination, shall be referred to and finally resolved by arbitration under the London Court of International Arbitration (the "LCIA") arbitration rules (the "Rules"), which Rules are deemed to be incorporated by reference into this Section; (B) each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against any other Party in any way arising from or relating to the Agreement and all contemplated transactions, including, but not limited to, contract, equity, tort, fraud, and statutory claims, in any forum other than the LCIA; (C) this Section shall not in any way prevent a Party from pursuing specific performance or injunctive relief in a court of competent jurisdiction; (D) the number of arbitrators shall be three; (E) each party shall be entitled to nominate an arbitrator and, once those arbitrators are appointed by the LCIA, the two party-appointed arbitrators shall then nominate a third arbitrator; (F) if either party fails to nominate an arbitrator within 30 days of receiving notice of the appointment of an arbitrator nominated by the other party, the LCIA shall, at the request of either party, appoint an arbitrator on behalf of the defaulting party; (G) if the first and second arbitrator appointed fail to nominate a third arbitrator within 30 days of the appointment of the second arbitrator, the third arbitrator shall, at the request of either party, be appointed by the LCIA; and (H) the seat, or legal place of arbitration, shall be London, England and the language to be used in the arbitral proceedings shall be English. Each Party agrees to the applicable governing law without regard to choice or conflicts of law rules.

<b>If the Customer is domiciled in:</b>	<b>The Itron entity entering into the Agreement is:</b>
Australia	Itron Australasia Pty Ltd
Austria	Itron Austria GmbH
Belgium	Itron Belgium S.A.
Canada	Itron Canada, Inc.
China or Hong Kong	Itron International, LLC
Czechia (Czech Republic)	Itron Czech Republic s.r.o.
France	Itron France S.A.S.
Germany	Allmess GmbH
Hungary	Itron Labs KFT
India	Itron India Private Limited
Indonesia	PT Mecoindo
Ireland	Itron Management Services Ireland Limited
Italy	Itron Italia SpA
Japan	Itron Japan Co., Ltd.
Luxembourg	Itron Global SARL
Malaysia	Metertek Sdn. Bhd.
Netherlands	Itron Nederland B.V.
New Zealand	Itron New Zealand Limited
Poland	Itron Polska SP ZOO
Portugal	Itron Sistemas de Medição Lda.
Republic of South Africa	Itron Measurement and Systems (Proprietary) Limited
Singapore	Itron Metering Systems Singapore Pte Ltd.
Spain	Itron Spain SLU
Sweden	Itron Sweden AB
Thailand	Itron Metering Solutions (Thailand) Co. Ltd.
United Kingdom	Itron Metering Solutions UK Ltd.
United States - Delaware	Itron Networked Solutions, Inc.

<b>If the Customer is domiciled in:</b>	<b>The Itron entity entering into the Agreement is:</b>
United States – All states except Delaware	Itron, Inc.
United Arab Emirates	Itron Wireless Trading, LLC
Any country not listed in this table	Itron International, LLC

## **16 Compliance.**

Each Party must comply with all applicable laws, regulations, and other legal requirements applicable to the conduct of its business and the Agreement. Itron's products and services delivered under the Agreement are subject to the U.S. Export Administration Regulations ("EAR"; 15 CFR part 730 et seq.), the U.S. sanctions imposed by the United States including its Office of Foreign Assets Control, 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 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. Each Party shall comply with the European Union's Russia and Belarus sanctions related Regulations 833/2014 and 765/2006 respectively, specifically Article 12g and Article 8g respectively ("EU Russian and Belarus Sanctions Regulations"). Customer shall not cause, directly or indirectly, the export, re-export, or transfer of goods or services obtained under the Agreement to Russia or Belarus, or their re-export for use in either of those countries, in violation of these Regulations. Customer's noncompliance with the EU Russian and Belarus Sanctions Regulations entitles Itron to terminate the Agreement without prejudice to Itron's other rights and remedies. Customer shall maintain any required export records related to Itron's products or services and make such records available to Itron immediately upon request. The Parties must comply with all anti-bribery laws and may not offer or make any payments, gift, or transfer any item of any value either directly or indirectly for the purpose of bribing any individual, group, or government official, or accepting or participating in any extortion, kickbacks, or other unlawful or improper means to obtain or retain an improper business advantage related to the Agreement or products and services orderable under the Agreement.

## **17 Publicity.**

Neither Party may issue a press release related to the Agreement or their relationship without the other Party's prior written consent. At Itron's request, the Parties will create and provide their prior written approval for publication a press release announcing their relationship under the Agreement. Itron may use Customer's name and logo as a part of Itron's normal marketing materials.

## **18 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 the Agreement.

## **19 Independent Contractor.**

The 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.

## **20 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 the Agreement, for any failure or delay in fulfilling or performing any term of the Agreement (except for Customer's obligations to make payments to Itron under the 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 Acceptance Date) beyond the Impacted Party's reasonable control and without the Impacted Party's negligence, including: (i) acts of God, (ii) severe weather, flood, fire, earthquake or explosion, (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, (iv) changes in applicable laws or regulations, (v) embargoes or blockades, (vi) action or inaction by any governmental authority, (vii) national or regional emergency, (viii) strikes, labor stoppages, or slowdowns or other industrial disturbances, (ix) shortage of adequate materials, qualified labor, power or transportation, (x) epidemics, pandemics or quarantines, and (xi) other similar or dissimilar circumstances outside the Impacted Party's reasonable control and without the Impacted Party's negligence (each a "**Force Majeure**").

**21 Notice.**

Each Party shall deliver all notices, requests, consents, claims, demands, waivers, and other communications under the Agreement (each, a “**Notice**”) in writing and addressed to the other Party at its address(es) set out below (or to any other address that the receiving Party may designate from time to time in accordance with this Section). Each Party shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees prepaid), email (as applicable, with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in these Terms of Sale, a Notice is effective only (i) upon receipt by the receiving Party and (ii) if the Party giving the Notice has complied with the requirements of this Section.

If to Itron: Itron, Inc.  
2111 North Molter Road  
Liberty Lake, WA 99019  
Attention: General Counsel

with a copy to: Itron, Inc.  
1250 S. Capital of Texas Highway  
Building 3, Suite 500  
Austin, TX 78746  
Attention: General Counsel

with a copy to: Itron, Inc.  
Email: [legal@itron.com](mailto:legal@itron.com)  
Attention: General Counsel

If to Customer: To the Customer’s address as set out in an Order Document or Statement of Work, or otherwise to the address for notices last advised to Itron.

**22 Modifications.**

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

**23 Miscellaneous.**

If any provision of the 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. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. The division of these Terms of Sale into sections and subsections, and the use of headings and captions in connection therewith, are solely for convenience of reference and shall have no legal effect in construing provisions of the Agreement. Any references to a particular section of these Terms of Sale will be deemed to include reference to any and all subsections thereof. The Parties agree that neither of them will be deemed the drafter of the Agreement and that no provision will be construed in favor of one Party on the ground that such provision was drafted by the other. No waiver by either Party of any breach under the Agreement will constitute a waiver of any other breach. The Agreement is not made for the benefit of any third parties. All communications and notices to be made or given pursuant to the Agreement must be in English. Customer may not assign the Agreement or any of its rights hereunder without Itron’s prior written consent. Subject to the foregoing, the 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. Order Documents and Statements of Work may be executed and delivered in counterparts, including by scan and electronic transmission, each of which will be deemed an original. Any document generated by the Parties related to the Agreement may be imaged and stored electronically and introduced as evidence in any proceeding as if original business records. Electronic communications do not constitute a “written agreement” under this provision. In these Terms of Sale, the word “including” shall mean “including, without limitation.”

**24 Local Law Requirements: Australia.**

With respect to Customers domiciled in Australia, the following provisions shall be applicable and are hereby added to Section 4 (Warranties and Disclaimers):

Notwithstanding anything else in the Agreement, to the extent required by applicable law, the statutory consumer guarantees provided under the *Competition and Consumer Act 2001* (Cth) or similar State and Territory consumer protection laws ("**Non-Excludable Guarantees**") shall apply to the products and services provided by Itron under the Agreement. All warranties provided by Itron under the Agreement are in addition to Customer's rights available under the Non-Excludable Guarantees. To the extent Itron's liability under a Non-Excludable Guarantee cannot be excluded, Itron's liability is limited to, at Itron's election: (i) in case of products, to repair or replace the product, or pay the cost of repair or replacement; or (ii) in the case of services, to reperform the service or pay the cost of having the service reperformed.

Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled: (1) to cancel your service contract with us; and (2) to a refund for the unused portion, or to compensation for its reduced value. You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

**FORM ORDER DOCUMENT**

This Order Document is made between **[Itron Entity]** an entity organized under the laws of **[Location]** having an address at **[Address]** ("**Itron**") and **[Customer Entity]**, an entity organized under the laws of **[Location]**, having an address at **[Address]** ("**Customer**") on the last date of execution below ("**Effective Date**").

This Order Document is governed by and incorporates the Agreement (as defined in the Itron Terms of Sale available at <https://na.itron.com/terms-of-sale> on the Effective Date), subject to any additions or modifications set out in this Order Document. If there is a conflict between this Order Document and the Agreement, the Agreement will control, except to the extent stated otherwise in this Order Document. Except as otherwise defined in this Order Document, capitalized terms herein have the meanings assigned to them in the Agreement.

**1. Scope**

This Order Document applies only to the products and/or services described in the pricing summary attached hereto as Attachment A [and the Statement of Work attached hereto as Attachment B] (the "**Deliverables**").

**Drafting Note: Delete bracketed text above if no SOW. Standalone SOW's may be executed w/o order doc.**

**2. [Supplemental Terms, and Conditions.]**

In addition to the terms and conditions set forth in the Agreement, the following supplemental terms and conditions apply to the Deliverables:

**2.1 [Section Title.]**

**Drafting Note: the bracketed section above should capture deal-specific terms and conditions that are intended to supplement (rather than modify) the Agreement. Delete if no supplemental T&C's.**

**3. [Modified Terms and Conditions.]**

The following modifications to the Agreement apply to the Deliverables:

**3.1 [Section Title.]**

Section [X] of the [Terms of Sale / [X] Addendum] is hereby modified as follows: ]

**Drafting Note: the bracketed section above should capture deal-specific terms and conditions that are intended to modify (rather than supplement) the Agreement. Delete if no modified T&C's.**

**4. Miscellaneous.**

Except as otherwise expressly provided or modified in this Order Document, the (i) terms and conditions set forth in the Agreement remain in full force and effect, and (ii) the Agreement constitutes the entire and exclusive agreement between the Parties regarding the subject matter hereof, and supersede all proposals and prior agreements, oral or written, and all other communications.

Each Party has executed this Order Document by its duly authorized representative.

**[Itron Entity]**

**[Customer Entity]**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Attachment A**  
**Pricing Summary**

**Attachment B**  
**Statement of Work**

DRAFT