

City of Naperville: Water AMI Project

Exhibit D

Sensus Software License and Spectrum Lease Agreement: Core & Main/Sensus

Software License and Spectrum Lease Agreement

between

City of Naperville
 ("Customer")

and

Sensus USA Inc.
 ("Sensus")

IN WITNESS WHEREOF, the parties have caused this Software License and Spectrum Lease ("Agreement") to be executed by their duly authorized representatives as of the day and year written below. The date of the last party to sign is the "Effective Date."

This Agreement shall commence on the Effective Date and continue for/until: 5 Years ("Initial Term"). At the end of the Initial Term, this Agreement shall automatically renew for an additional term of 5 years ("Renewal Term"). The "Term" shall refer to both the Initial Term and the Renewal Term.

This Agreement contains two parts: Part (1) is The FCC Notification for Spectrum Manager Lease, to be filed with the FCC by Sensus on behalf of the Customer and Part (2) is a Software License and Spectrum Lease between Sensus and Customer. Together, these two parts create the Agreement.

Sensus USA Inc.

Customer: City of Naperville

By: _____
 Name: _____
 Title: _____
 Date: _____

By: _____
 Name: _____
 Title: _____
 Date: _____

Contents of this Agreement:

- Part 1: Notification for Spectrum Manager Lease
- Part 2: Agreement
 - Exhibit A Software
 - Exhibit B Technical Support

Part 1: Notification for Spectrum Manager Lease

In order for Sensus to apply to the FCC on the Customer's behalf for a spectrum manager lease, Customer must complete the information below in boxes one (1) through ten (10) and certify via authorized signature. Customer's signature will indicate that Customer authorizes Sensus to file the spectrum manager lease notification on FCC Form 608 with the Customer as spectrum Lessee, and if Customer does not already have one, ownership disclosure information on FCC Form 602.

1.

Customer/Lessee Name:		
Attention To:		Name of Real Party in Interest:
Street Address:		City:
State:	Zip:	Phone:
Fax:	Email:	

Is Customer contact information same as above? Yes No (If No, complete box 2 below)

2.

Additional Customer/Lessee Contact Information

Company Name:		
Attention To:		
Street Address:		City:
State:	Zip:	Phone:
Fax:	Email:	

3.

Customer/Lessee is a(n) (Select one): <input type="checkbox"/> Individual <input type="checkbox"/> Unincorporated Association <input type="checkbox"/> Trust <input type="checkbox"/> Government Entity <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Limited Liability Partnership <input type="checkbox"/> Consortium <input type="checkbox"/> Other _____

4.

FCC Form 602: FCC File Number of Customer's Form 602 Ownership Information: _____. If Customer has not filed a Form 602, Sensus will file one for Customer. Please complete questions 5, 6, and 7 below if Customer does <u>not</u> have a Form 602 on file. Customer must complete items 8, 9 and 10 irrespective of whether Customer has an ownership report on file.
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5.

Customer Tax ID:

6.

Individual Contact For FCC Matters

Please designate one individual (the Director of Public Works or similar person) who is responsible to the FCC for the operation of the FlexNet radio system.	
Name	
Title:	
Email:	Phone:

7.

Ownership Disclosure Information

If Customer/Lessee is a government entity, list the names of the Mayor and all Council Members below, as well as verify citizenship and ownership interests in any entity regulated by the FCC. Such ownership must be disclosed where a mayor/council member owns 10% or more, directly or indirectly, or has operating control of any entity subject to FCC regulation. If any answer to Ownership question is Yes, or any answer to Citizenship question is No, provide an attachment with further explanation.		
	US Citizen?	Ownership Disclosure?
Mayor:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

8.

Alien Ownership Questions (if the answer is Yes, provide an attachment explaining the circumstances)

1) Is the Customer/Lessee a foreign government or the representative of any foreign government?	<input type="checkbox"/> Yes <input type="checkbox"/> No
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9.

Basic Qualification Information

1) Has the Customer or any party to this application had any FCC station authorization, license, or construction permit revoked or had any application for an initial, modification or renewal of FCC station authorization, license or construction permit denied by the Commission?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2) Has the Customer or any party to this filing, or any party directly or indirectly controlling the Customer or any party to this filing ever been convicted of a felony by any state or federal court?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3) Has any court finally adjudged the Customer or any party directly or indirectly controlling the Customer guilty of unlawfully monopolizing or attempting to unlawfully monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement, or any other means or unfair methods of competition?	<input type="checkbox"/> Yes <input type="checkbox"/> No

10.

Customer/Lessee Certification Statements

1) The Customer/Lessee agrees that the Lease is not a sale or transfer of the license itself.	<input type="checkbox"/> Yes
2) The Customer/Lessee acknowledges that it is required to comply with the Commission's Rules and Regulations and other applicable law at all times, and if the Customer/Lessee fails to so comply, the Lease may be revoked, cancelled, or terminated by either the Licensee or the Commission.	<input type="checkbox"/> Yes
3) The Customer/Lessee certifies that neither it nor any other party to the Application/Notification is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C § 862, because of a conviction for possession or distribution of a controlled substance (See Section 1.2002(b) of the rules, 47 CFR § 1.2002(b), for the definition of "party to the application" as used in this certification.)	<input type="checkbox"/> Yes
4) The Customer/Lessee hereby accepts Commission oversight and enforcement consistent with the license and lease authorization. The Lessee acknowledges that it must cooperate fully with any investigation or inquiry conducted either by the Commission or the Licensee, allow the Commission or the Licensee to conduct on-site inspections of transmission facilities, and suspend operations at the direction of the Commission or the Licensee and to the extent that such suspension of operation would be consistent with applicable Commission policies.	<input type="checkbox"/> Yes
5) The Customer/Lessee acknowledges that in the event an authorization held by a Licensee that has associated with it a spectrum leasing arrangement that is the subject of this filing is revoked, cancelled, terminated, or otherwise ceases to be in effect, the Customer/Lessee will have no continuing authority to use the leased spectrum and will be required to terminate its operations no later than the date on which the Licensee ceases to have any authority to operate under the license, unless otherwise authorized by the Commission.	<input type="checkbox"/> Yes
6) The Customer/Lessee agrees the Lease shall not be assigned to any entity that is not eligible or qualified to enter into a spectrum leasing arrangement under the Commission's Rules and Regulations.	<input type="checkbox"/> Yes
7) The Customer/Lessee waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by spectrum lease or otherwise.	<input type="checkbox"/> Yes
8) The Customer/Lessee certifies that it is not in default on any payment for Commission licenses and that it is not delinquent on any non-tax debt owed to any federal agency.	<input type="checkbox"/> Yes

The Customer/Lessee certifies that all of its statements made in this Application/Notification and in the schedules, exhibits, attachments, or documents incorporated by reference are material, are part of this Application/Notification, and are true, complete, correct, and made in good faith. The Customer/Lessee shall notify Sensus in writing in the event any information supplied on this form changes.

City of Naperville			
By:		Title:	
Name:		Date:	
FAILURE TO SIGN THIS APPLICATION MAY RESULT IN DISMISSAL OF THE APPLICATION AND FORFEITURE OF ANY FEES PAID.			
WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, Section 1001) AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, Section 312(a)(1)) AND/OR FORFEITURE (U.S. Code Title 47, Section 503).			

Part 2: Agreement

1. General

A. **Agreement Generally.** The scope of this Agreement includes usage terms for Sensus' licensed Software, leased spectrum, technical support, and supporting terms and conditions for an advanced metering infrastructure solution that Customer will purchase from Sensus' authorized distributor. Customer is not paying Sensus directly for the services provided by Sensus under the Agreement; rather, Customer shall pay Sensus' authorized distributor pursuant to a separate agreement between Customer and such authorized distributor.

2. Software.

A. Software License.

i. License.

(a) Subject to all the terms and conditions of this Agreement, Sensus hereby grants to Customer for the Ongoing Fees, a nonexclusive, non-transferable, royalty-bearing license under Sensus' intellectual property rights (the "Software License") to use the Licensed Software for the Permitted Use. The Software License is personal to Customer and is non-sublicensable to Affiliates or other third parties. Customer shall have no rights to the Licensed Software other than those expressly granted in this Section; this Software License contains no implied licenses. Customer shall not use the Licensed Software other than for the Permitted Use.

(b) Except as expressly authorized in accordance with the Permitted Use, Customer shall not (and shall not attempt to): (a) use, copy, adapt, translate, publish, display, sublicense, rent, lease, lend, transfer or distribute the Licensed Software, related documentation, or any copy thereof; (b) improve, enhance, revise, modify or make any other derivatives of the Licensed Software, related documentation or any copy or part thereof. Customer shall not reverse assemble, reverse compile, reverse engineer or otherwise translate or decode the Licensed Software or any part thereof, or any copy thereof. Sensus' suppliers of software and documentation (or any part thereof) are beneficiaries of this provision. Customer shall not destroy, remove or otherwise alter any proprietary notices (including, but not limited to, copyright notices) on the Licensed Software or related documentation, or any copy thereof, and agrees to reproduce any such notice(s) on any copy thereof it makes pursuant to this Software License.

(c) All software licenses provided hereunder shall commence on the Effective Date and shall terminate immediately when this Agreement expires or is earlier terminated for any reason or if Customer uses the Software provided hereunder other than for the Permitted Use.

ii. **Access to Licensed Software.** Customer shall ensure that only Customer employees and Customer independent contractors who need access to the Licensed Software for Customer to obtain the benefits of this Agreement may access it. Customer is liable for ensuring that its employees and independent contractors abide by the terms of this Agreement.

iii. Third Party Software.

(a) In addition to the Licensed Software, Sensus shall provide Customer with certain third party software (which may contain open source software), as determined by Sensus from time to time (the "Bundled Third Party Software"). Customer acknowledges that it has received the terms and conditions of the Bundled Third Party Software ("Third Party EULAs"). Customer accepts the Third Party EULAs and agrees to comply with the terms of such Third Party EULAs.

(b) Exhibit A contains, under the heading Non-Bundled Third Party Software, certain third party software ("Non-Bundled Third Party Software"). Customer must license the Non-Bundled Third Party Software directly from third party licensors in order to operate the FlexNet System.

(c) Customer acknowledges that both the Bundled Third Party Software and the Non-Bundled Third Party Software are subject to various rights and restrictions in favor of or imposed by the licensors thereof and that Customer's use of the Bundled Third Party software and/or Non-Bundled Third Party Software is subject to all such rights and restrictions. Sensus provides no warranty, indemnity nor support of or in relation to any third party software. All such rights and obligations are a matter strictly between Customer and the relevant third party licensors.

iv. Support and Maintenance.

(a) For so long as the Customer pays the Ongoing Fees, Sensus shall provide Customer with ongoing Licensed Software Patches, Updates, ongoing Licensed Software maintenance and remote telephone support of the Licensed Software according to the terms set forth in Exhibit B. Upgrades are not included hereunder and shall be priced separately.

(b) Sensus will support and will maintain compatibility with the most recent Release and the two prior Releases ("Previous Releases"). If Customer requires support for versions that were released earlier than the Previous Releases, Customer's Ongoing Fees for Licensed Software maintenance shall increase by thirty-three percent (33%) per year until Customer upgrades to a supported version of the Licensed Software.

v. **Effect of Termination.** Upon the termination of the Software License, all rights of the Customer to use the Licensed Software shall immediately cease and Customer shall promptly remove and return to Sensus all copies of the Licensed Software and any related documentation and shall instruct all its employees that further use of the Licensed Software is prohibited.

B. **UCITA.** To the maximum extent permitted by law, the Parties agree that the Uniform Computer Information Transaction Act as enacted by any state shall not apply, in whole or in part, to this Agreement.

3. Spectrum

A. **Definitions in this Section 3.** In this Section 3 only, "Sensus" shall mean Sensus USA Inc. and its wholly owned subsidiary, Sensus Spectrum LLC.

B. **Spectrum Lease.** Sensus hereby grants to Customer, and Customer accepts, a spectrum manager lease ("Spectrum Lease") over the frequencies of certain FCC license(s) ("FCC License") solely within Customer's Service Territory. (The frequencies of the FCC License within Customer's geographic Service Territory are called the "Leased Spectrum"). Customer shall pay the Ongoing Fees for use of the Leased Spectrum.

C. **FCC Forms.** At the Federal Communications Commission ("FCC"), Sensus will; (1) obtain an FCC Registration Number ("FRN") for Customer; (2) submit on behalf of Customer the FCC Form 602 Ownership Disclosure Information if Customer has not already done so; and (3) file a FCC Form 608, notification/application for long-term spectrum manager lease. This Lease becomes effective when the FCC accepts the FCC Form 608.

D. **Lease Application.** In order to complete the FCC lease application, Customer will promptly:

i. Complete and sign the representations in Part 1 of this Agreement such that Customer demonstrates it qualifies for a spectrum lease under FCC rules. Customer's signature will indicate that Customer authorizes Sensus to; (1) obtain an FRN on behalf of Customer; (2) submit the FCC Form 602 Ownership Disclosure Information on behalf of Customer if Customer has not already done so; and (3) file the spectrum manager lease notification on FCC Form 608 with the Customer as spectrum lessee.

ii. Give Sensus the coordinates of the boundaries of Customer's Service Territory or, alternatively, approve Sensus' estimation of the same.

- iii. If Customer has not already done so; Customer hereby authorizes Sensus to apply on Customer's behalf and obtain for Customer a Federal Registration Number (FRN, the FCC's unique identifier for each licensee) and shall supply Sensus with Customer's Taxpayer Identification Number ("TIN").
 - iv. Provide any other information or other cooperation reasonably necessary for the Parties to perform as set forth herein.
- E. **Permitted Use of Spectrum Lease and Equipment.** Customer may transmit or receive over the Leased Spectrum only in the Service Territory and only using FlexNet equipment manufactured by Sensus and used in accordance with Sensus' specifications. Customer may use the Leased Spectrum only to read and direct Field Devices or any other operation approved by Sensus in writing. Without limiting the foregoing, Customer is prohibited from reselling, subleasing or sublicensing the FlexNet Equipment and Leased Spectrum, and from transmitting voice communications over the Leased Spectrum. For each piece of RF Field Equipment used by Customer, Customer shall affix a Sensus-supplied label to the exterior of the RF Field Equipment cabinet or other appropriate visible place to indicate that RF operation is conducted under authority of FCC License(s) issued to Sensus.
- F. **FCC Forms.** At the Federal Communications Commission (FCC), Sensus will; (1) obtain an FCC Registration Number (FRN) for Customer; (2) submit on behalf of Customer the FCC Form 602 Ownership Disclosure Information if Customer has not already done so; and (3) file a FCC Form 608, notification/application for long-term spectrum manager lease. This Lease becomes effective when the FCC accepts the FCC Form 608.
- G. **Term of Spectrum Lease.** Unless terminated earlier (because, for example, Customer stops using the FlexNet equipment or because this Agreement terminates or expires for any reason), this Spectrum Lease will have the same term as the FCC license. If Customer is operating in compliance with this Agreement and is current on any payments owed to Sensus, when the FCC License renews, the Parties will apply to the FCC to renew this Spectrum Lease.
- H. **Termination of Spectrum Lease.** The Spectrum Lease will terminate: (a) two months after Customer stops transmitting with FlexNet equipment manufactured by Sensus; (b) upon termination, revocation or expiration of the FCC License; (c) upon Customer's breach of this Agreement; or (d) upon termination or expiration of this Agreement for any reason.
- I. **FCC Compliance.** The following FCC requirements apply
 - i. Pursuant to 47 CFR 1.9040(a);
 - a. Customer must comply at all times with applicable FCC rules. This Agreement may be revoked by Sensus or the FCC if Customer fails to so comply;
 - b. If the FCC License is terminated, Customer has no continuing right to use the Leased Spectrum unless otherwise authorized by the FCC;
 - c. This Agreement is not an assignment, sale or other transfer of the FCC License;
 - d. This Agreement may not be assigned except upon written consent of Sensus, which consent may be withheld in its discretion; and
 - e. In any event, Sensus will not consent to an assignment that does not satisfy FCC rules.
 - ii. Referencing 47 CFR 1.9010, Sensus retains *de jure* and *de facto* control over the applicable radio facilities, including that,
 - a. Sensus will be responsible for Customer's compliance with FCC policies and rules. Sensus represents and warrants that it has engineered the FlexNet equipment and accompanying software and other programs to comply with FCC rules. Customer will operate the FlexNet equipment subject to Sensus' supervision and control and solely in accordance with Sensus' specifications. Sensus retains the right to inspect Customer's radio operations hereunder and to terminate this Agreement or take any other necessary steps to resolve a violation of FCC rules, including to order Customer to cease transmission. Sensus will act as spectrum manager in assigning spectrum under the FCC License so as to avoid any harmful interference or other violation of FCC rules. Sensus will be responsible for resolving any interference complaints or other FCC rule violations that may arise; and
 - b. Sensus will file any necessary FCC forms or applications and Customer agrees to reasonably assist Sensus with such filing by providing any necessary information or other cooperation. Sensus will otherwise interact with the FCC with respect to this Agreement, the FCC License or FlexNet equipment.
 - iii. Customer must continue operations on the spectrum during the Term of this Agreement. If Customer stops operations for any period of time, Customer must notify Sensus by sending an email to legal@xyleminc.com. Customer may not pause or discontinue operations for more than 180 days.
- J. **Interference.** Customer agrees to report to Sensus promptly, and in no event later than 72 hours afterward, any incident related to the Leased Spectrum, including where Customer experiences harmful interference, receives a complaint or other notice of having caused harmful interference, or receives any type of communication from the FCC or other government agency regarding radio transmission.

4. Equipment.

- A. **Purchase of Equipment.** Customer shall purchase all Field Devices, RF Field Equipment, and other goods (collectively, "Equipment") from Sensus' authorized distributor pursuant to the terms and conditions (including any warranties on such Equipment) agreed by Customer and Sensus' authorized distributor. This Agreement shall not affect any terms and conditions, including any warranty terms, agreed by Customer and Sensus' authorized distributor. If Customer elects to purchase any equipment or services directly from Sensus, or if Customer pays any fees or other costs to Sensus, then Sensus' Terms of Sale shall apply. The "Terms of Sale" are available at: <https://www.sensus.com/tc>, or 1-800-METER-IT
- B. **THERE ARE NO WARRANTIES IN THIS AGREEMENT, EXPRESS OR IMPLIED. SENSUS EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES AND/OR CONDITIONS, EXPRESSED, IMPLIED, STATUTORY OR OTHERWISE, REGARDING ANY MATTER IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, WARRANTIES AS TO FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT AND TITLE.**

5. Services.

- A. **Installation of Equipment.** Installation services for Field Devices, other goods, and RF Field Equipment will be as agreed between the Customer and Sensus' authorized distributor. Sensus will not provide installation services pursuant to this Agreement
- B. **Technical Support.** Sensus shall provide Customer the technical support set forth in Exhibit B.
- C. **Project Management.** Sensus' authorized distributor will provide project management services to Customer. Any project management of the FlexNet System provided by Sensus shall be subject to a separate agreement which describes the scope and pricing for such work.
- D. **Training.** Sensus' authorized distributor will provide Customer with training on the use of the FlexNet System. Any training provided by Sensus shall be subject to a separate agreement which describes the scope and pricing for such work.
- E. **IT Systems Integration Services.** Except as may otherwise be provided herein, integration of the Software into Customer's new or existing

internal IT systems is not included in this Agreement. Any integration work shall be subject to a separate agreement which describes the scope and pricing for such work.

F. **Software Implementation.** Sensus shall install and configure the Software and shall install the Software on the Server Hardware.

6. **General Terms and Conditions.**

A. **Infringement Indemnity.**

Sensus shall defend, indemnify, and save and hold harmless the Customer from and against any losses, damages, fees, costs, and expenses related to any claim (“Claim”) alleging that the FlexNet System furnished pursuant to this Agreement infringe any United States patent, copyright, trademark, trade or business secret, service mark, or any other proprietary right, where the FlexNet System is used by the Customer strictly in conformance with the terms of this Agreement, provided that:

- i. the Customer promptly, and in any event, within ten (10) business days of becoming aware of the Claim, notifies Sensus in writing of such Claim;
- ii. the Customer fully cooperates with Sensus in assisting in the defense or settlement of such Claim; and
- iii. Sensus has the sole right to select counsel and conduct the defense of such Claim or to settle such Claims.

In the event the FlexNet System is held in such suit to be infringing or misappropriating, or their use by the Customer is enjoined or limited in any way, or Sensus believes that such holding or enjoining is likely, Sensus shall promptly, at its sole discretion and at its expense:

- (a) Procure for the Customer the right to continue to use the FlexNet System; or
- (b) Replace or modify the same with an equivalent non-infringing product with functionality substantially similar to the products it is replacing to the reasonable satisfaction of the Customer.

Notwithstanding the foregoing, Sensus shall not be liable for any Claim based on (i) the combination of the use of the FlexNet System with any other equipment or software not supplied or authorized by Sensus if it is determined by Sensus and the Customer, (or if they cannot agree, by a court of competent jurisdiction), that the combination or use of other Customer equipment or software was the cause of the infringement, or (ii) the Customer’s use of any altered version of the FlexNet System unless such alteration has been performed or expressly authorized by Sensus if it is determined by Sensus and the Customer, (or if they cannot agree, by a court of competent jurisdiction), that the use of any altered version of the FlexNet System was the cause of the infringement or (iii) Customer’s failure to use the most recent version of the Software or to otherwise take any corrective action as reasonably directed by Sensus provided such new release or corrective action would resolve the alleged infringement and provided that Sensus provided the Customer’s Director of Department of Public Utilities – Water with written notice of new versions of the Software and/or corrective actions that need to be taken by Sensus or taken by the Customer at Sensus’ cost; or (iv) any use of the FlexNet System other than for the Permitted Use if it is determined by Sensus and the Customer, (or if they cannot agree, by a court of competent jurisdiction), that the use of the FlexNet System for other than a Permitted use was the cause of the infringement. THIS SECTION STATES CUSTOMER’S SOLE AND EXCLUSIVE REMEDY AND SENSUS’ ENTIRE LIABILITY FOR ANY CLAIM OF INFRINGEMENT. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

B. **Limitation of Liability.** Except to the extent of Sensus’ indemnity obligation set forth in Paragraph 6.A. above, Sensus’ aggregate liability in any and all causes of action arising under, out of or in relation to this Agreement, its negotiation, performance, breach or termination (collectively “Causes of Action”) shall not exceed the greater of; (a) the total amount paid by Customer directly to Sensus under this Agreement; or (b) ten thousand US dollars (USD 10,000.00). This is so whether the Causes of Action are in tort, including, without limitation, negligence or strict liability, in contract, under statute or otherwise. As separate and independent limitations on liability, Sensus’ liability shall be limited to direct damages. Sensus shall not be liable for; (i) any indirect, incidental, special or consequential damages; nor (ii) any revenue or profits lost by Customer or its Affiliates from any End User(s), irrespective whether such lost revenue or profits is categorized as direct damages or otherwise; nor (iii) any In/Out Costs; nor (v) damages arising from maincase or bottom plate breakage caused by freezing temperatures, water hammer conditions, or excessive water pressure. The limitations on liability set forth in this Agreement are fundamental inducements to Sensus entering into this Agreement. They apply unconditionally and in all respects. They are to be interpreted broadly so as to give Sensus the maximum protection permitted under law.

C. **Termination.** Either party may terminate this Agreement earlier if the other party commits a material breach of this Agreement and such material breach is not cured within forty-five (45) days of written notice by the other party. Upon any expiration or termination of this Agreement, Sensus’ and Customer’s obligations hereunder shall cease and the Software License and Spectrum Lease shall immediately cease.

D. **Force Majeure.** If either party becomes unable, either wholly or in part, by an event of Force Majeure, to fulfill its obligations under this Agreement, the obligations affected by the event of Force Majeure will be suspended during the continuance of that inability. The party affected by the force majeure will take reasonable steps to mitigate the Force Majeure.

E. **Intellectual Property Rights.**

- i. **Software and Materials.** No Intellectual Property is assigned to Customer hereunder. Excluding Customer Data, Sensus shall own or continue to own all right, title, and interest in and to the Intellectual Property associated with the Software and related documentation, including any derivations and/or derivative works (the “Sensus IP”). To the extent, if any, that any ownership interest in and to such Sensus IP does not automatically vest in Sensus by virtue of this Agreement or otherwise, and instead vests in Customer, Customer agrees to grant and assign and hereby does grant and assign to Sensus all right, title, and interest that Customer may have in and to such Sensus IP. Customer agrees not to reverse engineer any Sensus Products purchased or provided hereunder.
- ii. **Customer Data.** Notwithstanding the prior paragraph, as between Customer and Sensus, Customer remains the owner of all right, title or interest in or to any Customer Data. “Customer Data” means solely usage data collected by the Field Devices. To avoid doubt, Customer Data does not include non-End User usage data collected by the Field Devices, Software, or FlexNet System, such as network and equipment status information or the like.
- iii. **Consent to Use of Customer Data.** Customer hereby irrevocably grants to Sensus a royalty-free, non-exclusive, irrevocable right and license to access, store, and use such Customer Data and any other data or information provided to Sensus, to (1) provide the Service; (2) analyze and improve the Service; (3) analyze and improve any Sensus equipment or software; or (4) for any other internal use, provided such internal use occurs after Sensus deidentifies the data as belonging to Customer. As used herein, “Service” means Sensus’ obligations under this Agreement. Sensus shall at no time make Customer Data available to any person or entity for any purpose other than set forth in (1)-

(4) above.

- F. **Data Privacy.** Customer acknowledges that Sensus and its Affiliates (collectively, “Xylem”) will collect and process personal data for the purposes outlined in this Agreement. Xylem’s data privacy policy is available at <https://www.xylem.com/en-us/support/privacy/>. Customer acknowledges that it has read and understood Xylem’s privacy policy and agrees to the use of personal data outlined therein. The collection and use of personal data by Customer is Customer’s responsibility.
- G. **Confidentiality.** Except as may be required under applicable law, court order, or regulation, or to the extent required to perform and enforce this Agreement, both parties shall (and shall cause their employees and contractors to) keep all Confidential Information strictly confidential and shall not disclose it to any third party. The Confidential Information may be transmitted orally, in writing, electronically or otherwise observed by either party. Notwithstanding the foregoing, “Confidential Information” shall not include; (i) any information that is in the public domain other than due to Recipient’s breach of this Agreement; (ii) any information in the possession of the Recipient without restriction prior to disclosure by the Discloser; or (iii) any information independently developed by the Recipient without reliance on the information disclosed hereunder by the Discloser. “Discloser” means either party that discloses Confidential Information, and “Recipient” means either party that receives it.
- H. **Compliance with Laws.** Customer shall comply with all applicable country, federal, state, and local laws and regulations, as set forth at the time of acceptance and as may be amended, changed, or supplemented. Customer shall not take any action, or permit the taking of any action by a third party, which may render Sensus liable for a violation of applicable laws.
- i. **Export Control Laws.** Customer shall; (i) comply with all applicable U.S. and local laws and regulations governing the use, export, import, re-export, and transfer of products, technology, and services; and (ii) obtain all required authorizations, permits, and licenses. Customer shall immediately notify Sensus, and immediately cease all activities with regards to the applicable transaction, if the Customer knows or has a reasonable suspicion that the equipment, software, or services provided hereunder may be directed to countries in violation of any export control laws. By ordering equipment, software or services, Customer certifies that it is not on any U.S. government export exclusion list.
- ii. **Anti-Corruption Laws.** Customer shall comply with the United States Foreign Corrupt Practices Act (FCPA), 15 U.S.C. §§ 78dd-1, et seq.; laws and regulations implementing the OECD’s Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; the U.N. Convention Against Corruption; the Inter-American Convention Against Corruption; and any other applicable laws and regulations relating to anti-corruption in the Customer’s county or any country where performance of this Agreement, or delivery or use of equipment, software or services will occur.
- I. **Non-Waiver of Rights.** A waiver by either party of any breach of this Agreement or the failure or delay of either party to enforce any of the articles or other provisions of this Agreement will not in any way affect, limit or waive that party’s right to enforce and compel strict compliance with the same or other articles or provisions.
- J. **Assignment and Sub-contracting.** Either party may assign, transfer or delegate this Agreement without requiring the other party’s consent; (i) to an Affiliate; (ii) as part of a merger; or (iii) to a purchaser of all or substantially all of its assets. Apart from the foregoing, neither party may assign, transfer or delegate this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld. Furthermore, Customer acknowledges Sensus may use subcontractors to perform RF Field Equipment installation, the systems integration work (if applicable), or project management (if applicable), without requiring Customer’s consent.
- K. **Amendments.** No alteration, amendment, or other modification shall be binding unless in writing and signed by both Customer and by a vice president (or higher) of Sensus.
- L. **Governing Law and Dispute Resolution.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Delaware. Any and all disputes arising under, out of, or in relation to this Agreement, its negotiation, performance or termination (“Disputes”) shall first be resolved by mediation between the Parties. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PARTIES AGREE TO A BENCH TRIAL AND THAT THERE SHALL BE NO JURY IN ANY DISPUTES.
- M. **Acknowledgement of Events.** The Parties acknowledge and agree that the global COVID-19 pandemic (“COVID-19”) is ongoing, dynamic, unpredictable, and as such may impact the ability of Sensus to meet its obligations under this Agreement. The Parties agree that, for so long as there is an impact of COVID-19 on Sensus’ performance, all performance efforts by Sensus will be on a reasonable efforts basis only and Sensus shall not be responsible for failure to meet its obligations, to the extent that it is precluded from doing so as a result of COVID-19. The Parties shall work, in good faith, to make any reasonable adjustments that may be required as a result of COVID-19.
- N. **Survival.** The provisions of this Agreement that are applicable to circumstances arising after its termination or expiration shall survive such termination or expiration.
- O. **Severability.** In the event any provision of this Agreement is held to be void, unlawful or otherwise unenforceable, that provision will be severed from the remainder of the Agreement and replaced automatically by a provision containing terms as nearly like the void, unlawful, or unenforceable provision as possible; and the Agreement, as so modified, will continue to be in full force and effect.
- P. **Four Corners.** This written Agreement, including all of its exhibits, represents the entire understanding between and obligations of the parties and supersedes all prior understandings, agreements, negotiations, and proposals, whether written or oral, formal or informal between the parties for the purposes of this Software License and Spectrum Lease Agreement. Any additional writings shall not modify any limitations or remedies provided in the Agreement. There are no other terms or conditions, oral, written, electronic or otherwise. There are no implied obligations. All obligations are specifically set forth in this Agreement. Further, there are no representations that induced this Agreement that are not included in it. The ONLY operative provisions are set forth in writing in this Agreement. Without limiting the generality of the foregoing, no purchase order placed by or on behalf of Customer shall alter any of the terms of this Agreement. The parties agree that such documents are for administrative purposes only, even if they have terms and conditions printed on them and even if and when they are accepted and/or processed by Sensus. Any goods, software or services delivered or provided in anticipation of this Agreement (for e.g., as part of a pilot or because this Agreement has not yet been signed but the parties have begun the deployment) under purchase orders placed prior to the execution of this Agreement are governed by this Agreement upon its execution and it replaces and supersedes any such purchase orders.
- Q. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Additionally, this Agreement may be executed by facsimile or electronic copies, all of which shall be considered an original for all purposes.
7. **Definitions. As used in this Agreement, the following terms shall have the following meanings:**
- A. **“Affiliate”** of a party means any other entity controlling, controlled by, or under common control with such party, where “control” of an entity means the ownership, directly or indirectly, of 50% or more of either; (i) the shares or other equity in such entity; or (ii) the voting rights in such entity.
- B. **“Confidential Information”** means any and all non-public information of either party, including all technical information about either party’s products or services, pricing information, marketing and marketing plans, Customer’s End Users’ data, FlexNet System performance, FlexNet System architecture and design, FlexNet System software, other business and financial information of either party, and all trade secrets of either party.
- C. **“End User”** means any end user of electricity, water, and/or gas (as applicable) that pays Customer for the consumption of electricity, water, and/or gas,

as applicable.

- D. **“Field Devices”** means the SmartPoint Modules .
- E. **“FlexNet Base Station”** identifies the Sensus manufactured device consisting of one transceiver, to be located on a tower that receives readings from the SmartPoint Modules (either directly or via an R100 unit) by radio frequency and passes those readings to the RNI by TCP/IP backhaul communication. For clarity, FlexNet Base Stations include Metro Base Stations.
- F. **“FlexNet System”** is comprised of the SmartPoint Modules, RF Field Equipment, Server Hardware, software licenses, Spectrum Lease, and other equipment provided to Customer hereunder. The FlexNet System only includes the foregoing, as provided by Sensus. The FlexNet System does not include goods, equipment, software, licenses or rights provided by a third party or parties to this Agreement.
- G. **“Force Majeure”** means an event beyond a party’s reasonable control, including, without limitation, acts of God, hurricane, flood, volcano, tsunami, tornado, storm, tempest, mudslide, vandalism, illegal or unauthorized radio frequency interference, strikes, lockouts, or other industrial disturbances, unavailability of component parts of any goods provided hereunder, acts of public enemies, wars, blockades, insurrections, riots, epidemics, earthquakes, fires, restraints or prohibitions by any court, board, department, commission or agency of the United States or any States, any arrests and restraints, civil disturbances and explosion.
- H. **“In/Out Costs”** means any costs and expenses incurred by Customer in transporting goods between its warehouse and its End User’s premises and any costs and expenses incurred by Customer in installing, uninstalling and removing goods.
- I. **“Intellectual Property”** means patents and patent applications, inventions (whether patentable or not), trademarks, service marks, trade dress, copyrights, trade secrets, know-how, data rights, specifications, drawings, designs, maskwork rights, moral rights, author’s rights, and other intellectual property rights, including any derivations and/or derivative works, as may exist now or hereafter come into existence, and all renewals and extensions thereof, regardless of whether any of such rights arise under the laws of the United States or of any other state, country or jurisdiction, any registrations or applications thereof, and all goodwill pertinent thereto.
- J. **“Licensed Software”** means the Sensus proprietary software that Sensus expressly licenses to Customer as specifically set forth in this Agreement.
- K. **“LCM”** identifies the load control modules.
- L. **“Ongoing Fee”** means the annual or monthly fees, as applicable, to be paid by Customer to Sensus’ authorized distributor during the Term of this Agreement.
- M. **“Patches”** means patches or other maintenance releases of the Software that correct processing errors and other faults and defects found previous versions of the Software. For clarity, Patches are not Updates or Upgrades.
- N. **“Permitted Use”** means only for reading Customer’s Field Devices in the Service Territory. The Permitted Use does not include reading third devices not provided by Sensus or reading Field Devices outside the Service Territory.
- O. **“R100 Unit”** identifies the Sensus standalone, mounted transceiver that takes the radio frequency readings from the SmartPoint Modules and relays them by radio frequency to the relevant FlexNet Base Station or directly to the RNI by TCP/IP backhaul communication, as the case may be.
- P. **“Release”** means both Updates and Upgrades.
- Q. **“Remote Transceiver”** identifies the Sensus standalone, mounted relay device that takes the radio frequency readings from the SmartPoint Modules and relays them directly to the RNI by TCP/IP backhaul communication.
- R. **“RF Field Equipment”** means, collectively, FlexNet Base Stations, R100 units (if any) and Remote Transceivers (if any) and handheld devices (such as the Sensus 6500 Series Handheld Device or successor products).
- S. **“RNI”** identifies the regional network interfaces consisting of hardware and software used to gather, store, and report data collected by the FlexNet Base Stations from the SmartPoint Modules. The RNI hardware specifications will be provided by Sensus upon written request from Customer.
- T. **“RNI Software”** identifies the Sensus proprietary software used in the RNI and any Patches, Updates, and Upgrades that are provided to Customer pursuant to the terms of this Agreement.
- U. **“Service Territory”** identifies the geographic area where Customer utilizes Sensus equipment to provide services to End Users as of the Effective Date. This area will be described on the propagation study in the parties’ Spectrum Lease filing with the FCC.
- V. **“Server Hardware”** means the RNI hardware.
- W. **“SmartPoint™ Modules”** identifies the Sensus transmission devices installed on devices such as meters, distribution automation equipment and demand/response devices located at Customer’s End Users’ premises that communicate with the relevant devices and transmit those communications by radio frequency to the relevant piece of RF Field Equipment.
- X. **“Software”** means all the Sensus proprietary software provided pursuant to this Agreement, and any Patches, Updates, and Upgrades that are provided to Customer pursuant to the terms of this Agreement. The Software does not include any third party software.
- Y. **“Updates”** means releases of the Software that constitute a minor improvement in functionality.
- Z. **“Upgrades”** means releases of the Software which constitute a significant improvement in functionality or architecture of the Software.
- AA. **“WAN Backhaul”** means the communication link between FlexNet Base Stations and Remote Transceivers and RNI.

**Exhibit A
Software**

Software License

RNI MSSQL version – Third Party Software	
BUNDLED THIRD PARTY SOFTWARE	As determined by Sensus per release
NON-BUNDLED THIRD PARTY SOFTWARE	MS SQL Server 2016 Standard edition
	MS Windows Server 2012 standard edition
	Red Hat Linux Enterprise edition 7.3
	VMWare ESXi
	Google Earth

Exhibit B Technical Support

1. Introduction

Sensus Technical Services provides utility customers with a single point of contact for Tier 1 support of technical issues as well as any coordination of additional resources required to resolve the issue. Requests that require specialized skills are to be forwarded to a senior support engineer or Technical Advisor within the team for further analysis. If Technical Services has exhausted all troubleshooting efforts for the product type, the issue will escalate to the Engineering Support Team. Occasionally, on-site troubleshooting/analysis may be required. The preferred order of on-site support is:

- a) The Customer (for assistance with the easiest and lowest time-consuming activities such as power on/power off).
- b) The local distributor.
- c) Sensus employees or contracted personnel, if required to fulfill a contract commitment.

2. Support Categories

- 2.1. General questions regarding functionality, use of product, how-to, and requests for assistance on Sensus AMR, AMI, RF Network Equipment, Metering Products, Sensus Lighting Control, and Demand Response Management System (FlexNet Home).
- 2.2. Proactive reporting and resolution of problems.
- 2.3. Reactive reporting to isolate, document, and solve reported hardware/software defects.
- 2.4. Responding to service requests and product changes.
- 2.5. Addressing customer inquiries with printed or electronic documentation, examples, or additional explanation/clarification.

3. Support Hours

- 3.1. Standard Support Hours: Toll-free telephone support (1-800-638-3748 option #2) is available Monday thru Friday from 8:00 a.m. EST to 8:00 p.m. EST. After-hours, holiday and weekend support for Severity 1 and Severity 2 issues is available by calling 1-800-638-3748, option #8.

4. Support Procedures

- 4.1. Customer identifies an issue or potential problem and calls Technical Services at 1-800-638-3748 Option #2. The Customer Service Associate or Technical Support Engineer will submit a Salesforce ticket.
- 4.2. The Customer Service Associate or Technical Support Engineer will identify the caller name and utility by the assigned software serial number, city, and state based on where the call originated. The Customer Service Associate or Technical Support Engineer will require a brief description of the problem symptoms, or error messages depending on nature of the incident. The nature of the problem and severity levels will be mutually agreed upon by both parties (either at the time the issue is entered or prior to upgrading or downgrading an existing issue) using the severity definitions below as a guideline. The severity level is then captured into Salesforce for ticket creation and resolution processing. Any time during the processing of this ticket, if the severity level is changed by Sensus, the customer will be updated.

A. Severity Levels Description:

Sev1 Customer's production system is down. The system is unusable resulting in total disruption of work. No workaround is available and requires immediate attention.

Example: Network mass outage, all reading collection devices inoperable, inoperable head end software (e.g., FlexWare, Sensus MDM). Not able to generate billing files.

Sev2 Major system feature/function failure. Operations are severely restricted; there is a major disruption of work, no acceptable work-around is available, and failure requires immediate attention.

Examples: Examples: Network equipment failure (e.g., FlexNet Echo, FlexNet Remote, Base Station transceiver, or VGB); inoperable reading devices (e.g., AR5500, VXU, VGB, or CommandLink); head end software application has important functionality not working and cannot create export file for billing system operations.

Sev3 The system is usable and the issue doesn't affect critical overall operation.

Example: Minor network equipment failure (e.g., Echo/Remote false alarms or Base Station transceiver false alarms); head end software application operable but reports are not running properly, modification of view or some non-critical function of the software is not running.

- 4.3. The Customer Service Associate or Technical Support Engineer identifies whether or not the customer is on support. If the customer is not on support, the customer is advised of the service options as well as any applicable charges that may be billed.
- 4.4. Calls are placed in a queue from which they are accessible to Technical Support Engineers on a first-come-first-served basis. A 1st level Customer Service Associate may assist the customer, depending on the difficulty of the call and the representative's technical knowledge. Technical Support Engineers (Tier 1 support) typically respond/resolve the majority of calls based on their product knowledge and experience. A call history for the particular account is researched to note any existing pattern or if the call is a new report. This research provides the representative a basis and understanding of the account as well as any associated problems and/or resolutions that have been communicated.
 - a. Technical Services confirms that there is an issue or problem that needs further analysis to determine its cause. The following information must be collected: a detailed description of the issue's symptoms, details on the software/hardware product and version, a description of the environment in which the issue arises, and a list of any corrective action already taken.
 - b. Technical Services will check the internal database and product defect tracking system, to see if reports of a similar problem exist, and if any working solutions were provided. If an existing resolution is found that will address the reported issue, it shall be communicated to the customer. Once it is confirmed that the issue has been resolved, the ticket is closed.
 - c. If there is no known defect or support that defines the behavior, Technical Services will work with the customer to reproduce the issue. If the issue can be reproduced, either at the customer site or within support center test lab, Technical Services will escalate the ticket for further investigation / resolution.

If the issue involves units that are considered to be defective with no known reason, the representative will open a Special Investigation RMA through the Salesforce system. If it is determined that a sample is required for further analysis, the customer will be provided with instructions that detail where to send the product sample(s) for a root cause analysis. Once it is determined that the issue cannot be resolved by Tier 1 resources, the ticket will be escalated to Tier 2 support for confirmation/workarounds to resolve immediate issue. Technical Services will

immediately contact the customer to advise of the escalation. The response and escalation times are listed in Section 5. At this time, screen shots, log files, configuration files, and database backups will be created and attached to the ticket.

5. **Response and Resolution Targets.**

Sensus Technical Support will make every reasonable effort to meet the following response and resolution targets:

Severity	Standard Target Response	Standard Target Resolution	Resolution (one or more of the following)
1	30 Minutes	Immediately assign trained and qualified Services Staff to correct the error on an expedited basis. Provide ongoing communication on the status of a correction (24 hours).	<ul style="list-style-type: none"> Satisfactory workaround is provided. Program patch is provided. Fix incorporated into future release. Fix or workaround incorporated into Salesforce Knowledge Base.
2	4 hours	Assign trained and qualified Services Staff to correct the error. Provide communication as updates occur (48 hours).	<ul style="list-style-type: none"> Satisfactory workaround is provided. Program patch is provided. Fix incorporated into future release. Fix or workaround incorporated into Salesforce Knowledge Base.
3	1 Business Day	30 business days	<ul style="list-style-type: none"> Answer to question is provided. Satisfactory workaround is provided. Fix or workaround incorporated into Salesforce Knowledge Base. Fix incorporated into future release.

6. **Problem Escalation Process.**

- 6.1. If the normal support process does not produce the desired results, or if the severity has changed, the issue may be escalated as follows to a higher level of authority.
 - 6.1.1.1. Severity 1 issues are escalated by Sales or Technical Services to a Supervisor if not resolved within 2 hours; to the Manager level if not resolved within 4 hours; to the Director level if not resolved within the same business day; and to the VP level if not resolved within 24 hours.
 - 6.1.1.2. A customer may escalate an issue by calling 1-800-638-3748, Option 2. Please specify the Salesforce ticket number and the reason why the issue is being escalated.
 - 6.1.1.3. In the event that a customer is not satisfied with the level of support or continual problem with their products, they may escalate a given Salesforce ticket to Manager of Technical Services (1-800-638-3748, Option 2).

7. **General Support Provisions and Exclusions.**

- 7.1. Sensus provides online documentation for Sensus products, and all Sensus customers are provided access to this online database, which includes operation, configuration and technical manuals. The customer shall provide names and email accounts to Sensus so Sensus may provide access to the product documentation.
- 7.2. Specialized support from Sensus is available on a fee basis to address support issues outside the scope of this support plan or if not covered under another specific contract or statement of work. For example: specialized systems integration services or out of warranty network equipment repair.
- 7.3. A Dell-provided three-year ProSupport hardware service plan plus a 4 hour Mission Critical upgrade accompanies the server/system hardware that Sensus procures on behalf of the customer. Sensus does not warrant third party server hardware. The customer may renew the ProSupport service plan directly with Dell. The Dell Master Services Agreement and Pro Support for IT Services Description documents may be found at www.dell.com/service contracts.
- 7.4. Sensus procures certain third party software licenses (e.g. Red Hat Enterprise Linux) required to operate the FlexNet-based applications on the Dell hardware. Sensus registers all the applicable third party software licenses in the customer's name and ships all documentation and licensing information to the customer with the server. The customer is responsible for maintaining all third party software licenses.
- 7.5. In the event of a server hardware failure at the customer site, Sensus will provide replacement Sensus proprietary software (e.g., RNI Software) either on digital media or downloadable from an internet site, as necessary. The method of software redistribution is at Sensus' discretion. The customer is responsible for re-installing the replacement software. Sensus installation support is not covered under this standard Technical Support program but may be provided as a fee-based service.