

# SOFTWARE ADDENDUM

## 1 Relationship to Terms of Sale.

This Addendum contains the terms governing the supply of Software 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:

**Authorized Installations** means installations of Itron Software only on one production environment and one test environment on Customer premises.

**Authorized User** means an employee or contractor of Customer who Customer permits to access and use the Itron Software and/or Documentation pursuant to Customer's license hereunder.

**Endpoints** means (i) a physical device (e.g., a meter, encoder-receiver-transmitter module, or other measuring, monitoring or sensing device) capable of being used in connection with Itron Software, or (ii) a virtual device created in the Itron Software to simulate the existence of a physical device. An example of a virtual device that is an Endpoint would include a single electricity meter that serves ten (10) apartment units. If the consumption data from that electricity meter was divided between ten (10) units (e.g., on the basis of square footage) and used in the Itron Software as if that single electricity meter was actually ten (10) electricity meters, it would count as ten (10) Endpoints. Further, each account, whether active or inactive, in the applicable that is associated with a single physical device counts as a separate Endpoint.

**Itron Software** means the machine readable (object code) version of computer programs listed on a Proposal to be licensed to Customer under the Agreement that are developed by or on behalf of Itron.

**License Term** means the duration of the Itron Software license granted by Itron to Customer under this Addendum; unless otherwise provided in a Proposal or Order Document, the License Term for each Itron Software product is perpetual.

**Software** means Itron Software and Third-Party Software, including any updates provided to Customer pursuant to the Agreement.

**Software Warranty Period** means a period of ninety (90) days from the date of delivery, unless another Software Warranty Period is expressly stated in the Proposal or Order Document.

**Third-Party Software** means the machine readable (object code) version of computer programs listed on a Proposal to be licensed to Customer by a third-party and that are not developed by or on Itron's behalf.

## 3 Ordering Software.

Customer shall order Software by issuing a Purchase Order to Itron in accordance with the Agreement.

## 4 Delivery and Invoicing.

Itron will promptly deliver Software electronically, on tangible media, or by other means following Itron's acceptance of the applicable Purchase Order. Risk of loss of any tangible media on which the Software is delivered will pass to Customer on delivery to carrier. Itron will invoice Customer for Fees due for Software upon the date of delivery.

## 5 Itron Software License.

Subject to and conditioned on Customer's payment of all applicable Fees and compliance with this Agreement, Itron hereby grants to Customer a non-exclusive, non-sublicensable, and non-transferable license during the License Term

to use Authorized Installations of Itron Software and related Documentation for Customer's internal business purposes solely within the Territory in connection with the number of Endpoints or other devices specified on the applicable Proposal or Order Document.

## **6 Third-Party Software.**

All Third-Party Software and related documentation is separately licensed to Customer by the applicable third-party, and Customer's rights and responsibilities with respect to such software or documentation shall be governed in accordance with the third-party licensor's applicable software license. If Customer chooses to order Third-Party Software, Customer shall enter into or accept one or more separate third-party agreements as part of the ordering, fulfillment, installation and/or download processes for such Third-Party Software.

## **7 Documentation.**

Itron will make its Documentation available via download and provide Customer with download instructions.

## **8 Itron Software License Restrictions.**

Customer shall not use the Itron Software or Documentation for any purpose beyond the scope of the licensed granted in this Addendum. Without limiting the foregoing, Customer will not at any time, directly or indirectly: (i) modify or create any derivative works from Itron Software, (ii) distribute the Itron Software, (iii) include or combine Itron Software with any software, equipment, or hardware other than as expressly authorized in writing by Itron, (iv) use Itron Software to provide services to third-parties, (v) reverse assemble, decompile, reverse engineer Itron Software or otherwise attempt to derive its source code except to the extent that such restriction is prohibited by applicable law, (vi) export Itron Software out of the Territory, (vii) use any Itron Software to create products or services that compete with any of Itron's products or services, or (viii) copy Itron Software except to make one machine readable copy for disaster recovery or archival purposes. Customer's breach of these restrictions or use of Itron Software or Documentation other than as licensed hereunder 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. Revocation does not preclude Itron from pursuing any legal and equitable remedies for Customer's breach of these restrictions. Customer is responsible and liable for all uses of Itron Software and Documentation resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted or in violation of the Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of the Agreement if taken by Customer will be deemed a breach of the Agreement by Customer. Customer shall take reasonable efforts to make all Authorized Users aware of the provisions of the Agreement as applicable to such Authorized User's use of the Itron Software and shall cause Authorized Users to comply with such provisions.

## **9 Limited Itron Software Warranty.**

For the Software Warranty Period, Itron warrants solely to Customer that the Itron Software 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 applicable Software Warranty Period, repair or replace non-conforming Itron Software to substantially conform to the foregoing warranty, provided that Itron will have no obligation to repair or replace any non-conforming Itron Software if the Agreement has terminated or expired. The foregoing warranty does not apply to non-conformities in Itron Software 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 Itron Software in accordance with the Documentation; (iv) incorrect data, or data entry or output, as applicable, by Customer or a third party; (v) use with 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 Software or Customer's systems through no fault of Itron. After the applicable Software Warranty Period, any Itron Software errors and any maintenance updates will be addressed under the Maintenance and Support Services Addendum.

## **10 Effect of Expiration or Termination for Cause.**

Upon termination of an Itron Software license for cause or expiration of a License Term, whichever occurs first, Customer shall immediately discontinue use of the applicable Itron Software and related Documentation, and Customer will destroy or return to Itron any and all copies. Upon Itron's request, Customer will confirm in writing that Customer has destroyed or has returned Itron Software and related Documentation in compliance with this section. This requirement applies to copies in all forms, partial and complete, in all types of media and computer memory, and whether or not modified or merged into other files or materials. Termination of an Itron Software license for cause will not restrict Itron from

pursuing any other remedies available to it, including injunctive relief, nor will it relieve Customer of its obligation to pay all fees that accrued prior to such termination.

### **11 Third-Party Software Warranty.**

Itron is not the owner of Third-Party Software 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 Software. Third-Party Software shall be subject to any warranties provided by the Third-Party Software 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 Software provider.

### **12 License Use Verification & Audit.**

#### **12.1 License Use Verification.**

Customer represents and warrants the Itron Software will be used by Customer in compliance with the licenses granted in this Addendum. Promptly upon Itron's written request, and no more than once annually, Customer must furnish Itron with a letter signed by an officer of Customer, verifying such compliance, and confirming the number, identification, type and location of Endpoints and other devices being managed by Customer using Itron Software.

#### **12.2 Audit.**

Itron has the right to audit Customer records to verify the number of Endpoints and other devices being managed by Customer using Itron Software and otherwise confirm Customer's compliance with license restrictions and Fee obligations of the Agreement. Itron must provide Customer with at least thirty (30) days prior written notice of the audit. The audit must be conducted during Customer's normal business hours at a mutually agreeable location. Itron's right to conduct an audit under this Section is limited to one (1) time per year, unless Itron has reason to believe that Customer is out of compliance with the license restrictions and Fee obligations of the Agreement. Itron has the right to use an independent auditor to conduct the audit. The audit shall be at Itron's sole cost and expense, unless the audit identifies a deficiency in Fees or other amounts owed or reimbursable by Customer during the audited period that is greater than five percent (5%) of the total amounts payable by Customer – in which case Customer must reimburse Itron for all reasonable costs of the audit. All amounts found to be owed by Customer pursuant to an audit will be payable within thirty (30) days after receipt of invoice from Itron.

### **13 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>.

### **14 Local Law Requirements.**

#### **14.1 Local Law Requirements: United States**

With respect to Customers domiciled in the United States, the following provision is hereby added to the end of Section 8 of this Addendum:

If an Itron Software license is acquired under a United States government contract, Customer acknowledges that such Itron Software (including updates thereto) and associated Documentation are "Commercial Computer Software" as defined in 48 C.F.R. 12.212 of the Federal Acquisition Regulations (FAR) and in 48 C.F.R. 227.7014(a)(i) of the Department of Defense Federal Acquisition Regulations Supplement (DFARS), and are provided with only the commercial rights and subject to the restrictions described in the Agreement .

#### **14.2 Local Law Requirements: European Union**

With respect to Customers domiciled in the European Union, the following provision is hereby added to the end of Section 8 of this Addendum:

To the extent directive 2009/24/EC on the legal protection of computer programs or similar legislation or regulations (collectively, the "directives") may provide Customer the right to decompile Itron Software in order to obtain information necessary to achieve the interoperability of an independently created computer program, prior to exercising any such possible rights under the directives, Customer agrees to: (a) first notify Itron of Customer's good faith belief that

information necessary to achieve the interoperability of an independently created computer program is not otherwise available and that decompilation is indispensable within the meaning of the directives; and (b) provide Itron with a reasonable amount of time to respond to Customer regarding the foregoing assertions.

**15 Survival.**

The following Sections of this Addendum shall survive termination or expiration of the Agreement: 1 (Relationship to Main Body of Terms of Sale), 2 (Additional Definitions), 4 (Delivery and Invoicing), 5 (Itron Software License) except to the extent applicable license rights expire or are terminated in accordance with the Terms of Sale, 6 (Third-Party Software), 8 (Itron Software License Restrictions), 9 (Limited Itron Software Warranty), 10 (Effect of Expiration or Termination for Cause), 11 (Third-Party Software Warranty), 12 (License Use Verification & Audit), 14 (Local Law Requirements), and 15 (Survival).

**END**