



## Customer FIRST

invensys  
Avantis

invensys  
Foxboro

invensys  
InFusion

invensys  
SimSci-Esscor

invensys  
Skelta

invensys  
Triconex

invensys  
Eurotherm



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Houston, Texas 77041  
Attn: Order Management

Email: United States - usorders@invensys.com  
Fax: 713-329-1700 Attn: Order Management

### Customer FIRST Support and Services Agreement

for

City of Sparks

Truckee Meadows Water Reclamation  
Facility

Reno, Nevada

### Customer FIRST Standard Program

Proposal No.: CPC-0212-18232 Rev. 0

July 20, 2012

**This Proposal is valid for 60 calendar days  
from the date of this Proposal.**

*This proposal contains technical and business information that is confidential and proprietary to Invensys. It is provided to City of Sparks solely for internal review and evaluation. The information contained herein may not be shown or disclosed in any form to third parties without the express consent of Invensys.*

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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, backup and restore services, and assist with 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. Pricing Summary

<b>SELECTION SUMMARY &amp; PRICING</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>
INCLUDED SERVICES <i>(Price before Optional Services)</i>	\$46,259.00	\$47,647.00	\$49,076.00
OPTIONAL FEATURES:			
<input checked="" type="checkbox"/> Training Growth Fund - Customer's contribution: Invensys will match customer's contribution with \$2,000.00 per year	\$2,000.00	\$2,000.00	\$2,000.00
ADDITIONAL SERVICES <i>(list below, insert rows as needed)</i>	None selected	None selected	None selected
TOTAL:	\$48,259.00	\$49,647.00	\$51,076.00

### 3. 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 support, annual product lifecycle assessment, and more. Discounts on value-add services are also offered, and the opportunity to establish funded reserves to help cover any billable labor, material, and training requirements you anticipate encountering during the timeframe of your Agreement.

## 4. Agreement Content

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### 4.1 Customer FIRST Program – Introduction

The Invensys Customer FIRST Support and Services Program will help you accomplish your short- and long-range objectives at the lowest possible cost. Program enrollment gives you the support services and resources you need to help increase asset availability, utilization and performance.

### 4.2 Customer FIRST Program – Standard Level

Invensys offers **Standard** level membership in the Customer FIRST Support and Services program for customers that require support availability during normal business hours. Maximize your investment in Invensys products with access to technical support, en route response commitment for on-site corrective support, and the latest software versions and maintenance releases. If applicable to covered equipment, scheduled preventive maintenance visits will be arranged. Flexible payment options are available for purchase of labor-based services, training, and material-related services including the Advantage Program for hardware upgrades.

### 4.3 Customer FIRST Program – I/A Series and InFusion CE Features Summary

Customer FIRST Support and Services program features are summarized below.



V2012\_April\_1\_I/A Series

Included Services	Standard
<b>Common Elements</b>	
Business Hours Technical Support (normal local business hours)	◆
Web Support - Knowledgebase, Online Training*, Proactive Communications	◆
Annual Lifecycle Assessment Report	◆
Upgrade Planning Roadmap	◆
En route response commitment for Onsite Corrective Assistance	<b>NBD*</b>
Discount on Consulting Services (when purchased with Service Agreement)	◆
<b>Software Elements</b>	
Software maintenance releases, service packs, patches and updates	◆
Software version upgrades and revisions**	◆
<b>Hardware Elements</b>	
Number of Preventive Maintenance site visits per year	<b>1</b>
Discount on Site Support Services	◆
Advantage Program Discount (I/A Series, InFusion CE and Triconex)	◆
Module Exchange/Reserve Program	<b>Reserve</b>
MEP/MRP Parts Discount	◆
Discount on Spares	◆

Optional Services	Standard
Flexible Funding (Training Growth)	◆

\* where available

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

NBD = Next Business Day

## 4.4 Customer FIRST Program – Feature Descriptions

Customer FIRST Support and Services program features are described below.

### 4.4.1 Standard Level – Included Services

#### 4.4.1.1 Standard Level – Common Elements

**Business Hours Technical Support (normal local business hours):**

Invensys provides expert technical assistance and application support during normal business hours via regional support centers. 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.

**Web Support – Knowledgebase, Online Training\*, Proactive Communications:**

Invensys provides its extensive knowledgebase of technical user documentation, issue solutions, and software via the Customer Support website. The registration profile allows the website user to refine their access to only the product content of interest.

Invensys web tools provide online support case management. Customer personnel may submit service requests online; if qualified for handling as a support case, a tracking number will be issued. Cases may be reviewed online by the submitter.

In addition, website-registrants will receive pro-actively issued communications of two types:

- 1) Those that describe identified technical product problems and provide a solution and
- 2) Notifications pertaining to lifecycle management topics such as hardware and software release notifications, and service program changes.

*\* Most Invensys brands offer web-based training opportunities; contact your Invensys representative regarding availability.*

**Annual Lifecycle Assessment Report:**

Invensys understands that you have a need and a responsibility to maintain system equipment and software applications as critical parts of your business. The Lifecycle Assessment Report provides a top level view of the current lifecycle status of the products in use at your site and outlines key business objectives related to their maintenance and supportability. The report will be reviewed with you during the annual Customer FIRST Program renewal process.

This report is developed using the System Asset Viewer application to access your site's system configuration data which is stored on the GCS website. Based on this information, lifecycle charts and high-level overview drawings that show current system topology or architecture will be generated, Your Invensys Service Representative will review this information with you to address any identified system maintenance issues and to recommend course of action.



If the System Asset View application is installed on a personal computer at your site, your staff can use it to access your system configuration data and lifecycle phase information on demand.

**Upgrade Planning Roadmap:**

Building on the Lifecycle Assessment Report, Invensys will assess the components of your system and applications, as appropriate, for potential upgrade to preferred (current) phase products. This collaborative activity with customer staff focuses on identifying a logical progression for the potential upgrade of your Invensys equipment, software and files, and third party products. The deliverable is a high-level upgrade roadmap that will help facilitate effective short and long term upgrade planning decisions. It will be updated annually, and may be used as the foundation for the optional Upgrade and Migration Planning service.

**En Route Response Commitment for Onsite Corrective Assistance:**

Invensys solutions are reliably supported through a remote connection (VPN or web conference). This approach provides fast, effective support, particularly in emergency situations. In the event that our Technical Support Engineers/Consultants are unable to resolve your support case via remote methods, Invensys will provide hands-on corrective assistance at your site.

A skilled Invensys service engineer/consultant will travel to your site to perform necessary remedial actions with the objective of returning your system or application to normal operation. These activities may include system troubleshooting, defective hardware replacement, and software restoration<sup>3</sup> or correction due to data corruption or necessity.

While this type of support is typically time sensitive in nature, actual en route response time commitment will be determined by the level of Customer FIRST support enrollment, situation urgency and availability of regional resources. Arrival time at site is dependent on transportation contingencies beyond Invensys' control.

*Notes:*

- 1) Activities that are not covered by Onsite Corrective Assistance include application work, block configuration, display creation, historian creation, software installation, preventative maintenance work, startup support and upgrade labor.
- 2) Labor and materials, travel and living expenses are billable unless otherwise defined in the Agreement terms. Billable labor hours include travel time, time spent obtaining plant access, time spent onsite and offsite performing evaluations and preparing documentation necessary for the assigned tasks.
- 3) Software restoration may be accomplished using install discs or via download. If the customer's data is corrupt, there may be no recourse, in some cases, to restore corrupted user data.

*This Customer FIRST Support and Services Agreement includes:*

*Standard level: Next Business Day En Route Response Commitment for Corrective Assistance.*

**Discount on Consulting Services (when purchased with Service Agreement):**

Invensys Consulting Services allow you to leverage skilled Invensys resources that can help optimize the performance of your existing assets, conduct routine performance assessments and assist with new product deployment. The Customer FIRST Program provides you with access to discounts on Consulting Services when purchased in conjunction with your support and services agreement.

Whether you are planning a new project and need help architecting a solution, or want recommendations to optimize the performance of your existing application for a single-site project or a global, enterprise-wide engagement, we will help you make arrangements with the appropriate resources within the Invensys organization. Invensys Consulting Services combine best-in-class software technologies with in-depth process, plant and IT expertise.

Standard level: 10% discount off list price.

#### 4.4.1.2 Standard Level – Software Elements

##### **Software Maintenance Releases, Service Packs, Patches and Updates:**

With the Customer FIRST Support and Service program, Invensys provides maintenance releases and fixes for covered software related to your application that is released during the contract period. This applies to software that is in the Preferred (i.e., most current) lifecycle phase.

Maintenance releases provide corrections to software defects within a software revision level. 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 maintenance releases will become available during the agreement period.

Software installation and startup activities are not part of the Customer FIRST program. These activities require the scheduling of a separate site visit for which the labor terms of this Agreement apply.

##### **Software Version Upgrades and Revisions:**

Invensys provides software version upgrade and revision releases with the Customer FIRST Support and Services program. This benefit provides you with the ability to upgrade and keep covered Invensys software continuously current at the Preferred (i.e., most current) lifecycle phase.

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.

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

Software installation and startup activities are not part of the Customer FIRST program. These activities require the scheduling of a separate site visit for which the labor terms of this Agreement apply.

Eligibility requirements:

1) Request for Upgrade or Revision

The Customer First agreement must be active at the time the software version upgrade or revision is requested. Eligibility to request provision of upgrades and revisions at no charge ends at agreement expiration.

2) Licensed Software Version and Revision requirement(s)

To qualify for version upgrades, you must be licensed to operate (not necessarily be running) the most current/preferred version of Invensys Software at the time the Customer FIRST agreement is executed. If you do not request the latest software release, eligibility to obtain subsequent licensed Version and Revision level releases at no charge will lapse.

If you are licensed to a non-current / non-preferred version of Invensys Software, you must first purchase an upgrade to the current / preferred version. Invensys offers incentives for the purchase of new hardware and software.

Note: New hardware and/or system shutdown may be required to support new version upgrade and revision releases.

#### 4.4.1.3 Standard Level – Hardware Elements

**Number of Preventive Maintenance site visits per year:**

The Customer FIRST Support and Services Agreement provides you with a number of Preventive Maintenance (PM) visits each year based on your selected program level. The general scope of work includes physical inspection of equipment, review of software maintenance releases and fixes, technical advisories, product alert notices (Triconex) 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. They will perform corrective actions that are within the scope of the PM visit, and schedule follow-up maintenance for additional issues if necessary. Invensys will help you determine the appropriate length of the PM visit per site.

On an annual basis, “discovery” tools (e.g., FERRET for I/A Series and InFusion CE, and Triconex System File Maintenance Evaluation) are used to extract current system configuration data for analysis, and the resulting report will identify any issues that may require corrective activity. The data extracted will become the basis of the Lifecycle Assessment Report, which is described elsewhere in this proposal.

*Notes:*

- 1) The delivery schedule and timing of PM visits will be determined in consultation with the customer.

- 2) Customer should review the full scope of work with the Service Engineer prior to their arrival at site.
- 3) 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.

Standard level: One (1) Preventive Maintenance site visit per year.

#### **Discount on Site Support Services:**

A discount on the current Invensys labor rate at time of service is provided on labor hours dedicated to Site Support Services.

Site Support Services utilize the talents of Invensys Service Engineers to supplement your site resources with simple day to day activities or to help solve more complex engineering issues. Site Support Services are generally applicable to smaller scale projects. Invensys will help you define the scope of work to meet your specific requirements. If you are interested in having similar work performed on a larger scale, arrangements can be made with the appropriate resources within our organization.

For examples of applicable activities, refer to "Site Support Services (I/A Series, InFusion CE, Triconex)" in the "Policies and Guidelines for Specific Customer FIRST Features" section of this document.

Standard level: 10% discount

#### **Advantage Program Discount (I/A Series, InFusion CE and Triconex):**

The Advantage Program provides cost-effective upgrade options that include substantial incentives for the exchange of existing I/A Series, InFusion CE and Triconex systems equipment. A discount for Advantage Program upgrades is provided when the older technology units are returned to Invensys. The Advantage discount is applicable only to Preferred hardware and software products that qualify for Advantage program pricing.

The Advantage Upgrade Program Policy applies.

Standard level: 50% discount on Advantage Program orders.

#### **Module Reserve Program (MRP):**

Invensys provides customers with access to its materials inventory when rapid replacement of malfunctioning equipment is necessary. If you encounter an issue with a component on your Eurotherm, I/A Series, or Triconex system, you may arrange for exchange of the malfunctioning unit with another unit. The replacement material generally ships within one business day following receipt of the malfunctioning equipment at Invensys' designated address. Product provided under the Module Reserve Program is billable, and may be applied to the Module Reserve Program (MRP) - Material Cost-Inclusive feature or the Flexible Material Fund if appropriate. Pricing is contingent on Invensys' subsequent determination that the returned unit meets Module Reserve Program Policy qualifications.

*I/A Series and Triconex: 43% discount. Landed costs (duties, fees, etc.) may apply.*

**MRP Parts Discount:**

The price of unit supplied to the customer will qualify for a discount contingent on material returned to Invensys meeting Module Reserve Program qualifications.

*I/A Series and Triconex: 43% discount. Landed costs (duties, fees, etc.) may apply.*

**Discount on Spares:**

The Customer FIRST Support and Services Agreement enables you to better manage and control the cost of equipment by providing a discount on the purchase of new material that will be stored as spare inventory at your site.

*Standard level: 5% discount*

#### 4.4.2 Standard Level – Optional Services

Invensys offers the following optional services with the Customer FIRST Support and Services program for your consideration.

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**Training Growth Fund:**

Invensys-operated Learning Centers offer extensive opportunities for learning solutions to help you increase workforce effectiveness. The Training Growth Fund offers you an opportunity to effectively forecast and prepay relevant training opportunities as part of your scheduled agreement payments, thereby enabling you to spread payment of applicable services over the coverage period of your Customer FIRST Support and Services Agreement.

Invensys will match your contribution up to a value equal to 10% of your Support and Services Agreement. You may arrange for qualified training at any time during the Agreement term.

Invensys can help you determine appropriate Fund allocation for your company, site(s) and situation. Training Growth Fund Policy applies.

This agreement includes \$2,000.00 per year for the Training Growth Fund. Invensys will match \$2,000.00 per year for a total training benefit of \$4,000.00 per year.

## 5. Policies and Guidelines for Specific Customer FIRST Features

The policies and guidelines described in this section apply to the specifically ascribed service deliverables and programs.

### 5.1 Support Hours and Rates

Support and services covered by this Agreement shall be performed during the normal workday as defined by local practice or labor law, or as defined in this Agreement between Invensys and Customer. Support, services, and travel hours in excess of the normal workday may be billable, subject to the specified Customer FIRST Program level, labor terms and provisions of this Agreement.

NO.	TITLE	DESCRIPTION
1	NORMAL WORKDAY HOURS	<p>Normal workday hours: <u>8:00</u> AM to <u>5:00</u> PM</p> <p>Normal work week: <u>Monday to Friday</u></p> <p>Time zone: <u>Local</u></p> <p><input checked="" type="checkbox"/> Invensys-designated holidays will be observed.</p>
2	TRAVEL HOURS	<p>Travel hours shall accrue from the point of origin and cover time traveling to and returning 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>The following detail will apply as determined appropriate by Invensys and Customer. Travel hours will be billed for:</p> <p><input checked="" type="checkbox"/> Actual time incurred</p>
3	SERVICE RATES	<input checked="" type="checkbox"/> Service Rates are defined in local Service Rate Schedule

## 5.2 Lifecycle Support Policy

Invensys has established clear and predictable product support timelines to enable customers to plan product upgrades in advance of reaching obsolescence. This proactive approach provides a comprehensive view of product lifecycle phases, phase transition timing, and available support during each phase.

Information about the products currently supported in each lifecycle phase is posted on the respective Invensys brand support websites, and we provide periodic notification of all product transitions from one lifecycle phase to the next:

<http://iom.invensys.com/EN/Pages/Support.aspx>

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.

## 5.3 Module Reserve Program (MRP) Policy

If you encounter an issue with your Eurotherm, I/A Series, 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 unit may be shipped from Invensys inventory in exchange for your malfunctioning unit. You must be covered by a Customer FIRST Support and Services Agreement to receive this benefit.

Product provided under the Module Reserve Program is billable, and may be applied to Module Reserve Program (MRP) - Material Cost-Inclusive feature or the Flexible Material Fund if appropriate.

Major system components are carefully selected for refurbishment and inclusion in Invensys 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) CUSTOMER FIRST COVERAGE CONDITIONS

The Module Reserve Program (MRP) is available to Eurotherm, I/A Series and Triconex non-Nuclear industry customers that have Customer FIRST program Standard level coverage.

The requested replacement unit will be shipped by Invensys AFTER Invensys has received your malfunctioning unit.

### 2) PRODUCT LIFECYCLE AND 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 Customer FIRST program level.
- Products in LifeTime Phase will be supplied on a reasonable effort basis, with shipment subject to availability, in accordance with Customer FIRST program level.
- 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

- a) Equipment is provided at the price prevailing at the time of shipment, if the exchange transaction meets the conditions detailed below.
- b) 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



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area. Refer to the Invensys Contact \ Material Return section of the Customer FIRST Support and Service Agreement.

- c) 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.
- d) 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) Delivery of critical equipment within 24 hours may be arranged if availability and transportation logistics allow it; a premium charge will apply.
- f) 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 before the refurbished replacement unit will be shipped 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.

## 6) NON-COMPLIANCE

- a) Non-compliance with this policy will result in the issuance of an invoice for the full list price of product provided. Purchaser agrees to provide Invensys with a funded purchase order for this purpose.

## 7) WARRANTY

- a) The Module Reserve Program does not cover warranty replacement. For warranty replacement, the client can arrange for a return to the factory for repair or replacement in accordance with Invensys warranty terms.

## 5.4 Training Growth Fund Policy

Customer's contribution to the Training Growth Fund can only be applied at approved Invensys Learning Centers. It can be used for:

- Standard Invensys public instructor-led, e-learning courses, webinars, seminars, workshops and media products published in the Invensys Learning Services catalog
- Custom training, and custom training development
- Invensys OpsManage Conference fees
- Third party training courses delivered by Invensys Learning Centers
- Equipment expenses (workstation rentals, etc) provided by Invensys Learning Centers
- Freight shipment provided by Invensys Learning Centers
- Instructor travel and living expenses

Invensys' matching contribution will not be applied to:

- Custom training, and custom training development
- Non-catalog-published seminars and workshops
- Third party training courses; including those provided by Invensys Learning Centers
- Invensys OpsManage Conference fees
- Equipment expenses
- Freight shipment
- Instructor or Student travel and living expenses

The following terms and conditions apply to the Training Growth Fund:

- 1) Training Growth Fund may be provisioned by the customer for a value that will accrue during the coverage period of the Customer FIRST Support and Services Agreement, in accordance with the terms of the Agreement. Allocation to Training Growth Fund may differ each year within a multi-year Agreement.
- 2) Invensys will make a matching contribution to the Training Growth Fund that is limited to a maximum of 10% of the annual Support and Service Agreement value.

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*Note: The annual value of the Invensys Customer FIRST Program does not include fund contributions.*

- 3) Customer's contribution to the Training Growth Fund will be made together with Agreement payments in accordance with the agreement billing schedule. It may be increased at annual anniversary date within a multi-year agreement and upon renewal of the Agreement for the next coverage period. Customer's contribution cannot be cancelled during the annual term or multi-year coverage period.
- 4) The scope of training usage can be defined prior to, or during, the annual term of the Training Growth Fund. All training must be taken within annual term.
  - a) The Training Growth Fund cannot be combined with other discounts offered by Invensys.
  - b) Usage is limited to the Customer defined in the Customer FIRST Support and Services Agreement.
  - c) Usage of Training Growth Funds for Distributor or other 3rd party entity provided training activities, course, products and training related services is disallowed.
- 5) As training is provided, the customer's contribution will be deducted from the Training Growth Fund. Once the Training Growth Fund's value has been fully used, no further usage can be applied. Additional funding will not be accepted during the annual term.
- 6) At the 12-month anniversary date of the multi-year Agreement, customer's portion of unused Training Growth Fund balance
  - a) may roll forward, establishing a beginning balance in the Training Growth Fund for the next year within the Agreement
  - b) cannot be moved to provision another Fund within the Agreement
  - c) will not be refunded to the customer.
- 7) At the 12-month anniversary date of the multi-year Agreement, unused Invensys' contribution to the Training Growth Fund
  - a) will not roll forward each year
  - b) cannot be moved to provision another Fund within the Agreement
  - c) cannot be applied to the Agreement itself on renewal
  - d) will not be provided to the customer.
- 8) At Agreement expiration, unused customer's contribution to the Training Growth Fund balance
  - a) cannot be used to establish a beginning balance in the Training Growth Fund within the next Agreement
  - b) cannot be moved to provision another Fund within the next Agreement
  - c) will not be refunded to the customer.
- 9) At Agreement expiration, unused Invensys' contribution to the Training Growth Fund
  - a) cannot be used to establish a beginning balance in the Training Growth Fund within the next Agreement
  - b) cannot be moved to provision another Fund within the next Agreement
  - c) will not be provided to the customer.

- 10) If the Agreement is terminated prior to its expiration date, accrued unused Training Growth Fund balance will not be refunded to the customer.
- 11) If the Agreement is terminated prior to its expiration date, a lump-sum invoice will be issued for Training Growth Fund usage above the accrued customer contribution.

## 6. Components Covered

### 6.1 Components and Software Covered

The following system components and software are covered under the terms and conditions of this Customer FIRST Support and Services Agreement and the Lifecycle Support Policy. Components and software not listed are not covered by this Agreement.

#### City of Sparks - Waste Water 2012

Item	Qty	Product	Short Description	Lifecycle phase
1	1	P0923LY	P92-390 Workstation Style G, Rev A,B,C,D, E, F	LifeTime
2	7	P0923QV	P92-T3400 Workstation Style H, Rev A,B,C,D	LifeTime
3	8	S10B23220000	I/A Series Windows W'kstation SW Lic (Certificate)	Preferred
4	6	P0973BJ	Fiber E'net Switch w/24 MT-RJ Ports & Uplink Ports	Mature
5	20	P0917YZ	FCP270 Control Processor	Preferred
6	21	S61C21421000	I/A Series Function Block SW Lic (Certificate)	Preferred
7	33	P0400DA	FBM01 0-20 mA Input	Mature
8	70	P0400YE	FBM04 0-20 mA Input/Output	Mature
9	85	CM400YH	FBM07 Contact/dc Input	Mature
10	7	DM400YJ	FBM08 120 Vac Input	Mature
11	17	CM400YK	FBM09 Contact/dc Input/Output	Mature
12	42	DM400YL	FBM10 120 Vac Input/Output	Mature
13	1	P0914SY	FBM204 4 Channel 0-20 In + 4 Channel 0-20 Out	Preferred
14	1	P0926GW	FBM232, 10/100 Mbps Ethernet, Single	Preferred
15	1	P0914TG	FBM241 Ch Isolated Vmon DI + External Source DO	Preferred
16	2	P0950BM	FBM43 Dual Baud Intelligent Transmitter Interface	Mature
17	8	J0177AH	Additional FoxView DM For The 70 Series	LifeTime
18	1	Q0300FV	AIM*DataLink Quantity 1	Preferred
19	1	Q0301AS	AIM*Historian SW Lic (2000 Points)	Preferred
20	1	Q0301YB	AIM*OLE DB Provider License - 1 User	Preferred
21	8	J0200RV	App Station V6* SW For Windows Ethernet License	Preferred
22	1	Q0300GB	FoxAPI V4.0 For I/A NT	LifeTime
23	8	J0200JN	FoxDraw Standalone Lic	Preferred
24	8	P0922RV	FoxView/FoxDraw V10.x For Windows Media Kit	Preferred
25	7	L0997CC	Integrated Control Configurator (ICC) - Windows	Available
26	1	K0173XC	Media: MODBUS Driver For FDSI Version 1	Preferred
27	1	P0901EG	Okidata 80-Column Printer For PW's (120 Vac)	Preferred

## 7. Contact Information

### 7.1 Customer Contact Information

Customer shall provide the following information to Invensys.

#### 7.1.1 Customer Addresses

Customer shall provide the following addresses to Invensys.

Site Name:	City of Sparks - Truckee Meadows Water Reclamation Facility
Billing Address	8500 Clean Water Way, Reno , NV 89502, USA
Shipping Address	8500 Clean Water Way, Reno , NV 89502, USA
End User Address	8500 Clean Water Way, Reno , NV 89502, USA
Sold To Address	8500 Clean Water Way, Reno , NV 89502, USA

#### 7.1.2 Purchasing & Accounts Payable Contacts

Customer shall provide contact information for purchasing and accounts payable to Invensys.

NO.	CONTACT NAME	RESPONSIBILITY	CONTACT INFORMATION
1			Tel: Mobile: Fax: Email:

### 7.1.3 Site Identification

This Customer FIRST Support and Services Agreement covers the identified system(s) located at the following site(s).

1.	Site Name and Location	City of Sparks - Truckee Meadows Water Reclamation Facility, Reno NV
2.	System(s)	I/A

### 7.1.4 Site Operations Contacts

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

Indicate whether the named individual(s) may be contacted by Invensys for remote services (RemoteWatch) purposes.

NO.	CONTACT NAME	RESPONSIBILITY	CONTACT INFORMATION	PROCESS UNIT ID, LOCATION
1	Mark Bowman	Treatment Plant Systems Analyst	Tel: (775) 861-4135 Mobile: Fax: (775) 861-4101 Email: mbowman@cityofsparks.us	Water Reclamation, Reno, NV
2			Tel: Mobile: Fax: Email:	
3			Tel: Mobile: Fax: Email:	

## 7.2 Invensys Contact Information

Invensys shall provide contact information to the customer.

### 7.2.1 Individual Invensys Contacts

The following individuals have assisted in preparing this Customer FIRST Support and Service Agreement.

NO.	CONTACT NAME	RESPONSIBILITY	CONTACT INFORMATION
1	Dave Coyle	Client Sales Executive (CSE)	Tel: (513) 247-9488 Mobile: (513) 319-2611 Fax: (513) 247-9499 Email: dave.coyle@invensys.com
2	Gene Bradford	Product Sales Executive (PSE)	Tel: (949) 455 8125 Mobile: (714) 299-5679 E-Fax: (928) 222-9337 Email: gene.bradford@invensys.com

### 7.2.2 Invensys Support Centers

The following Invensys or Invensys-authorized support centers are available to provide support to your site:

#### Canada, United States:

#### 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

### 7.2.3 Material Return Instructions and Contact Information

It is essential to confirm the correct address, instructions, and authorization for material return claims and Advantage upgrade claims prior to shipping a package to Invensys.



For all material returns and exchanges, contact Invensys via the contact points listed above or one of the Invensys offices listed below to request a Return Material Authorization (RMA) number and the correct shipping address to which to return the material.

CUSTOMER SITE LOCATION	INVENSYS LOCATION	CONTACT INFORMATION
Canada  NOTE: Always contact the telephone numbers provided here for Return Material Authorization Number (RMA#) and shipping instructions prior to shipping unit .	Invensys Systems Canada Inc. 4 Lake Road, D.D.O, Quebec H9B-3H9 Canada	Worldwide support: Telephone: +1 508-549-2424 Fax: +1 508-549-4999 Email: <a href="mailto:support@ips.invensys.com">support@ips.invensys.com</a>  Canada toll free: Telephone: +1 866-746-6477
United States of America (USA)  NOTE: Always contact the telephone numbers provided here for Return Material Authorization Number (RMA#) and shipping instructions prior to shipping unit.	Invensys Systems, Inc. Dept. 910 Field Service Receiving 15 Pond Street Foxboro, MA 02035 USA  Invensys Triconex 17146 FeatherCraft Lane Houston, TX 77598-4309 USA  Invensys Operations Management 26561 Rancho Parkway South Lake Forest, Ca 92630	Worldwide support: Telephone: +1 508-549-2424 Fax: +1 508-549-4999 Email: <a href="mailto:support@ips.invensys.com">support@ips.invensys.com</a>  USA toll free: Telephone: +1 866-746-6477

### 7.3 Purchase Order Submittal

To facilitate Purchase Order Processing and eliminate possible rework and review cycles, please ensure your Purchase Order includes the following information:

- ◆ The Purchase Order has an authorized signature and is dated.
- ◆ The Ship To Address is listed.
- ◆ The Invoice Address is listed.
- ◆ The Invensys Proposal Number CPC-0212-18232 Rev. 0 terms and conditions – will govern and supersede – any terms provided by Purchaser..

Send completed purchase orders to the Invensys entity as follows:

#### FOR UNITED STATES ORDERS

Mail: Invensys Systems, Inc.  
 10900 Equity Drive  
 Houston, Texas 77041  
 Attn: Order Management

Email: United States – [usorders@invensys.com](mailto:usorders@invensys.com)  
 Fax: 713-329-1700 Attn: Order Management

## 8. Commercial Section

### 8.1 Project Terms and Conditions

<b>Proposal Acceptance:</b>	This proposal is valid for 30 calendar days from the date of proposal.
<b>Firm Prices:</b>	Prices are in US dollars and are firm for all Foxboro services. Pricing level is for a single purchase order. Multiple purchase orders may affect pricing.
<b>Taxes/Duties:</b>	Sales taxes, duties and other fees are not included in this proposal.
<b>Terms of Payment/Schedule</b>	Quarterly payments. All invoices are due and payable within 30 days from invoice date. Late charges may result in a late payment fee.
<b>Services:</b>	Field services are available from the local Foxboro branch office. Demand or contract rates in effect when services are rendered will be in effect.
<b>Others:</b>	Unless stated as included elsewhere in the Proposal, all travel and living expenses are extra and will be invoiced at cost + 10%. Unless stated as included elsewhere in the Proposal, all engineering estimates do not include travel time which will be charged at an agreed to rate.  This quotation assumes standard work 8-hour days, Monday through Friday, Invensys holidays excluded.
<b>Commercial Terms</b>	The following commercial terms are in effect –  Invensys Customer FIRST Program Terms and Conditions.

### 8.2 Invensys Customer FIRST Program Terms and Conditions

**1. General.** The Invensys Customer FIRST Program (“ICFP”) is a fee-based software and hardware maintenance and support program. By paying the ICFP Fee and participating in the ICFP, Customer agrees to all of the terms and conditions contained in the Invensys Proposal and these Invensys Customer FIRST Terms and Conditions (together, the “Agreement”). Any new Software or Goods will be provided per Invensys General Terms and Conditions of Sale of Goods and Services and License of Software.

#### 1.1 Definitions.

(a) “Goods” shall mean all products, equipment, materials, spare parts, hardware, supplies, and accessories defined and supported under the Agreement.

- (b) "ICFP Fee" shall mean the fees described in the Invensys Proposal to be paid by Customer to Invensys.
- (c) "Invensys Proposal" shall mean the document which may describe, among other things, the specific (i) support level chosen by the Customer, (ii) Services to be provided by Invensys, (iii) ICFP Fee, (iv) payment terms, and (v) Goods and/or Software covered under the Agreement.
- (d) "Software" shall mean Invensys computer software programs defined and supported under the Agreement 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 Products, their related instructions manuals and documentation, for which Invensys grants Customer a license and which are supported under the Agreement. The terms and conditions of the Software license shall be set forth in Invensys' end-user license agreement applicable to the particular Software at the time of delivery or, if such Software does not include an end-user license agreement at the time of delivery, then in accordance with the Software license terms and conditions set forth in a written agreement between Invensys and Customer.
- (e) "Services" shall mean the support services described in the Invensys Proposal.
- (f) "Specifications" shall mean the Invensys standard specifications applicable to the Goods and/or Software or the specific requirements agreed upon, in writing, between Invensys and Customer in relation to the Goods and Software.
- (g) "Third Party Products" shall mean products and software of a third party vendor. If Third Party Products are supplied by Invensys to Customer, unless otherwise agreed in writing by Invensys, 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.

**2. Purchase.** The ICFP is priced based on the value of Invensys Software licenses owned (or being purchased) by the Customer site at the time the ICFP Fee is paid and the support level selected by Customer, and, in the case of Goods, is based on the type and number of Goods owned (or being purchased) by the Customer and the support level selected by Customer at the time the ICFP Fee is paid. Following payment of the ICFP Fee, any new Software or Goods purchased by the Customer during the Agreement term must be purchased with coverage under the ICFP, which will be pro-rated to expire at the same time as the initial expiration date. Alternatively, a Customer may opt to back-charge applicable ICFP Fees for the new Software and Goods at the time of renewal, including back charges plus a minimum of one year agreement duration. Unless otherwise agreed in writing by Invensys, Invensys reserves the right to increase ICFP Fees one time per calendar year. Unless otherwise agreed upon in writing, Customer shall reimburse Invensys for expenses incurred by Invensys to perform the Services, including but not limited to travel and living expenses.

To enroll in and purchase the ICFP (Standard, Premium and Elite levels provide free software version upgrades) for Software only, a Customer must possess (not necessarily be running) the most current version of Invensys Software as a prerequisite. If a Customer is running a non-current / non-preferred version of Invensys Software, they must first purchase an upgrade to the current / preferred version. Invensys may offer incentives for Customers to purchase version upgrades.

Except as stated in Section 8.2 (a), the ICFP Fee for any initial, renewal, prorated or other term is non-refundable.

Unless otherwise stated in the Invensys Proposal, the ICFP Fee and all other fees and expenses under the Agreement are due and payable by Customer within thirty (30) days of Customer's receipt of Invensys' invoice.

**3. Invensys Customer FIRST Program Levels.** The ICFP portfolio includes four (4) levels; Primary, Standard, Premium and Elite, which offer Customers a wide choice of offerings to meet their business requirements. Specific program level benefits are described in the Invensys Proposal and the ICFP User Guide.

**4. Scope of Support.** Invensys provides Services in accordance with the Invensys lifecycle support policy applicable to the Agreement-covered Software and Goods. The Invensys lifecycle policy is published on the Invensys brand support websites, and may be referenced in the Invensys Proposal and ICFP Guide. Although Invensys and its Certified Support Providers (third parties retained by Invensys to provide Services to Customers under the ICFP, including but not limited to Authorized Distributors and other support providers) may attempt to resolve issues arising in earlier Invensys goods or software versions, they do not have any obligation to do so under any support level in the ICFP unless extended support for obsolete versions is available and purchased on a product by product basis.

#### 4.1 Support Exclusions.

(a) Unless otherwise agreed in writing by Invensys, Invensys does NOT provide Services under the ICFP for Third Party Products, including but not limited to Crystal Reports. If Invensys services Third Party Products at Customer's written request, Invensys' services shall be rendered "AS-IS" and without warranty of any kind and such services shall be for an additional fee at Invensys' then current service rates.

(b) Customer shall be responsible for payment for Invensys equipment and materials if Customer's employees, agents, consultants or contractors working on Invensys equipment or materials causes malfunction or failure of such equipment or materials. If such an event occurs, Invensys equipment and materials will be billed to Customer at the then current rates for such equipment and materials and Customer shall also pay Invensys for any associated services as a result of such malfunction or failure.

(c) Invensys and non-Invensys system goods and software not specifically listed in the Invensys Proposal as covered under the support level purchased by Customer are NOT covered under the Agreement. Technical assistance rendered via any means of personal communication (including but not limited to telephone, facsimile, postal mail, email, texting, and web-enabled chat), remote connection and diagnosis, material, labor or other support assistance provided by Invensys to resolve an issue involving non-listed equipment is chargeable to Customer at the then-current Invensys service rates.

(d) Invensys will NOT provide Services on Invensys software or goods from or repaired by a non-Invensys-authorized agent, distributor, reseller or other third party. If any issues occur that are attributable to third-party procured material or services, all work performed by Invensys will be subject to invoicing at the then-current Invensys service rates.

(e) Unless specifically purchased as an option under the Agreement and described in the Invensys Proposal, planning, installation, testing, and documentation of expansions, modifications and software upgrades of custom application or third party programs are NOT covered under the ICFP.

(f) Unless otherwise agreed in writing by Invensys, Goods identified as obsolete phase or due to become obsolete under the Invensys lifecycle support policy during the Agreement term will be excluded and will NOT be supported.

(g) Goods identified as lifetime phase under the Invensys lifecycle support 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.

(h) All decisions made by Customer relating to the implementation of Invensys' 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. 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 Goods or Software covered under the Agreement. Invensys shall have full and free access to the Goods and Software in order to provide any on-site corrective support Services under the Agreement. Customer will identify person(s) who will interface with the Invensys or other designated support center under the terms of the Agreement. Any maintenance or repair services performed on the Goods or Software by Customer or third party personnel resulting in additional material or corrective support service requirements by Invensys will be invoiced at then current time and material service rates.

**6. Remote Services Security. (Applicable to systems using RemoteWatch or legacy Invensys-proprietary Remote Services)** 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 RemoteWatch Services server or any other means of remote communication, 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 an 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 a 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 the Agreement.

## 7. On-Site Services.

(a) Services or travel in excess of normal workday, and any Services or travel on Saturdays, Sunday or nationally observed holidays shall be invoiced by Invensys as defined by local practice, or by labor law as applicable, or as defined in a written agreement between Invensys and Customer. The normal work day shall be defined by local practice, or by labor law as applicable, or as defined in a written agreement between Invensys and Customer.

(b) Unless otherwise agreed in writing by Invensys and Customer, all on-site Services will be billed to Customer at the then current Invensys service rates. There shall be a minimum charge of four (4) hours where hourly rates are applicable, or one (1) day where daily rates are applicable for service and travel time.

(c) When shift work other than the normal workday is required, a premium rate shall be added for Services 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 a written agreement between Invensys and Customer.

(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 chargeable to Customer.

(g) Standby time is defined as that time during which an Invensys representative is requested to remain in readiness and available for Services 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. All staging and rigging required for access to equipment to be serviced shall be erected by and at the expenses of Customer or third parties and shall comply with reasonable safety requirements. The Invensys representative shall comply with all plant safety regulations given to such representative in writing. However, any protective clothing or equipment, except the standard safety hat, required by Customer regulations shall be provided by Customer at Customer's sole cost.

(i) 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 Customer or third parties.

(j) Unless otherwise agreed in writing by Invensys, all parts identified as requiring replacement during a non-warranty related service call shall be invoiced at Invensys' current list prices.

**8. Term.** The term of the Agreement shall be as stated in the Invensys Proposal ("Term"). Notwithstanding anything else in a Customer purchase order or other order document, or if the Customer purchase order or other order document is issued for a period of less than the Term of this Agreement, Customer agrees that the Term of the Agreement shall be the stated Term, and such Term shall take precedence over any other period stated elsewhere. If Customer issues a Customer purchase order or other order document for less than the full Term, Customer's failure to issue a subsequent Customer purchase order or other order document for the remainder of the Term shall be considered a Termination for Convenience pursuant to Section 8.2(b) hereafter. Thereafter, subject to the other limitations and requirements described in the Invensys Proposal and herein, the Agreement may be renewed for future terms. Renewal of the Agreement requires the mutual written consent of Customer and Invensys. All software licenses and Goods for a given Invensys brand (including but not limited to Avantis, Eurotherm, Foxboro, SimSci-ESSCOR, Triconex and Wonderware) at a participating site must be covered under the ICFP during the initial term or any renewal or prorated terms.

**8.1 Termination.** The Agreement may be terminated by Invensys and all Services under the ICFP stopped if:

- (a) Customer has breached any of its material obligations under the Agreement and has not cured such breach within thirty (30) days of receipt of a notice of default from Invensys;
- (b) Customer has breached any of its material obligations under any Invensys end user licensing agreement and Customer has not cured such breach within thirty (30) days of receipt of a notice of default from Invensys;
- (c) Customer does not use the Services for its own internal business purposes or uses the Services to provide similar services related to the Software or Goods to any third party and Customer has not cured such breach within thirty (30) days of receipt of a notice of default from Invensys; or,
- (d) Customer fails to pay the ICFP Fee when due and Customer has not cured such breach within ten (10) days of receipt of a notice of default from Invensys.

**8.2 Termination For Convenience.**

- (a) Invensys may at any time, without cause, terminate the Agreement and stop all Services under the ICFP, by giving Customer ninety (90) days written notice of such termination. If Invensys elects to terminate under this Section 8.2(a) prior to the end of the then-current Agreement term, then Customer shall be entitled to a pro-rated refund of ICFP Fees actually paid by Customer to Invensys.
- (b) Customer may terminate the Agreement without cause by giving Invensys ninety (90) days written notice of such termination prior to the specified termination date. Upon termination of the Agreement, Customer shall pay Invensys (i) all fees and expenses (including but not limited to ICFP Fees) earned or incurred in connection with the performance of the Services under the 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.

**8.3 No Damages for Termination.** Invensys will not be liable to Customer for any claims or damages of any kind arising out of termination of the Agreement in accordance with Sections 8.1 ("Termination") or 8.2 ("Termination For Convenience").

**9. Suspension of Services.** Without prejudice to other remedies available by law, Invensys reserves the right to suspend Services if Customer does not comply with its obligations under the Agreement.

**10. Work Product and Residual Rights.** "Work Product" means any new or useful art, discovery, improvement, deliverable, process, invention, modification, enhancement, product, software, whether or not copyrightable or patentable, inclusive of all related know-how, trade secrets, and any other tangible or intangible technical material or information. Any Work Product developed under the Agreement is not to be considered made-for-hire under the United States Copyright Act and, at all stages of development, will remain the sole and exclusive property of Invensys. Customer further agrees that it will take all actions and execute and deliver all documents requested by Invensys in order to evidence Invensys' rights in and to the Work Product. It is agreed and understood that Invensys is otherwise free to use its general knowledge, skills and experience and any general ideas, concepts or know-how and techniques related to or derived from the performance of Services under the Agreement.

**10.1 Confidential Information.** "Confidential Information" shall mean any and all information in any form that disclosing party provides to receiving party in the course of the Agreement and that either (i) has been marked as confidential; or (ii) is of such nature that a reasonable person would consider confidential under like circumstances. Notwithstanding the foregoing, Confidential Information shall not include any information, however designated, which the receiving party can show (a) is or has become generally available to the public without breach of the Agreement by the receiving party, (b) became known to the receiving party prior to disclosure to the receiving party by the disclosing party, (c) was received from a third party without breach of any nondisclosure obligations to the disclosing party or otherwise in violation of the disclosing party's rights, or (d) was developed by the receiving party independently of any Confidential Information received from the disclosing party. Additionally, Confidential Information does not include work product resulting from the Services performed hereunder.

Each party or third party whose Confidential Information has been disclosed retains ownership of its Confidential Information. Each party agrees to (i) protect the Confidential Information received from the disclosing party in the

same manner as it protects the confidentiality of its own proprietary and confidential materials but in no event with less than reasonable care; (ii) use the Confidential Information received from the disclosing party only in furtherance of the business relationship between the parties. Upon termination of the Agreement or upon written request submitted by the disclosing party, whichever comes first, the receiving party shall return or destroy, at the disclosing party's choice, all of the disclosing party's Confidential Information. Neither party shall, except with respect to its employees, contractors or agents with a need to know for purposes of the Agreement, disclose to any person any Confidential Information received from the disclosing party without the disclosing party's prior written consent. However, the receiving party may disclose Confidential Information pursuant to an order of a court or governmental agency, provided that the receiving party shall first notify the disclosing party of such order and afford the disclosing party the opportunity to seek a protective order relating to such disclosure.

A receiving party's obligations hereunder, including the obligations to protect and preserve the secrecy of Confidential Information delivered hereunder will survive any termination or expiration of the Agreement for a period of five (5) years from the date of disclosure.

**11. Limited Warranties and Exclusive Remedy.** Services will be performed in a professional manner and warranted for a period of 90 days from the date of Service. Invensys warrants that any parts, for Goods which are supplied while performing Services under the Agreement, will be free from material defects for a period of 90 days following delivery of such parts. Additionally, Invensys warrants that any Software upgrades, patches, service packs, quick fix, quick custom, or corrective fixes which are supplied while performing Services under the Agreement, will be free from material defects for a period of 90 days following delivery of such Software upgrades, patches, service packs, quick fix, quick custom or corrective fixes. For any breach of these warranties, a Customer's exclusive remedy, and Invensys' entire liability, shall be the reperformance of the Services or repair or replacement of such parts, Software upgrades, patches, service packs, quick fix, or quick custom.

#### DISCLAIMER OF ALL OTHER WARRANTIES

THE WARRANTIES ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY INVENSYS, ITS DEALERS, DISTRIBUTORS OR AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE WARRANTIES SET FORTH ABOVE AND CUSTOMER MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE. INVENSYS DOES NOT WARRANT THAT THE SOFTWARE OR GOODS WILL MEET CUSTOMER'S REQUIREMENTS, THAT THE SOFTWARE OR GOODS WILL OPERATE IN COMBINATIONS OTHER THAN AS SPECIFIED IN INVENSYS' DOCUMENTATION, THAT THE OPERATION OF THE SOFTWARE OR GOODS WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT THE SOFTWARE, GOODS OR SERVICES, INCLUDING BUT NOT LIMITED TO CYBER SECURITY SERVICES, WILL PROTECT AGAINST ALL POSSIBLE SECURITY THREATS, INTERNET THREATS OR OTHER THREATS OR INTERRUPTIONS.

**12. Liability Limitation and Exclusion of Damages.** In no event shall Invensys be liable for any indirect, incidental, special, punitive or consequential damages, or damages for loss of profits, revenue, data or use, incurred by a Customer or third party, whether in an action in contract or tort, even if Invensys has been advised of the possibility of such damages. Invensys' liability for damages hereunder or relating hereto (whether in an action in contract or tort) shall in no event exceed the amount of fees paid to Invensys by Customer with respect to the Services provided to Customer within the 12 month period prior to the time such liability arose. The provisions of this Section 12 allocate the risks between Invensys and a Customer and Invensys' pricing reflects this allocation of risk and the limitation of liability specified herein.

**13. Taxes.** ICFP Fees and other fees due under the Agreement do not include state, federal, local sales tax, use, excise, valued added or other similar taxes, all of which will be paid by Customer.

**14. Relationship of Parties.** The parties to the Agreement are independent contractors. There is no relationship of agency, partnership, joint venture, employment, or franchise between the parties. Neither party nor its employees has the authority to bind or commit the other party in any way or to incur any obligation on its behalf.

#### **15. Customer's Obligations.**

(a) Customer shall indemnify, hold harmless and defend Invensys from and against any claims, damages or liabilities asserted by any third party against Invensys as a result of Invensys' access to Customer's or Third Party Products including but not limited to claims, damages or liabilities for infringement of any third party's intellectual property rights.

(b) 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 Services under the Agreement, 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.

**16. Severability.** If any provision of the Agreement is determined by a court of competent jurisdiction to be in violation of any applicable law or otherwise invalid or unenforceable, such provision will to such extent as it will be determined to be illegal, invalid or unenforceable under such law be deemed null and void. The Agreement will otherwise remain in full force and effect.

**17. No Implied Waivers.** The failure of either party to exercise any right or option granted under the Agreement, or to require the performance by the other party hereto of any provision of the Agreement, will not prevent a subsequent exercise or enforcement of such provisions or be deemed a waiver of any subsequent breach of the same or any other provision of the Agreement.

**18. Assignment.** Customer may not assign the Agreement, in whole or in part, without Invensys' prior written consent. Any attempt to assign the Agreement without such consent will be null and void. Subject to the foregoing, the Agreement will bind and inure to the benefit of each party's permitted successors and assigns.

**19. Translation.** The language of the Agreement is expressly stipulated to be English. In the event that the Agreement is translated into another language, the English language version of the Agreement shall govern for purposes of interpretation and enforcement.

**20. Force Majeure.** Except for payments due under the Agreement, neither party will be responsible to the other for any failure or delay in its performance due to acts of God or other unforeseen circumstances beyond the reasonable control of either party, provided that such party gives prompt written notice thereof to the other party and uses its diligent efforts to resume performance.

**21. Compliance.**

(a) Restricted Rights Legend - U.S. Government Users. The software is a "commercial item" as that term is defined at 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 the U.S. Government only as a commercial end 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. Contractor/ manufacturer is Invensys Systems, Inc., 5601 Granite Parkway, Suite 1000, Plan, TX 75024. Telephone: (469) 365-6400.

(b) Export Restrictions. Customer agrees to comply fully with all applicable international and national export laws and regulations, including the U.S Export Administration Regulations and the Office of Foreign Asset Control Regulations, as well as end-use and destination restrictions issued by the U.S and foreign governments to assure that neither the Software nor Goods nor any direct product thereof are (i) exported, directly or indirectly, in violation of export laws; or (ii) are intended to be used for any purposes prohibited by the export laws.

**22. Governing Law and Dispute Resolution.** The Agreement shall be governed by and construed in accordance with the laws of the State 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 the Agreement. The governing language for the Agreement shall be English, and no concurrent or subsequent translation of the Agreement into any language shall modify any term of the Agreement and the English language version of the Agreement shall control in the event of conflict. Any claim arising out of or relating to the 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. 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. The prevailing party in such arbitration shall be entitled to recover its reasonable attorney's fees. In no event shall any arbitration award provide a remedy beyond those permitted under the Agreement, and any award providing a remedy beyond those permitted under the 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 the 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).

**23. Survival of Provisions.** The Sections of the Agreement that by their nature survive expiration or termination of the Agreement include but are not limited to the following Sections: Section 8.3 ("No Damages For Termination"), Section 10 ("Work Product and Residual Rights"), Section 10.1 ("Confidential Information"), Section 11 ("Limited Warranties and Exclusive Remedy"), Section 12 ("Liability Limitation and Exclusion of Damages"), Section 13 ("Taxes"), Section 15 (a), Sections 16-22 and Sections 23-24.

**24. Entire Agreement.** The Agreement constitutes the entire agreement between the parties relating to its subject matter and supersedes all prior or contemporaneous representations, understandings or agreements whether written or oral, relating to its subject matter. The Agreement may be amended or modified only by a writing that is signed by authorized representatives of both parties. The Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. 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 Agreement will have any effect on the rights, duties or obligations of the parties hereunder, or otherwise modify, the Agreement, regardless of any failure of Invensys to object to such terms, provisions or conditions.

## 9. Customer FIRST Selection Summary

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### 9.1 Proposal Acceptance

This Proposal is valid for 60 calendar days from the date of this Proposal.

### 9.2 Selection Summary

The 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.

The following information covers pricing for the proposed Customer FIRST Support and Services program.

#### **Included Services**

The "Included Services" are covered by the selected Customer FIRST Program level's price before Optional Features are added. Refer to the Agreement Content section of this Agreement for a summary matrix and description of program features.

#### **Optional Services**

The Customer FIRST Program offers the listed Support and Services features on an optional basis.

#### **Additional Services**

The Customer FIRST Program allows the opportunity to include Additional Services to help you meet your specific support requirements. The Additional Services listed below will be provided under this specific Agreement.

<b>SELECTION SUMMARY &amp; PRICING</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>
INCLUDED SERVICES <i>(Price before Optional Services)</i>	\$46,259.00	\$47,647.00	\$49,076.00
OPTIONAL FEATURES:			
<input checked="" type="checkbox"/> Training Growth Fund - Customer's contribution: Invensys will match customer's contribution with \$2,000.00 per year	\$2,000.00	\$2,000.00	\$2,000.00
ADDITIONAL SERVICES <i>(list below, insert rows as needed)</i>	None selected	None selected	None selected
TOTAL:	\$48,259.00	\$49,647.00	\$51,076.00

### 9.3 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	\$48,259.00	\$48,259.00	Twelve (12) months	1-Oct-2012	30-Sep-2013
Year 2	\$49,647.00	\$49,647.00	Twelve (12) months	1-Oct-2013	30-Sep-2014
Year 3	\$51,076.00	\$51,076.00	Twelve (12) months	1-Oct-2014	30-Sep-2015
Total	\$148,982.00				

Payment is due 30 days from date of invoice.

## 10. Agreement Acceptance

Execution of this Agreement or receipt of a Purchase Order represents acceptance into the program and acceptance of these terms and conditions for the term indicated above.

<b>PURCHASER</b>	
Client (Company) Name	City of Sparks
Address	
City/State/Zip	
Country	
Authorized Purchaser Representative	
Title	
Date	

<b>INVENSYS</b>	
Invensys Local Entity Name	
Acceptance By	
Title	
Date	