

# i n v e n s y s

## Operations Management

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Avantis

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Foxboro

i n v e n s y s  
InFusion

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SimSci-Esscor

i n v e n s y s  
Triconex

i n v e n s y s  
Eurotherm

i n v e n s y s  
**Wonderware**

## 2011 Service Agreement Renewal for City of Columbus Columbus, OH

Proposal No.: HPC-0910-10413, Rev.0

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## 1. Executive Summary

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The Invensys Customer FIRST Support and Services program offers a broad portfolio of resources designed to help ensure high levels of asset availability, utilization and reliability from your InFusion, Foxboro I/A Series, and Triconex systems. It will help you manage your systems throughout their productive lifecycles, and protect your property and intellectual investments, maximize asset performance while helping you reduce total cost of ownership.

Customer FIRST membership facilitates fast, efficient response to requests for material, labor and technical expertise with flexible options designed to provide you with a wealth of resources through the largest partner ecosystem in the industry. From training and planning, to project implementation, operation and lifecycle support, Invensys and its network of partners are uniquely qualified to help Customer FIRST members effectively utilize our applications, systems, services and solutions.

Invensys' globally-situated support and service teams are uniquely qualified to deliver the high quality support and services that you require. Our support experts can provide fast and reliable support assistance, recommend risk mitigation strategies such as remote connectivity, automated back documentation, back-up and restore services, and assist with nuisance maintenance tasks to help protect your Invensys systems from the potential of catastrophic loss.

The Invensys Customer FIRST program offers an array of options such as cost-control incentives, access to technical information specific to your operation, inventory management support and training opportunities for your personnel.

As technology inevitably continues to evolve, Invensys can assist you with planning and implementation of system upgrades to ensure that you are getting the most from the latest technology with minimum disruption to your business operations.

Invensys has earned a global reputation for support excellence with continuously improving levels of service and performance, and through recognition by prestigious organizations such as TSIA (Technology Services Industry Association).

## 2. Proposal Scope

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The Customer FIRST Support and Services Program offers a broad scope of support features encompassing technical support via a variety of communication modes, remote and onsite corrective and preventive maintenance support, material replacement and spares inventory programs, annual product lifecycle assessment, and more. Value-add service solutions are also offered, including discounts on selected features, and the opportunity to establish funded reserves to help cover any billable labor, material, training and Advantage Upgrade requirements you anticipate encountering during the timeframe of your Agreement.

## 3. Agreement Content

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### 3.1 Customer FIRST Premium Program

As your performance requirements become more demanding, the Invensys Customer FIRST Support and Services program become even more critical. As more is demanded from these systems, you in turn demand more from Invensys; a closer technology alignment, a deeper business relationship, and a higher level of support availability and responsiveness are needed to meet these stringent business requirements. Invensys is pleased to offer the Premium program level providing higher levels of support services to meet your critical business goals.

The Premium membership level of the Invensys Customer First Program offers a blend of support services that form the foundation for a lasting strategic relationship with Invensys for the solutions that are vital to the success of your business.

### 3.1.1 Features Summary

The Customer FIRST Support and Services **Premium** Program provides:

V2010\_06\_10

Included Services	Premium
<b>Common Elements</b>	
Business Hours Technical Support (normal local business hours)	◆
Web Support - Knowledgebase, Online Training, Proactive Communication	◆
Annual Lifecycle Assessment Report	◆
Upgrade Planning Roadmap	◆
Onsite Corrective Assistance - En route response commitment	<b>24hrs</b>
Discount on Consulting Services (when purchased with Service Agreement)	◆
Emergency 24 Hour Technical Support (24/7/365)	◆
Support Usage and Summary Reports	◆
Number of Contract Management/Performance reviews per year	<b>2</b>
<b>Software Elements</b>	
Software maintenance releases, service packs, patches and updates	◆
Software version upgrades and revisions**	◆
Discount on Test and Offline Development System Licenses	◆
<b>Hardware Elements</b>	
Number of Preventive Maintenance site visits per year	<b>2</b>
Discount on Site Engineering Services	◆
Advantage Program Discount (I/A Series, InFusion CE and Triconex)	◆
Module Exchange/Reserve Program	<b>Exchange</b>
MEP/MRP Parts Discount	◆
Discount on Spares	◆
RemoteWatch Service (I/A Series and InFusion CE)	◆
Number of RemoteWatch Health Check Reports per year	<b>2</b>

## Optional Services

## Premium

Flexible Funding (Services, Material, Training Growth, Advantage Upgrade)	◆
Upgrade Migration Plan	◆
Onsite Corrective Assistance – 4 Hour en route response commitment*	◆
Onsite Corrective Assistance - Labor Cost Inclusive	◆
Preventive Maintenance - Additional number of site visits per year	◆
Custom Application Support	◆
MEP/MRP - Material Cost Inclusive	◆
Parts Management	◆
Resident Engineer/Consultant (full time or part time)	◆

† minimum purchase criteria applies. Your sales person can advise you.

\* where available

\*\* exclude labor and hardware, additional conditions apply.

NBD = Next Business Day

### 3.1.2 Features Description

The features of the Customer FIRST Support and Services **Premium** program are described below.

#### 3.1.2.1 Technical Support

**Business Hours Technical Support:** Invensys provides expert technical assistance during normal business hours via regional support centers and locally-based service engineers. Each request is processed through a defined multi-level response model that assures skilled and timely attention appropriate to the urgency and complexity of the reported situation. Reported situations are assessed by support analysts according to the impact on the customer's production, safety or environment.

**Emergency Technical Support (24/7/365):** Invensys provides emergency technical support via telephone outside of normal business hours for situations that involve loss or potential loss of an essential function such as a production line, system or plant down situation.

**Two (2) Contract Management/Performance Reviews per year:** Invensys will review the Customer FIRST Support and Services Program performance two times per year with the customer. Discussion may include technical support cases, labor and material usage, RemoteWatch usage, lifecycle management topics and technical topics of pertinent interest.

#### 3.1.2.2 On-Site Technical Support

**Two (2) Preventive Maintenance site visits per year:** Two Preventive Maintenance (PM) site visits per year are provided to I/A Series, InFusion CE, InFusion SCADA and Triconex system customers. The appropriate length of the PM visit is determined per site. The general scope of work includes physical inspection, review of software maintenance releases and fixes, technical alerts, advisories and status of open cases. The service engineer will perform analysis of system conditions (counters, loading, etc.) to help ensure the system is operating within defined specifications. The service engineer will perform corrective actions that are within the scope of the PM visit, and schedule follow-up maintenance for additional issues. Discovery tools are used to assess the current system configuration on an annual basis. Any addition to the scope of work should be defined prior to service engineer arrival at site.

*Note: The Preventive Maintenance Site Visit does not include installation of version licenses, revision releases and maintenance releases, or any startup activities. These activities require the scheduling of a separate site visit for which the labor terms of this agreement will apply.*



**Onsite Corrective Assistance –24-Hour En route Response Commitment:** Invensys will commit to having a service engineer en route to the customer site within 24 hours. Arrival time is dependent on transportation contingencies beyond Invensys' control.

Onsite Corrective Assistance involves a skilled Invensys service engineer traveling to your site to perform necessary remedial actions with the objective of returning your system to normal operation. These activities may include system troubleshooting, defective hardware replacement, and software restoration or correction due to data corruption or necessity. Typically this type of support is time sensitive in nature but actual en route response time commitment will be determined by the level of Customer FIRST Support and Services program enrollment and situation urgency. Activities not covered include: Application work, (block configuration, display creation, historian configuration) software installation, preventive maintenance work (PM), start up support and Advantage labor.

*Note: Labor and materials usage in conjunction with Onsite Corrective Assistance activity are billable unless otherwise defined in the agreement terms.*

### 3.1.2.3 Self-Service Support Tools

**Web Support:** Invensys makes available its extensive knowledgebase of technical user documentation, issue solutions, online training and software via the Customer Support website. The registration profile provides the website user an opportunity to refine their access to only the product content of interest. Website-registrants will receive pro-actively issued communications of two types, 1) those that describe identified technical product problems and provide a solution, including but not limited to potential safety issues, and 2) notifications pertaining to lifecycle management topics such as hardware and software release notifications, and service program changes.

#### **Dedicated Customer Portal**

The Customer Portal interface on the Global Customer Support website allows you to initiate a service request (which becomes a numbered "case") at any hour of the day or night. Requests for product repair, Module Exchange Program, Module Reserve program are handled in compliance with service agreement terms and warranty status. Technical support cases are analyzed, diagnosed and escalated within a targeted timeframe appropriate to the urgency and complexity of the reported situation. Authorized customer personnel may monitor case status for your company's sites; the case "owner" may update case details and upload pertinent files for examination by Invensys engineers. Additionally, the Customer Portal provides access to your company's I/A Series, Tricon and Trident system configuration data and annual Lifecycle Assessment Report. As with support cases, the report and raw data is accessible only to your company's personnel.

**Support Usage Summary Report:** The Support Usage Summary Report highlights all technical support case activity, as well as labor-based cases logged by Invensys' service management system. The report is distributed via email on a monthly basis.

### 3.1.2.4 Hardware Maintenance

**Module Exchange Program (MEP) (advance replacement):** Invensys provides customers with access to its refurbished materials inventory when rapid replacement of malfunctioning equipment is necessary. Material generally ships within one business day of the customer's request for service, in advance of Invensys receiving the malfunctioning equipment at its designated address. The Module Exchange/Reserve Program Policy applies.

**MEP Parts Discount:** The price of refurbished unit supplied to the customer will qualify for a discount contingent on material returned to Invensys meeting Module Exchange/Reserve Program Policy terms and conditions.

**50% Advantage Program Discount:** The Advantage Program for I/A Series, InFusion and Triconex systems provides cost-effective upgrade options that include substantial incentives for the exchange of existing equipment. The terms of the Advantage Upgrade Credit Policy will apply. A discount for Advantage Program upgrades is provided to Customer FIRST Support and Service Program customers when the older technology units are returned to Invensys.

*NOTE: The Advantage Program discount is applicable only to products defined as Advantage that are replacing refurbishable products that were originally purchased through Invensys.*

**10% Discount on Spares:** A 10% discount is provided on purchase of new material that the customer will store as spare inventory.

### 3.1.2.5 Software Maintenance

**Software Maintenance Releases, Service Packs and Fixes:** Invensys provides software maintenance releases and fixes with the Customer FIRST Support and Service Program.

Maintenance releases and service packs provide corrections to software defects within a software revision level. The third digit denotes a Maintenance release: v.r.**M** (Example: V8.1.**1**).

Fixes correct a single software defect; they will be provided to the specific customer(s) affected by the identified defect. Fixes for safety issues will be specifically identified for this purpose.

Media will be made available upon release, in electronic or physical format as appropriate, during the program's coverage timeframe.

*Note: Installation labor for maintenance releases, service packs and fixes is not included in this program feature. These activities require the scheduling of a separate site visit for which the labor terms of this agreement will apply.*

**Software Version and Revision Releases:** Invensys provides software version upgrade and revision releases with the Customer FIRST Support and Services Premium program. This benefit provides customers the ability to upgrade and enhance selected Invensys system software at the Preferred (i.e. most current) lifecycle phase.

License(s) and upgrade media will be made available upon release, in electronic or physical format as appropriate, during the program's coverage timeframe. Invensys makes no guarantee that version and revision releases will become available during the agreement period.

The Version release is the most significant software upgrade. It generally contains major new features and enhancements. The Revision release generally contains both software correction and minor enhancements.

- ◆ The first digit denotes a Version Release: V.r.m. (Example: V8.0 to V9.0).
- ◆ The second digit denotes a Revision Release: v.R.m (Example: V8.0 to V8.1)

To qualify, the customer must be licensed to operate (not necessarily be running) the most current version of Invensys Software as a prerequisite. If a customer is licensed to a non-current / non-preferred version of Invensys Software, they must first purchase an upgrade to the current / preferred version. Invensys offers incentives such as the Advantage Program, for customers to purchase version upgrades.

New hardware and/or system shutdown may be required to support new version releases, but will not be required for software revision releases.

*Note: Installation labor for version licenses, revision releases and maintenance releases and startup activities are not included in this element. These activities require the scheduling of a separate site visit for which the labor terms of this agreement will apply.*

**50% Discount on Test & Offline Development System License:** For customers that use an offline system to mirror their online system for testing upgrades, development, etc., before moving those changes into production, a 50% discount is applicable to all off-line test system, development or disaster recovery system licenses.

### 3.1.2.6 Lifecycle Management

**Annual Lifecycle Assessment Report:** Discovery tools are used by a service engineer to assess the current system configuration at site on an annual basis as part of a Preventive Maintenance visit. Based on the data generated, a Lifecycle Assessment Report will be generated that outlines key business objectives related to the system maintenance and recommends a course of action and services to enable system performance within operational specifications. The information generated is reviewed with the customer during the annual Customer FIRST Support and Services Program renewal process and is also available via the Support website.

**Upgrade Planning Roadmap:** Invensys will work with you to provide a clear understanding of where installed products are in their lifecycle and availability of preferred products. This involves a site visit to obtain and verify your current system topology, including hardware, standard and custom software and files, third party packages. Invensys will develop a high-level upgrade roadmap for the site that will be updated annually.

### 3.1.2.7 Remote Services

**RemoteWatch Service:** RemoteWatch system monitoring tools have the ability to help proactively identify Invensys system anomalies before plant upset occurs, and can be used for reactive diagnosis purposes. It is applicable to I/A Series system Version 7.x and up, InFusion and reactive support for SCADA systems.

Each RemoteWatch server is capable of monitoring up to approximately 60 workstations. The required number of servers for the site, and installation, is covered by the Premium level program.

All RemoteWatch hardware and software remains the property of Invensys, who will be responsible for repair and for software and hardware upgrades, if required. Necessary repair of hardware due to environmental causes and misuse will result in actual repair costs being assessed to the customer. All such hardware and software must be returned to Invensys upon discontinuation of the Service Agreement or the Remote Services portion of the agreement. The terms of the Remote Services License Agreement will apply.

**Two (2) RemoteWatch Health Check Reports per year:** Supplementing the Support Usage Summary Report, customers using RemoteWatch Service capability will receive RemoteWatch Health Check reports two times per year.

### 3.1.2.8 Training, Consulting & Site Engineering Services

**10% Discount for Standard Training:** A 10% discount on standard Invensys course offering tuition is provided.

*Note: The training discount cannot be combined with the Training Growth Credit.*

**10% Discount on Consulting Services:** Invensys offers specialized optimization services. These services typically encompass an assessment survey that identifies situation requirements and results in a recommendation for action. Upon approval, agreed-upon activity will commence. Activity may involve material and/or software purchase, installation and implementation of same, identified engineering tasks, customer staff training, and on-going support. A 10% discount is applied to the Consulting Service order when it is included with the Customer FIRST Premium level program.

**10% Discount on Site Engineering Services:** Invensys Field service engineers can provide limited engineering support to supplement customer resources. Site Engineering Service is defined by local Invensys service management to meet your specific requirements.

### **3.1.2.9 Events**

**Onsite Corrective Assistance - Labor Cost Inclusive:** Includes all onsite and travel time required to meet the objectives defined under Onsite Corrective Assistance.

“Labor Cost Inclusive” does not include Travel & Living expenses incurred (i.e., transportation, lodging and meals).

## 4. Terms and Conditions for Specific Customer FIRST Features

The terms and conditions described in this section apply to the specifically ascribed service deliverables and programs.

### 4.1 Support Hours and Rates

Labor-based support and services shall be performed during the Normal Business Day (NBD). Support and services rendered outside of the Normal Business Day may be billable, subject to the labor terms and provisions of this Agreement.

The Normal Business Day shall be defined by local practice or labor law, or as defined in this agreement between Invensys and Customer.

NO.	TITLE	DESCRIPTION
1	NORMAL BUSINESS DAY (i.e., normal work day)	<p>Normal business hours (NBH) : <u>8</u> AM to <u>5</u> PM  Normal business week: <u>Monday - Friday</u></p> <p><input checked="" type="checkbox"/> Invensys-designated holidays will be observed.  <input type="checkbox"/> National, provincial, state, local holidays will be observed.  <input type="checkbox"/> Other (describe): _____</p>
2	OVERTIME	<p>Overtime (Premium) rate: _____  Specific to customer locality, Overtime is defined:  <input checked="" type="checkbox"/> In local Service Rate Schedule  <input type="checkbox"/> Other (describe): _____</p>
3	SHIFT WORK	<p>Shift Work (Premium) rate: _____  Specific to customer locality, Shift Work is defined:  <input checked="" type="checkbox"/> In local Service Rate Schedule  <input type="checkbox"/> Other (describe): _____</p>

4	TRAVEL TIME LABOR EXPENSES	<p>Travel time labor expenses shall accrue from the time and place of origin and cover time traveling to and from the job site.</p> <p>The point of origin shall be:</p> <p><input checked="" type="checkbox"/> Home base of the Invensys engineer performing the work.</p> <p><input type="checkbox"/> Other (describe): _____</p> <p>Travel time labor will be billed for:</p> <p><input type="checkbox"/> A minimum of _____ hours</p> <p><input type="checkbox"/> A maximum of _____ hours</p> <p><input checked="" type="checkbox"/> Actual time incurred (in excess of minimum hours if indicated above)</p> <p><input type="checkbox"/> Other (describe): _____</p>																
5	BILLABLE SERVICE TIME Service Rates may be obtained from Invensys.	<p>Service time will be billed for:</p> <p><input checked="" type="checkbox"/> Minimum billable hours: <u>4</u></p> <p><input type="checkbox"/> Actual time incurred (in excess of minimum billable hours if indicated above)</p> <p><input type="checkbox"/> Other (describe): _____</p>																
6	<b>SERVICE RATES</b> AC Application Consultant AE Application Engineer LE Lead Engineer PM Project Manager SE Service Engineer SR Senior Service Engineer ST System Technician Instrument Technician Break-fix	<p>Service rates are defined as described below:</p> <table> <tr><td>AC Application Consultant</td><td>\$271.00</td></tr> <tr><td>AE Application Engineer</td><td>\$156.00</td></tr> <tr><td>LE Lead Engineer</td><td>\$213.00</td></tr> <tr><td>PM Project Manager</td><td>\$262.00</td></tr> <tr><td>SE Service Engineer</td><td>\$197.00</td></tr> <tr><td>SR Senior Service Engineer</td><td>\$197.00</td></tr> <tr><td>ST System Technician</td><td>\$113.00</td></tr> <tr><td>Instrument Technician Break-fix</td><td>\$175.00</td></tr> </table> <p>Currency Type: <u>USD</u></p>	AC Application Consultant	\$271.00	AE Application Engineer	\$156.00	LE Lead Engineer	\$213.00	PM Project Manager	\$262.00	SE Service Engineer	\$197.00	SR Senior Service Engineer	\$197.00	ST System Technician	\$113.00	Instrument Technician Break-fix	\$175.00
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LE Lead Engineer	\$213.00																	
PM Project Manager	\$262.00																	
SE Service Engineer	\$197.00																	
SR Senior Service Engineer	\$197.00																	
ST System Technician	\$113.00																	
Instrument Technician Break-fix	\$175.00																	

## 4.2 Module Exchange / Reserve Program Policy

If you encounter an issue with I/A Series, InFusion or Triconex system, Invensys will help you return it to normal operation. When replacement of a malfunctioning component is determined to be the best solution, a factory-refurbished unit may be shipped from Invensys inventory in exchange for your malfunctioning unit. You must be covered by a Customer FIRST Support and Services Program Agreement to receive this benefit.

Major system components are carefully selected for refurbishment and inclusion in Invensys MEP/MRP inventory. These components undergo a comprehensive refurbishment process including error detection and correction. Firmware is updated when appropriate and the hardware is put through Invensys' manufacturing product testing sequence. A 90-day warranty is provided on refurbished equipment.

### 1) COVERAGE CONDITIONS:

The Module Exchange Program (MEP) is available to Customer FIRST Support and Services ELITE and PREMIUM program customers: The replacement unit will be shipped by Invensys IN ADVANCE OF Invensys receiving your malfunctioning unit.

The Module Reserve Program (MRP) is available to Customer FIRST Support and Services STANDARD program customers: The replacement unit will be shipped by Invensys AFTER Invensys receives your properly identified malfunctioning unit at its designated location.

### 2) PRODUCT LIFECYCLE & AVAILABILITY:

Components are categorized in the Available, Preferred, Mature and LifeTime Phases defined in the Lifecycle Policy in the "Components and Software Covered" section of the Customer FIRST Support and Service Agreement. Product lifecycle status may affect availability, as described below.

- ◆ Products in Preferred, Available and Mature Phases are generally available for shipment within one business day, in accordance with coverage conditions.
- ◆ Products in LifeTime Phase will be supplied on a reasonable effort basis, with shipment subject to availability, in accordance with coverage conditions.
- ◆ Products in Obsolete Phase are not supported under this program. In situations in which it is determined that an Obsolete Phase product has failed, Invensys may suggest that client purchase a new functionally equivalent Preferred Phase product if available.

### 3) ORDERING INSTRUCTIONS and PRICING:

The refurbished equipment is provided at the price prevailing at the time of shipment, if the exchange transaction meets the conditions detailed below.

- a) Refurbished equipment can be requested by the customer's authorized personnel by contacting the Global Customer Support center in the United States of America (telephone +(00)1 508-549-2424) or Invensys representative in the customer's geographical area. Refer to the Invensys Contact \ Material Return section of the Customer FIRST Support and Service Agreement.
- b) Shipping and handling costs may apply. This detail varies by country in accordance with local custom and regulations. Your Invensys representative will advise you on this detail.



- c) ELITE and PREMIUM program customers: The requested replacement material will be shipped generally within one business day of order placement, subject to availability. Refer to "Product Lifecycle and Availability" above.
  - d) STANDARD program customers: The requested replacement material will be shipped generally within one business day after Invensys receives the unit that is being replaced, subject to availability. Refer to "Product Lifecycle and Availability" section above.
  - e) ELITE and PREMIUM program customers: The requested replacement material will be shipped generally within one business day of order placement, subject to availability. Refer to "Product Lifecycle and Availability" above.
  - f) STANDARD program customers: The requested replacement material will be shipped generally within one business day after Invensys receives the unit that is being replaced, subject to availability. Refer to "Product Lifecycle and Availability" section above.
  - g) Delivery of critical equipment within 24 hours may be arranged if availability and transportation logistics allow it; a premium charge will apply.
  - h) A purchase order or credit card number will be requested at time of order placement if product is billable.
- 4) INSTRUCTIONS FOR PRODUCT RETURN TO INVENSYS-DESIGNATED LOCATION:
- a) A Return Material Authorization (RMA) number will be provided at the time of order placement for use in returning the malfunctioning unit to an address designated by Invensys. The RMA number must be clearly identified on the box in which the malfunctioning unit is being shipped.
  - b) Invensys is not responsible for loss, or delay in processing, of returned material when packaging lacks clear identification (i.e., Return Material Authorization number, your company name, individual contact name and address) or is received at any Invensys address other than the specific address provided with a Return Material Authorization number.
  - c) The malfunctioning equipment must be received at the Invensys-designated location within 20 days from date of Invensys shipping the refurbished replacement unit to the customer.
- 5) EVALUATION OF RETURNED PRODUCT:
- a) Invensys will evaluate returned material to determine whether it is in acceptable condition for repair/refurbishment and subsequent inclusion in Invensys inventory.

- b) Invensys reserves the right to disqualify returned units that do not qualify as visually presentable to our next client (i.e., scratched, written upon), or which have been damaged by misuse, incorrect installation, power surges, exposed to contaminants, force majeure, or subjected to non-Invensys unauthorized repair. Such damage may prevent the modules from being repaired reliably and these modules must be removed from the pool of replacement modules.

#### **4.3 Advantage Upgrade Credit Policy**

- 1) Delivery of Advantage Upgrade products and services may begin upon accrual and payment of 50% of the Credit amount deliverable.
- 2) Delivery of Advantage Upgrade products and services must be taken within the Customer FIRST Support and Service Agreement term.
- 3) Advantage Upgrade credit usage will be deducted during the agreement period and any residual balance remaining at end of the Agreement period may be applied to establish a beginning balance of Advantage Upgrade credit for the renewal of the Agreement, otherwise it will not be refunded.
- 4) In the event of cancellation of the Customer FIRST Support and Service Agreement before the agreement expiration date, a lump-sum invoice for the Advantage Upgrade credit used above the accrual amount will be issued. Accrued Advantage Upgrade credit not used will be returned to the customer minus applicable termination fees.

#### **4.4 Remote Services License Agreement**

IF YOU USE REMOTE SERVICES SOFTWARE, YOU HAVE AGREED TO BE BOUND BY THE LICENSE AGREEMENT SET FORTH BELOW.

**LICENSE GRANT:** All Remote Services software programs which are embodied in human readable source form or machine readable object form and which include, but are not limited to programs having a series of instructions, statements and data, and related materials provided by Invensys are the property of Invensys and/or others and are subject to the terms set forth in this license, in which Purchaser is provided solely with a personal and non-exclusive license to use such programs solely for their diagnostic purposes in the country in which the software was furnished and for execution on the system for which it was provided.

**COPYRIGHT AND TITLE:** No title to the intellectual property in the software programs or material is transferred to Purchaser under this license. All software and its copyrights are owned by Invensys and/or its suppliers. The software is protected by United States copyright laws and international treaty provisions. Therefore, Purchaser must treat the software in confidence like any other copyrighted material (e.g. a book or musical recording) except that Purchaser may make copies of the programs for use only with the system for which such programs were acquired. Purchaser must reproduce and include the copyright notice on any backup copy. The written materials and firmware may not be copied.

RESTRICTED USE: Purchaser shall not export or re-export the programs or material without the appropriate United States and Foreign government licenses. Purchaser agrees not to reverse engineer, decompile, disassemble, emulate or perform any other similar operations on the software. Purchaser may not rent or lease the software to any third parties. Storage media which purchaser received from Invensys may contain certain Software for which Invensys has not accepted an order from Purchaser for a Software License. If Purchaser desires to license this Software, Purchaser must obtain the appropriate Software license from Invensys. Purchaser shall defend and Indemnify Invensys from all damages arising from unauthorized use or transfer of the software.

## 5. Warranty

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Warranty protection for new Invensys products is provided for specific time periods as defined in the Invensys document entitled General Terms and Conditions of Sale of Goods and Services and License of Software, and in accordance with local consumer protection laws.

If an issue is encountered with a product that is under warranty, contact Invensys to request technical support. If the reported situation involves a warranty issue that is resolvable via replacement of hardware or software, Invensys will advise you of the appropriate options. These options include non-billable hardware repair services, and replacement of hardware or software media.

If hardware or software is replaced under warranty, Invensys will provide a 90 day warranty, or honor the remaining warranty period of the original product, whichever is longer.

## 6. Lifecycle Policy & Components Covered

### 6.1 Lifecycle Support Policy

The Lifecycle Support Policy provides consistent and predictable guidelines for product support, compatibility, availability and repair. The policy establishes clear and predictable product support timelines to assist customers with managing end of life issues related to their installed Invensys system equipment. This proactive approach provides a comprehensive view of product lifecycle phases, phase transition timing, and available support during each phase. This information enables customers to plan product upgrades years in advance. Invensys system products move through five phases during their lifecycles:

- ◆ Preferred Products (PREF): These products are the most recent sales-released products available in their functional area.
- ◆ Available Products (AVAL): Products are available for sale primarily for expansion projects. They are no longer the Preferred Product offering.
- ◆ Mature Phase (MATR): Products withdrawn from sale. Comprehensive support services are provided.
- ◆ LifeTime Phase (LIFE): Invensys continues to support and maintain standard Invensys products based on an annual review of support capability.
- ◆ Obsolete (OBSL): Invensys will determine if a product is unrepairable due to age or obsolescence and will provide advance notice via email to client personnel that have registered on the Global Customer Support website <http://support.ips.invensys.com> . Once the product has entered the Obsolete Phase, Invensys can no longer provide a quality repair nor provide a module exchange. Products that are identified as Obsolete shall be excluded from coverage under this Service Agreement. If that product fails, Invensys will suggest purchase of an alternate replacement.

### 6.2 Components covered

Quantity	Product	Short Description	Lifecycle phase
1	CM400YH	FBM07 Contact/dc Input	Mature
1	CM400YN	FBM12 Contact/dc Input Expander	Mature
9	CM400YP	FBM13 120 Vac Input Expander	LifeTime
7	CM400YR	FBM15 120 Vac I/O Expander	LifeTime
2	DM400YJ	FBM08 120 Vac Input	Mature
15	DM400YL	FBM10 120 Vac Input/Output	Mature
6	J0177AH	Additional FoxView DM For The 70 Series	Mature

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3	J0200NG	FoxPanels SW Lic For Windows	Preferred
3	K0200VS	IACC V2.0 Media Kit	Available
11	P0400DA	FBM01 0-20 mA Input	Mature
11	P0400YE	FBM04 0-20 mA Input/Output	Mature
1	P0912QJ	Color Printer, HP 1600CM	LifeTime
1	P0923HM	Alarm Impact Printer, 7 Color,Wide Carriage,120Vac	Preferred
3	P0923LY	P92-390 Workstation Style G, Rev A,B,C,D, E, F	Mature
2	P0926CP	ZCP270 Control Processor	Preferred
2	P0926GV	FBM231, Four Serial Ports, Redundant	Preferred
8	P0972ZA	FCM100E, Field Comm Mod w/Fiber Optic	Preferred
2	P0973BH	Copper E'net Switch w/24 RJ-45 Ports &Uplink Ports	Available
2	Q0301AP	AIM*Historian SW Lic (500 Points)	Preferred
3	S10B23220000	I/A Series Windows W'kstation SW Lic (Certificate)	Preferred
1	S61C21421000	I/A Series Function Block SW Lic (Certificate)	Preferred

## 7. Contact Information

### 7.1 Customer Contact Information

Customer shall provide personnel names and contact information for the individuals that Invensys may contact for administrative purposes.

#### 7.1.1 Purchasing & Accounts Payable Contacts

No.	Contact Name	Responsibility	Telephone	Email
1				
2				
3				
4				

#### 7.1.2 Operations Contacts

Customer shall provide personnel names and contact information for the individuals that Invensys may contact for authorization to initiate Remote Services and other support purposes.

	#1	#2	#3
Name	Jack Lelko		
Title	Instrumentation Supervisor		
Process Unit Identification	Div. of Sewerage & Drainage		
Unit Platform (UNIX, Solaris #, MESH, Windows XP, Windows NT, name other)	Windows NT		
Site Location (City, State, Country)	Columbus, OH		

Remote Services Connection Authority (Yes / No)	No		
Telephone #	1-614-645-3138, Ext.1217		
Mobile Telephone#			
Fax #			
Email:	<a href="mailto:jhlelko@columbus.gov">jhlelko@columbus.gov</a>		

## 7.2 Invensys Contact Information

### 7.2.1 Support Centers

The following Invensys support centers serve I/A Series, InFusion, SCADA and Triconex customers:

**North America, Canada and worldwide:**

**Invensys Support Center**

Foxboro, MA, USA

Telephone: +(00)1-866-746-6477 (toll-free Canada, USA)

Telephone: +(00)1-508-549-2424

Facsimile: +(00)1-508-549-4999

Website: <http://support.ips.invensys.com>

Email: [support@ips.invensys.com](mailto:support@ips.invensys.com)

**Europe, the Middle East and Africa:**

**Invensys Support Center**

Baarn, The Netherlands

Telephone: +31 (0)35 54 84 125

**Asia-Pacific:**

**Invensys Support Center**

Singapore

Telephone: +65 6829 8899



## 8. Addendum – Legal Terms and Conditions

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### APPENDIX A

#### General Terms and Conditions – Services and Hardware and Software Upgrades

##### A. GENERAL TERMS

The following terms and conditions apply to the entire Agreement between the Parties:

##### 1. DEFINITIONS

“Goods” shall mean all products, equipment, materials, spare parts, hardware, supplies, and accessories to be supplied under a Purchase Order.

“Order” shall mean this order made by the acceptance this Proposal for Services, or the writing from the Customer to order Upgrades.

“Software” shall mean computer software programs, in object code form including firmware and custom software, and instructions manuals, specifications and related documentation in written or electronic form, but excluding third party software, their related instructions manuals and documentation, for which Invensys grants Customer a license. The conditions of the Software license shall be set forth in the Invensys’ end-user license agreement applicable to the particular Software at the time of delivery or, in the absence of such end-user license agreement, the software license terms contained herein.

“Services” shall mean Support Services as defined in the Invensys Proposal.

“Specifications” shall mean the Invensys standard specifications applicable to the Goods and/or Software at the time of placement of this Order hereunder or the specific requirements agreed upon between the Parties in relation to the Goods and Software.

“Third Party Products” shall mean products and software of a third party vendor. If Third Party Products are supplied by the Invensys under the Agreement, notwithstanding anything to the contrary, such supply is made on a “pass-through” basis only and is subject to the terms and conditions of the third party vendor, including but not limited to warranties, licenses, indemnities, limitation of liability, prices and changes thereto. Third Party Products are quoted subject to price changes imposed by third party vendors between the date of Order encompassing such Third Party Products and the date of Invensys’ invoice related to that Third Party Product.

- 2) Term and Renewals: This term of Agreement shall be as noted in constitutes the attached Proposal. This Agreement will automatically renew on the anniversary date unless terminated in accordance with Articles A/9, b.8, and C.6. At the time of Agreement renewal, prices may change upon mutual agreement of the Parties.
- 3) CHANGES: During the course of the Agreement, before the anniversary date, either party may request a change to the scope, Specifications or price of this Agreement in the event of modification in the value of the installed base equipment or an upgrade. The parties shall negotiate in good faith a reasonable and equitable adjustment. Neither party shall be bound by any change requested by the other until an amendment has been agreed upon in writing by both parties. Pricing of changes shall be based on the then current prices.
- 4) PRICE AND PAYMENT TERMS

- (a) Prices for Services, Goods and/or Software under this Agreement shall be in accordance with the prices set forth in Invensys’ proposal. Invoices shall be sent to the address specified in the Order. Unless otherwise

agreed upon, full payments of all invoiced Services, Goods and Software are due in the invoice currency (ies) within thirty (30) calendar days from the date of invoice.

(b) Should Customer dispute any invoice, Customer shall notify Invensys of the nature of the dispute or the information required within thirty (30) days of the date of the invoice. Customer shall have the right to withhold payment of the portion of the invoice in question until Customer and Invensys agree on the amount to be paid and any additional documentation or information requested by the Customer has been received from the Invensys. Customer shall pay the undisputed portion of the disputed invoice. Customer shall not set off or recoup invoiced amounts or any portion thereof against sums that are due or may become due from Invensys and/or its Affiliates.

(c) If Invensys is required to impose, levy, collect, withhold or assess any taxes, duties and charges on any Order under this Agreement, Invensys shall invoice Customer for such taxes, duties and charges unless Customer furnishes Invensys with an exemption certificate or other equivalent documentation demonstrating its exemption from such taxes, duties and/or charges. If Customer is required by law to make any tax withholding from amounts paid or payable to Invensys under this Agreement, (i) the amount paid or payable shall be increased to the extent necessary to ensure that Invensys receives a net amount equal to the amount that it would have received had no taxes been withheld; (ii) Customer shall forward proof of such legally required withholding to Invensys.

(d) If Customer is delinquent in its payment obligations, without prejudice to any other remedies available to it by law or in equity, Invensys may at its option (i) suspend all further deliveries or performance to be made under the Agreement or any further performance under any other contract with Customer or Customer's Affiliates, in which event Customer shall not be released in any respect from its obligations to Invensys under the Agreement or the other contract; (ii) recover all costs of collection including but not limited to reasonable attorneys' fees; (iii) repossess the Goods and Software for which payment has not been made and (iv) retain any equipment supplied by Customer to Invensys. Any discount from Invensys' rates, if any, shall cease to apply to the delinquent invoice.

5. EXPENSES: Unless otherwise agreed upon in writing, Customer shall reimburse Invensys for expenses as follows:

- a) Automobile travel expenses shall be reimbursed at Invensys' published rates.
- b) All other travel and living expenses shall be reimbursed at cost plus a ten (10) percent administration fee.
- c) Applicable communication expense accrued on the job shall be reimbursed at cost plus a ten (10) percent administration fee.
- d) Travel time and expenses shall accrue from the time of origin. Living accommodations shall be best available.

6. INVENSYS PERSONNEL:

(a) Invensys reserves the right to determine the qualifications and the source of Invensys personnel required to fulfill its obligations under this Agreement.

(b) Invensys representatives will be equipped with instruments, tools, and test equipment as required to fulfill normal service obligations.

7. COOPERATION: Invensys' performance depends upon Customer's timely and effective cooperation, including providing Invensys with reasonable facilities, timely access to appropriate data and information, timely decisions and approvals and appropriately skilled customer personnel. Invensys will not be liable for any failure to perform the Services or Upgrades, to the extent that the failure is caused by Customer's lack of cooperation. Invensys may rely upon the accuracy and completeness of data, material, and other information furnished by Customer, without any independent investigation or verification.

8. OPERATION OF EQUIPMENT: Invensys representatives are authorized to act only in a consulting capacity and are not authorized or licensed to operate equipment. All responsibility for operating equipment shall rest with others. Except as provided in Article A.13, Invensys shall not be liable for loss or damage of any nature.

9. TERMINATION FOR CAUSE: Either party may terminate this Agreement for default if the other party has breached any of its material obligations and has not cured the breach within thirty (30) days of receipt of a notice

of default from the other party. Termination of this Order by either Party whether for default or for convenience shall not affect continuing performance by the Parties of their respective obligations under a different Order, unless otherwise agreed upon by the Parties.

10. **INSURANCE.** Invensys will at Customer's request submit Certificates of Insurance from Sureties chosen by Invensys showing the limits of coverage.
11. **INTELLECTUAL PROPERTY OWNERSHIP:** For purposes of this Agreement, "Intellectual Property Rights" mean any patent, trademark, service marks, copyrights, trade secrets, ideas, concepts, know-how, works of authorship, techniques or other proprietary right. Invensys may utilize proprietary works of authorship, pre-existing or otherwise, including without limitation software, computer programs, methodologies, templates, flowcharts, architecture designs, tools, specifications, drawings, sketches, models, samples, records and documentation, as well as Intellectual Property Rights and any derivatives thereof, which have been originated, developed, licensed or purchased by Invensys, a parent or affiliated company of Invensys, or by third parties under contract to Invensys or to a parent or affiliated Customer of Invensys (all of the foregoing, collectively, "Invensys' Information"). Invensys shall retain at all times ownership of the Invensys' Information. Invensys or the applicable third party owner shall retain at all times the ownership of its Software, firmware and Third Party software, regardless of the media upon which the original or copy may be recorded or fixed. No Services performed shall be considered "work for hire."
13. **INDEMNITY AND LIMITATION OF LIABILITY**
- (a) Invensys shall indemnify, defend and hold Customer harmless against third party claims (including without limitation, the Parties' employees) for personal injury, death or loss or damage to property caused by Invensys' negligence in the performance of its obligations hereunder, provided (i) Invensys is entitled to exclusively control the defense against the claim; (ii) Invensys is immediately notified of such claim and (iii) Customer provides reasonable assistance in the defense of the claim and does not enter into any settlement or make any concession without the Invensys' prior written approval.
- (b) IN NO EVENT SHALL SELLER HAVE ANY LIABILITY UNDER THIS AGREEMENT OR ANY ORDER FOR ANY SPECIAL INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOSS OF PRODUCTION, LOSS OF REVENUES, INTEREST, CAPITAL, FINANCING, GOOD WILL, USE, BUSINESS REPUTATION, OPPORTUNITY OR PRODUCTIVITY, HOWSOEVER ARISING, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- (c) SELLER'S LIABILITY UNDER THIS AGREEMENT FOR ANY DIRECT DAMAGES ARISING OUT OF OR IN ANYWAY RELATED TO THIS AGREEMENT (WHETHER ARISING UNDER TORT, NEGLIGENCE, CONTRACT, WARRANTY, STRICT LIABILITY OR ANY OTHER CAUSE OR COMBINATION OF CAUSES) SHALL IN NO EVENT EXCEED THE SPECIFIC PRICE OF GOODS, SOFTWARE, AND/OR SERVICES PROVIDED UNDER THIS AGREEMENT OR THE SPECIFIC ORDER GIVING RISE TO LIABILITY.
- 14) **CONFIDENTIAL INFORMATION:** Customer and Invensys agree that certain proprietary information which is furnished by Invensys verbally and/or in writing, in connection with the Agreement and identified in writing as proprietary information, will, within the best efforts of Customer, be maintained by Customer in confidence and not disclosed to third parties nor made use of for any other commercial purpose not related to the business which may be transacted between the Customer and Invensys. This commitment shall impose no obligation upon the Customer with respect to any portion of the received information which: (1) is now or which hereafter through no act or failure to act on the part of Customer becomes generally known or available to the public; (2) is known to Customer at the time of receiving such information; (3) is furnished to others by Invensys without restriction on disclosure; (4) is hereafter furnished to Customer by a third party acting to the best knowledge of Customer as a matter of right and without restriction on disclosure; or (5) is independently developed by Customer provided that the person or persons developing same have not had access to the same information received from Invensys.
- 15) **FORCE MAJEURE:** Except for payment obligations, neither party shall be liable for delays caused by conditions beyond their reasonable control, ("Force Majeure"), provided notice thereof is given to the other party as soon as practicable. Force Majeure shall include, without limitation, hostilities, revolution, acts of war (whether or not declared), act of terrorism, civil commotion, strike, epidemic, accident, quarantines or regional medical crises, fire, flood, wind, earthquake or other inclement weather conditions and any threat of the foregoing, blockade,

embargo, shortage of material or transportation facilities, strikes and lockouts, any other Acts of God or act of any Government or Government agency, including laws, regulation or ordinance and proclamation affecting the parties, the Goods, Software or Services without the fault or negligence of the parties hereto. All such Force Majeure conditions preventing performance shall entitle the Party hindered in the performance of its obligations hereunder to an extension of the date of delivery of the Goods and Software or completion of the Services by a period of time equal to the period of delay incurred as a result of the Force Majeure or to any other period as the Parties may agree in writing.

## 16. COMPLIANCE

(a) Neither Party shall comply with any foreign boycott laws or requirements, which are in violation of any federal or provincial law, rule, or regulation.

(b) Customer acknowledges that each product and any related software and technology, including technical information supplied by Invensys or contained in documents (collectively "Items"), is subject to export controls of the U.S. government. Software is licensed for Use in the specific location identified in the Order and Licenses attached. Customer may not export the "Items" to another country without Invensys' written permission and payment of any applicable country specific surcharges. Customer agrees to comply fully with all relevant export laws and regulations of the United States and foreign nations in which the "Items" will be used ("Export Laws") to ensure that neither the "Items" nor any direct product thereof are (i) exported, directly or indirectly, in violation of any Export Laws; or (ii) are intended to be used for any purposes prohibited by the Export Laws. Without limiting the foregoing, Customer will not export or re-export the "Items": (i) to any country to which the United States has embargoed or restricted the export of goods or services or to any national of any such country, wherever located; (ii) to any end user who Customer knows or has reason to know will utilize the "Items" in the design, development or production of nuclear, chemical or biological weapons; or (iii) to any end-user who has been prohibited from participating in U.S. export transactions by federal agency of the U.S. government.

(c) In the event the U.S. Government enters into possession of the Software, for the avoidance of doubt, "Software" is a "commercial item" as that term is defined under 48 CFR 2.101 (October 1995), consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 CFR 12.212 (September 1995) and is provided to U.S. Government only as a commercial item. Consistent with 48 CFR 12.212 and 48 CFR 227-7202-1 through 227.7202-4 (June 1995), all U.S. Government end-users acquire the Software with only those rights set forth herein.

(d) Either Party shall execute and deliver to the other any documents as may be required to effect or evidence compliance.

(e) The Parties may correspond and convey documentation via the Internet unless Customer expressly requests otherwise. Neither Party has control over the performance, reliability, availability or security of the Internet. Invensys shall not be liable for any loss, damage, expense, harm or inconvenience resulting from the loss, delay, interception, corruption or alteration of any communication over the Internet due to any reason beyond Invensys' reasonable control.

## 17. LAWS AND DISPUTE RESOLUTION

(a) This Agreement shall be governed by and construed in accordance with the laws of Massachusetts, USA, without regard to the conflict of laws provisions thereof. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The governing language for this Agreement shall be English, and no concurrent or subsequent translation of this Agreement into any language shall modify any term of this Agreement.

(b) Any claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by final and binding arbitration administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules and its Optional Procedures for Large, Complex Commercial Disputes. The arbitration shall be heard and determined by a panel of three (3) arbitrators selected by the AAA. The arbitrators shall have exclusive authority to resolve any and all disputes relating to procedural and substantive questions of arbitrability, including but not limited to, choice of venue and choice of law issues, and the formation, interpretation, applicability, scope, and enforceability of this agreement to arbitrate. The

Parties shall be entitled to conduct discovery in accordance with the Federal Rules of Civil Procedure under the supervision of the arbitrators. The arbitration proceeding shall occur in Boston, Massachusetts. Each party shall bear its own costs relating to such arbitration, the parties shall equally share the arbitrators' fees, and the arbitration and all related proceedings and discovery shall take place pursuant to a protective order entered by the arbitrators that adequately protects the confidential nature of the parties' proprietary and confidential information. In no event shall any arbitration award provide a remedy beyond those permitted under this Agreement, and any award providing a remedy beyond those permitted under this Agreement shall not be confirmed, no presumption of validity shall attach, and such award shall be vacated. No claim may be brought as a class action, combined or consolidated with any other proceeding, nor may any proceeding be pursued in a representative capacity or on behalf of a class. Neither party has the right to act as a class representative or participate as a member of a class of claimants with respect to any claim. Either party may, without waiving any remedy under this Agreement, seek from any court of competent jurisdiction any interim or provisional relief that such party deems necessary to protect its confidential information and property rights, pending the establishment of the arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the claim).

(c) Upon the request of either Party, mediation shall be conducted prior to the arbitration pursuant to the mediation rules of the AAA.

#### 18. INDEPENDENT CONTRACTOR

(a) Invensys is performing the Services as an independent contractor and not as an employee of Customer and none of Invensys' personnel shall be entitled to receive any compensation, benefits or other incidents of employment from Customer. Invensys shall be responsible for all taxes and other expenses arising from the employment or independent contractor relationship between Invensys and its personnel and the provision of services hereunder by such personnel to Customer.

(b) At all time and notwithstanding anything to the contrary herein, Invensys retains full control over the methods, details, persons employed or otherwise used to perform the services and any other means of performance of its obligations under this Order and vary the composition of the team assigned to the performance of the Services or make different arrangements to achieve completion of its obligations.

19. ASSIGNMENT: This Agreement shall extend to and be binding upon the parties hereto, their successors, and assigns, provided, however, that neither Party shall assign or transfer this Agreement hereunder without the other party's express prior written consent, which shall not be unreasonably withheld. Notwithstanding the foregoing, Invensys shall have the right to assign this Agreement or any Purchase Order hereunder to any of its parent, affiliates without prior written consent of Customer.

#### 20. MISCELLANEOUS:

- (a) This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement.
- (b) If any clause or provision of this Service Agreement shall be held to be invalid, illegal or unenforceable under any applicable law, the remaining provisions of this Service Agreement shall not be affected thereby, but shall remain in full force and effect.
- (c) No terms, provisions or conditions of any request for proposal, purchase order, acknowledgement or other business form that Customer may use in connection with the work will have any effect on the rights, duties or obligations of the parties hereunder, or otherwise modify, this Agreement, regardless of any failure of Invensys to object to such terms, provisions or conditions.
- (d) No waiver, alteration, or modification to any of the provisions hereunder or to the provisions of any agreement relating to Services, Goods or Software provided by Invensys shall be binding on Invensys unless signed by an authorized home office representative of Invensys.
- (e) The provisions of this Agreement that by their nature survive final acceptance under this Order, expiration, cancellation and shall remain in full force and effect after such acceptance and payment for the period specified herein, or if not specified then for the maximum time allowed by law. These provisions are:



(i) Definitions, Article A.1; (ii) Price and Payment Terms, Article A.4; (iii) Indemnification and Limitation of Liability, Article A.13; (iv) Force Majeure, Article A.15; (v) Warranties, Articles B.5 and C.3; (vi) Confidentiality, Article A.16; (vii) Intellectual Property Ownership, Article A.11, (viii) Software License, Article C.4, (ix) Intellectual Property Indemnity, C.5; (x) Compliance, A.6; (xi) Laws and Dispute Resolution, Article A.17; (xii) Miscellaneous, A.20

21. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement of the parties hereto with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions, and communications, whether oral or in writing with respect to this subject matter.

## **B. SERVICES TERMS**

The following terms and Conditions apply to Services provided in accordance with the Invensys Proposal in addition to the terms and conditions in Section A of this Agreement:

1) **ACCESS TO FACILITIES AND EQUIPMENT:** The Customer will furnish at no cost to Invensys suitable and safe working space, storage space, adequate telephone, light, ventilation, regulated electric power, and outlets for testing purposes. These facilities will be within a reasonable distance from the system equipment covered by this Agreement. Invensys shall have full and free access to Invensys-provided equipment in order to provide the on-site corrective support services provided under this Agreement. Customer will identify person(s) who will interface with the Invensys support center under the terms of this Agreement. Any maintenance or repair services performed on the Invensys-provided equipment by unauthorized personnel resulting in additional material or corrective support service requirements by Invensys will be invoiced at applicable time and material rates and conditions of service then in effect.

2) **THIRD PARTY EQUIPMENT:**

- (a) Invensys reserves the right to refuse to service equipment manufactured or supplied by others. If Invensys services equipment manufactured or supplied by others at Customer's written request, Invensys' services shall be rendered AS IS.
- (b) Customer shall indemnify, hold harmless and defend Invensys from and against any and all liabilities incurred or asserted against Invensys in connection with any third party claim to the extent such liabilities result from Invensys' access to Customer's and third party-provided equipment and materials, in connection with Invensys' performance of the services, including liabilities for infringement of any third party's intellectual property rights.
- (c) Customer shall be responsible for payment of services and material rendered by Invensys if Customer's agent or third party working on Invensys assets at Customer site without Invensys authorization causes malfunction or failure of said assets. Invensys services and material will be billable at prevailing rates.

3) **REMOTE SERVICES SECURITY:** Remote Services communication will be conducted only by Invensys trained specialists working in a secured area using authorized connectivity equipment with security and auto log-on features, or connections automatically initiated by the customer's system via the Remote Services server, which permits access to the Customer's system only via Customer-maintained security credentials allowing the use of read-only non-intrusive Remote Services tools only. All session screen information will be recorded and archived by Invensys with date and time stamp. Data indicating health status of the customer system will be transported automatically via always available connection automatically initiated from the Remote Services server. Remote Services communications using other than read-only non-intrusive Remote Services tools must be authorized by Customer representative and the security credentials must be changed by Customer immediately upon request by Invensys to return to the read-only mode. Communication processors, servers, routers, modems and other equipment used in conjunction with Remote Services are the property of Invensys and shall be returned to Invensys upon termination of this Agreement.

4) **EXCLUSIONS:**

- a) Invensys and non-Invensys system hardware and software not specifically listed in this contract are NOT covered. Technical telephone, remote connection and diagnosis, material, labor or other support assistance provided by Invensys to resolve an issue involving non-listed equipment is chargeable.
- b) Invensys will not provide material support on Invensys equipment purchased from or repaired by a non-Invensys-authorized agent. Invensys will provide all other support agreement services, but if any issues occur that are attributable to third-party procured material, all work performed by Invensys will be subject to invoicing at prevailing service rates.
- c) Unless specifically purchased as an option in the Services Agreement, planning, installation, testing, and documentation of expansions, modifications and software upgrades of custom and application programs are not covered by this contract.
- d) Products identified as Obsolete Phase or due to become obsolete under the Lifecycle Policy during the agreement period will be excluded by the agreement price and will not be supported.
- e) Product identified as Lifetime Phase under the Lifecycle Policy will be supported for a maximum of one year. The product lifecycle categorization will be reviewed during the annual installed product assessment to determine whether it is anticipated that the product(s) will move to the Obsolete Phase during the next 12 months.
- f) Without prejudice to other remedies available by law, Invensys reserves the right to suspend the services if the Customer does not comply with its obligations under the Agreement.
- g) All decisions made by Customer relating to the implementation of Invensys's advice and recommendations are the sole responsibility of Customer. To the extent services are of an advisory nature, no specific business result is assured or guaranteed.

## 5) WARRANTIES

- a) All services shall be performed in a professional manner and warranted for ninety (90) days.
- b) The warranties on Parts shall be for one (1) year from date of shipment and shall be as stated in Section B, Hardware and Software Upgrades, herein.
- c) THESE WARRANTIES EXCLUDE ALL OTHER WARRANTIES WHETHER EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION WARRANTIES AS TO MERCHANTABILITY, OPERABILITY, OR FITNESS FOR A PARTICULAR PURPOSE).

6. PARTS: All parts identified as requiring replacement during a non-warranty related service call shall be invoiced at Invensys current list prices or per the terms of Service Agreement.

## 7. WORKING HOURS AND CONDITIONS:

- (a) The normal work day shall be defined by local practice, or by labor law as applicable, or as defined in an Addendum to this Agreement.
- (b) Service or travel in excess of normal workday, and any service or travel on Saturdays, Sundays or nationally observed holidays, or other days defined in an Addendum to this Agreement, shall be invoiced by Invensys as defined by local practice, or by labor law as applicable, or as defined in an Addendum to this Agreement.
- (c) When shift work other than the normal workday is required, a premium rate shall be added for service during the other shifts and an additional premium shall be added for work in excess of normal workday during these other shifts, in accordance with local practice, or labor law as applicable, or as defined in an Addendum to this Agreement.
- (d) Service time committed in advance by Invensys on the basis of pre-specified number of days shall not be deemed to include overtime or shift work. If overtime or shift work is required on such commitments, the pre-specified time so committed in advance shall be appropriately reduced.

- (e) Unless the Invensys representative has been released from the job site, or has completed his assignment, the Customer will pay Invensys charges computed as if the Invensys representative was working a normal work week, regardless of whether or not the representative is prevented from working due to delays beyond his control.
  - (f) Release from the job site shall entitle the representative to return to his point of origin, with travel time and expenses for the account of Customer.
  - (g) Standby time is defined as that time during which an Invensys representative is requested to remain in readiness and available for work commencing at the convenience of the Customer. Such time shall be considered as time worked, whether or not the representative is at the job site, and Customer will be billed accordingly. If standby time is outside normal working hours, overtime rates will be applicable. Standby time will be added to time actually worked for the computation of overtime charges, etc.
  - (h) The Invensys representatives reserve the right to refuse to work under hazardous conditions. In case of doubt, mutual agreement must be reached prior to commencement of any work. All staging and rigging required for access to equipment to be serviced shall be erected by and at the expenses of others and shall comply with reasonable safety requirements. The Invensys representative shall comply with all plant safety regulations where applicable. However, any protective clothing or equipment, except the standard safety hat, required by Customer regulations shall be provided by Customer.
8. **TERMINATION FOR CONVENIENCE:** In the event Customer terminates this Agreement without cause, Customer shall provide Invensys written termination notice of at least ninety (90) days prior to the specified end-of-term date. If the termination notice is provided in violation of this section, Customer shall pay Invensys (i) all fees and expenses earned or incurred in connection with the performance of this Agreement until the effective date of such termination ("Fees and Expenses"); (ii) any and all reasonable costs directly related to Customer's termination pursuant to this provision, including costs associated with personnel reassignment, travel and other administrative requirements, which termination costs equal 25% of the remaining balance of the total Agreement Value and (iii) a Termination Fee equal to 2.5 % of the Agreement Value.

## C. HARDWARE AND SOFTWARE UPGRADES

The following terms and Conditions apply to Goods and Software provided in accordance with the Invensys Proposal in addition to the terms and conditions in Section A of this Agreement:

### 1. DELIVERY, TITLE AND RISK OF LOSS

- a. Title to all Goods sold hereunder, except for Software whose title remains at all times with Invensys, shall pass to Customer upon full payment of the Order.
- b. Upon delivery, risk of loss or damage shall pass to Customer unless delivery has been delayed because of Customer.
- c. Delivery shall be Ex-works (Incoterms 2000), Invensys' facility.
- d. If, as part of this Order, Invensys is responsible for packing any Goods for shipment, Invensys shall pack, mark and label such Goods in accordance with its usual packing procedures.

### 2. RECEIVING, INSPECTION AND ACCEPTANCE

- a. Customer shall be responsible for receiving, installing, starting up and maintaining all Goods, unless otherwise agreed in the Order.
- b. If Customer fails to notify Invensys of any material non-conformities with the Specifications within a reasonable period following delivery, not to exceed thirty (30) calendar days, or is using those Goods and Software in a production environment or for the regular conduct of its business, the Goods and Software shall be deemed accepted, without prejudice to the warranty provisions hereunder.



c. Customer shall have the right to reject Goods and Software not materially in accordance with the Specifications in the Order. Invensys shall have a reasonable opportunity to correct non-conformities or replace non-conforming Goods and/or Software at its option, in accordance with Article C.3. Should Invensys fail to use reasonable efforts to correct non-conformities or replace the non-conforming Goods and/or Software within a reasonable period of time, based on the complexity of the non-conformities, Customer may terminate the Order or portion thereof. Invensys' maximum liability under this Clause shall be to refund the fees and expenses paid by Customer for the portion of the Goods and Software that is non-conforming.

d. Unless other acceptance criteria are agreed upon in the Order at Customer's expense, Invensys' standard testing procedures, including factory acceptance test and site acceptance test where applicable, shall apply to Goods and Software. To the extent that any Goods or Software have been, or can be deemed approved by Customer pursuant to the terms of this Agreement at any stage of Invensys' performance, Invensys shall be entitled to rely on such approval for purposes of all subsequent stages of its performance hereunder.

### 3. WARRANTIES FOR GOODS AND SOFTWARE

- a. Invensys warrants to Customer that the Goods and Software Invensys provides hereunder for a period of one (1) year after Shipment, ("Upgrade Warranty Period") shall, at time of delivery, materially conform to the Specifications agreed between the Parties, including drawings or descriptions, specification sheets, drawings, notes and technical data for such Goods and Software. In the absence of agreed upon Specifications for Goods and Software, Invensys warrants the Goods and Software shall meet the applicable standard Specifications available from Invensys for such Goods and Software at the time of the Order.
- b. Invensys further warrants that Goods, at the time of their delivery, and the media on which the licensed Software is provided will be free from defects in material and workmanship for the Warranty Period. If a material defect in workmanship with regard to the media carrying licensed Software occurs during the Warranty Period, Invensys' sole obligation and Customer's sole remedy shall be the replacement of the media and the licensed Software residing on the media.
- c. If, any time prior to the end of the Upgrade Warranty Period, as defined above or under the separate applicable software license agreement, the Goods or Software, or any part thereof, do not conform to applicable warranties or Specifications, Customer shall notify Invensys within a reasonable time after its discovery, but in no case before the end of the Upgrade Warranty Period, and shall provide written particulars of the non-conformity and all information and assistance necessary to enable Invensys to verify the nature and cause of the non-conformity and carry out its warranty obligations hereunder.
- d. Non-conforming Goods subject to a warranty claim shall be returned to the nearest Invensys repair facility, transportation charges prepaid for the account of the Customer. The costs to diagnose non-conformity on Customer's site, if required, shall be for the account of the Customer. Goods so returned by Customer to the Invensys during the Warranty Period and found upon Invensys' inspection to be non-conforming and Software found non-conforming upon Invensys' inspection shall be repaired, replaced or corrected, at Invensys' option and shall be warranted by Invensys for the remainder of the original Warranty Period or for three months, whichever is longer, free of charge and return-shipped to Customer with transportation prepaid by Customer. Invensys shall not be responsible for any offshore transport costs.
- e. Invensys' obligation and Customer's sole remedy under this Clause is, at Invensys' option the repair or replacement, correction, of any non-conforming Goods, Software or part thereof. Goods, Software and labor used, as well as any and all Expenses reasonably incurred, by Invensys for the repair or replacement or correction of any Goods or Software found in whole or in part to be non-conforming for reasons listed under Article C.3.g shall be for Customer's account.
- g. The foregoing warranties do not apply to non-conformities caused by (i) Customer's design or installation of the Goods and/or Software, (ii) modification or repair to the Goods and/or Software otherwise than as authorized in writing by Invensys; (iii) handling, storage, use or maintenance of the Goods and/or Software in a manner or an environment inconsistent with the Specifications and/or instructions or recommendations of Invensys; (iv) defect in Customer's own products or software or use of the Goods and/or Software in combination with any Third Party Product not procured by Invensys; (v) Customer's failure to observe the payment terms under this Agreement or any other of its obligations under this Agreement; (vi) normal wear and tear; (vii) installation or wiring of the Goods and/or Software other than in accordance with Invensys'

- instructions; (vii) transfer of the Software from the device on which it was originally installed; and/or (viii) any fault of the Customer or its agents.
- h. Invensys has no obligation under this warranty unless Customer maintains adequate records that accurately document operating time and maintenance performed on Goods and Software and provides those records to Invensys on demand for substantiating warranty claims.
  - i. Goods subject to wear or burnout through usage such as lamps, fuses, paper media, filters, trim, packing and the like shall not be deemed not in conformity by reason of such wear or burnout.
  - j. The foregoing warranties do not apply to Third Party Products. Invensys shall bear no responsibility for the performance, repair or warranty of any of Customer's software or hardware product or any Third Party Products and Customer shall look solely to third party vendor for all remedies and support with regard to such Third Party Products. If such Third Party Product is expressly procured by Invensys to Customer under this Order, that Third Party Product shall be warranted only in accordance with the warranties given to Invensys in respect thereof by the relevant third party vendor and to the extent that Invensys has the right to assign or transfer such warranties.
  - k. EXCEPT AS SET FORTH HEREIN AND IN THE WARRANTIES PROVISIONS CONTAINED IN SEPARATE SOFTWARE LICENSE(S) IF ANY, THESE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, INTEROPERABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. INVENSYS DOES NOT WARRANT THAT THE OPERATION OF ANY SUCH SOFTWARE WILL BE UNINTERRUPTED AND/OR ERROR-FREE.
  - l. WARRANTIES PROVIDED HEREIN ARE PERSONAL TO, AND INTENDED SOLELY FOR THE BENEFIT OF, CUSTOMER AND DO NOT EXTEND TO ANY THIRD PARTY, EXCEPT IN CASE OF TRANSFER OF THE SOFTWARE IN ACCORDANCE WITH Article C.4.f, OR UNDER THE ASSIGNMENT CLAUSE.

#### 4. SOFTWARE LICENSE

- a. In consideration of the receipt of full payment of the Software license fee applicable as part of the Price, and subject to Customer's compliance with its obligations under this Agreement, Invensys shall provide to Customer a personal, non-transferable, non-exclusive limited license to use the Software described in the relevant Order and the Invensys' Information incorporated into the Goods, Software and services, if any, for purpose of Customer's ordinary business as defined in the Purchase Order and in the particular location(s) and/or on the particular systems for which Customer licensed such Software, as those locations and/or systems are identified in the Order. The attached Schedule A may be required to be completed and signed by both Parties prior to the delivery of some Software products.
- b. Invensys' Software licensed to Customer may contain components that are owned by third parties. The third party owner shall retain exclusive right to its firmware and software. Use of such third party components may be subject to restrictions contained in the third party's end-user license agreement in addition to the conditions set forth herein. Invensys shall make available to Customer upon request the third party's end-user license agreement applicable. Copyright and other proprietary rights notices of Invensys and third parties are contained in the Software and Customer shall not modify, delete or obfuscate such notices.
- c. Customer may not without Invensys' prior written express consent (i) copy, modify, sublicense, loan or transfer in any manner the Software licensed herein; (ii) create derivative works based on the Software licensed herein; (iii) subject the Software licensed herein to translating, decompiling, disassembling, reverse assembling, reverse engineering, simulating, emulating or performing any other operation on the Software, unless the operation is specifically authorized by law. Customer shall hold the Software licensed herein in strict confidence and will not allow third parties, other than its employees with a need to use the Software and who have agreed to comply with the terms of this Software License clause, to access or use the Software without Invensys' prior written consent. Customer agrees to defend, indemnify and hold harmless Invensys from all damages and third party claims arising from unauthorized use or transfer of the Software.
- d. Notwithstanding the foregoing restrictions but subject to all restrictions applicable to Third Party, Customer shall be entitled to make one (1) copy of the Software for backup or archival purposes and may make a

limited reasonable number of copies of the instruction manuals and documentation related to the Software for purpose of their use by Customer in connection with the authorized use of the Software. All titles, trademarks and copyrights and restricted rights notices shall be reproduced in such copies.

- e. Customer shall maintain complete and accurate records documenting the location and use of the licensed Software in Customer's possession. No later than thirty (30) days upon receipt of Invensys' written request, Customer shall provide Invensys with a signed certification of compliance with the Software licensing conditions. Invensys has the right to conduct an audit of Customer's use of the Software. Any such audit shall be conducted during regular business hours at Customer's facilities. If an audit reveals any underpayment of license fees, Customer shall be invoiced for additional license fees consistent with Invensys' then current price list for the Software, without any discount being applicable in that instance. Customer shall then immediately pay the underpaid amount together with interest at a rate of one and one-half percent (1.5%) per month or partial month during which such amount was due and unpaid. The assessment of additional license fee is without prejudice to Invensys' other remedies in the event of breach by Customer of other licensing conditions.
- f. Unless otherwise set forth in an applicable Invensys' License Agreement, Customer may not transfer its license to use the Software and related documentation and written materials to a third party without the Invensys' prior written consent, which shall not be unreasonably withheld. In case of Invensys approval of such transfer, Customer shall be responsible to ensure that the recipient agrees to the terms of this Software License clause.

## 5. INTELLECTUAL PROPERTY INDEMNITY

(i) Unless otherwise set forth in the applicable Invensys' License Agreement, Invensys shall defend, indemnify and save harmless Customer from and against any third party claims, suits, judgments, court costs, reasonable attorney's fees and other liabilities, demands or losses (altogether "Liabilities") to the extent such Liabilities result from an infringement due to the Services Goods and/or the Software's design or construction, of a patent or copyright owned by a third party in the country of manufacture of such Goods and/or Software or in the country of performance of the Services at the time of execution of the relevant Purchase Order under which the alleged infringement has occurred, provided that (i) Invensys shall be promptly notified of the bringing of said suits; (ii) Invensys shall be given the sole control of the defense and all related settlement negotiations; (iii) Customer agrees to fully assist Invensys in the defense of the claim and (iv) Customer complies with Invensys' direction to cease any use of the Goods or Software which in Invensys' reasonable opinion, is likely to constitute an infringement. Invensys shall not be responsible for any settlement made without its consent.

(ii) The foregoing obligations do not apply when the claim of infringement results from or is related to: (i) Goods, Services and/or Software provided pursuant to Customer's designs, drawings or specifications; (ii) Goods and/or Software stored, used or maintained otherwise than in accordance with Invensys' instructions or recommendations or other than for the Customer's internal business purpose; (iii) claims of infringements resulting from combining Goods or Software provided hereunder with any other item not furnished by Invensys; (iv) modifications to the Goods or Software without prior written consent of Invensys; (iv) parts supplied or designed by Customer or third parties; and (v) Customer's failure to use corrections or enhancements made available by Invensys.

(iii) Invensys may cease to deliver any Goods or Software or Services, which it reasonably considers, could infringe third party's rights, without being in breach of this Agreement.

(iv) In case said results of Services, Software or Goods, or any part thereof, is in such suit held to constitute infringement and/or its use is enjoined, the Invensys shall, at its own expense and option either: (i) procure for the Customer a royalty-free license to continue using such Software, results of services or Goods, or (ii), replace same with substantially equal but noninfringing equipment or modify it so it becomes noninfringing, provided that no such replacement or modification shall in any way amend or relieve Invensys of its warranties and guarantees set forth in this Agreement. In the event Invensys is unable to do either of the foregoing, the allegedly infringing item shall be returned to Invensys and Invensys' maximum liability shall be to refund to Customer the amount paid for such item, less a reasonable depreciation for use and damage.

(v) This Article C.5 states the Parties' entire liability and sole remedy with respect to infringement or claims thereof.

6. TERMINATION FOR CONVENIENCE

- (a) Seller's performance of work under this Agreement or a Purchase Order may be terminated by the Company in accordance with this clause in whole or in part whenever the Company may elect, with minimum prior written notice ("Notice of Termination") of at least thirty (30) business days. Any such termination shall take place by delivery to the Seller of a Notice of Termination specifying the extent to which performance of work under the Agreement or Purchase Order is terminated, and the date upon which termination becomes effective. Upon receipt of any such notice, Seller shall, unless the notice requires otherwise:
- (1) discontinue work on the date and to the extent specified in the notice; and
  - (2) make every reasonable effort to either obtain cancellation of all orders to subcontractors or assign those orders to Company.
- (b) Upon Notice of Termination, Company shall (i) pay all fees earned and expenses incurred in connection with the performance of this Agreement or the Purchase Order until the effective date of such termination ("Fees and Expenses") and (ii) any and all reasonable costs directly related to Company's termination pursuant to this provision, including costs associated with personnel reassignment, travel, restocking charges and other administrative requirements ("Termination Costs"). In the event of partial execution of the Agreement or when termination occurs between two invoicing milestones, a pro rated share of the fees shall be added based upon the portion of Purchase Order completed on the termination date. Notwithstanding the foregoing, with respect to M&I Products, Company may only terminate a Purchase Order without cause before shipment

## 9. Selection Summary and Pricing

The Invensys Customer FIRST Program's Support and Services Agreement provides a comprehensive portfolio of support and service features that addresses your short term and long term maintenance and lifecycle challenges. Refer to the Agreement Content section of this Agreement for a summary matrix and description of program level features.

Premium Level	Pricing
Included Features- Tier price (before options):	\$28,348.00
Optional Features:	
<input checked="" type="checkbox"/> Onsite Corrective Assistance – 4 Hour En route Response Commitment	\$7,692.00

### 9.1 Billing Schedule

This Customer FIRST program is (select one):

- ☐ New  
☒ A renewal of a prior Agreement  
☐ An Amendment to a current Agreement

The billing cycle is

- ☒ Annual  
☐ Quarterly  
☐ Other (describe)

Payment Schedule:	Annual Payment Total	Period Payment	Period Length	Start Date	End Date
Year 1	\$36,040	1 Year	1 Year	3/1/2011	2/29/2012

Payment is due 30 days from date of invoice.

## 10. Agreement Acceptance

<b><i>Purchaser</i></b>	
Client (Company) Name	City of Columbus
Address	
City/State/Zip	
Country	
Authorized Purchaser Representative	
Printed Signature:	
Title	
Date	

<b><i>Invensys</i></b>	
Invensys Local Entity Name	Invensys Systems Inc.
Acceptance By	
Title	
Date	

<b><i>Invensys Contract Management Department</i></b>	
Acceptance By	
Title	
Date	