

CLERK'S CONTRACT and AGREEMENT COVER PAGE

Legistar File ID#: 2014-0135

Innoprise Contract #: C14-0066

Year: 2014

Amount: \$214,675.00

Department: PW - John Ingram

Contract Type: Small Construction/Installation

Contractors Name: HD Supply Waterworks, Ltd.

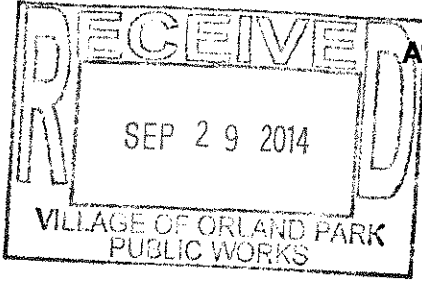
Contract Description: FlexNet Fixed Meter Reading
Sensus AMI Agreement C14-0093

Advanced Metering Infrastructure (AMI) Agreement

between

**Village of Orland Park
("Customer")**

and
**Sensus USA Inc.
("Sensus")**



IN WITNESS WHEREOF, the parties have caused this AMI Agreement ("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: 10 Years ("Term"), unless sooner terminated as provided in the Agreement, provided that it may be extended for a longer period by written agreement.

This Agreement contains two parts: Part (1) has been removed as it is inapplicable and Part (2) is a AMI Agreement between Sensus and Customer. Together, these two parts create the Agreement.

Sensus USA Inc.
By: *Jim Vaniga*
Name: TEM HARRDAER
Title: Director of Sales
Date: 9/19/14

Customer Village of Orland Park
By: *Paul G. Grimes*
Name: Paul G. Grimes
Title: Village Manager
Date: 7/30/14

Contents of this Agreement:
Part 1: Intentionally Omitted
Part 2: AMI Agreement
Exhibit A Software Listing
Exhibit B Technical Support

Part 1: Intentionally Omitted

Part 2: AMI AGREEMENT

1. **Equipment.**

- A. **Purchase of Equipment.** Customer shall purchase all 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 <http://na.sensus.com/TC/TermsConditions.pdf>, or 1-800-METER-IT.
- B. THERE ARE NO WARRANTIES IN THIS AGREEMENT, EXPRESS OR IMPLIED. THERE ARE NO IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES AS TO FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED.

2. **Services.**

- A. **Installation of Equipment.** Installation services will be as agreed between the Customer and Sensus' authorized distributor. Sensus will not provide installation services pursuant to this Agreement.
- B. **Software Implementation.** Sensus shall install and configure the Software and shall install the Software on the Server Hardware.
- C. **IT Systems Integration Services.** Integration of the Software into Customer's new or existing internal IT systems is not included in this Agreement.
- D. **Technical Support.** Sensus shall provide Customer the technical support set forth in Exhibit B.
- E. **Project Management.** Project Management of the AMI System is not included in this Agreement.

3. **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 Software for the Permitted Use. The Software License is personal to Customer and is nonsublicenseable to Affiliates or other third parties. Customer shall have no rights to the Software other than those expressly granted in this Section; this Software License contains no implied licenses. Customer shall not use the Software other than for the Permitted Use.
- (b) Subject to all the terms and conditions of this Agreement that are applicable to Software and otherwise, and subject to the terms and conditions in Exhibit A, so long as Customer pays for use of certain Harris Software, Sensus hereby grants to Customer for the Ongoing Fees, a nonexclusive, non-transferable, royalty bearing license under Sensus' intellectual property rights (the "Harris Software License") to use the Harris Software solely for the Permitted Use. This Harris Software License is personal to Customer and is nonsublicenseable to Affiliates or other third parties. Customer shall have no rights to the Harris Software other than those expressly granted in this Section; this Harris Software License contains no implied licenses. Customer shall not use the Harris Software other than for the Permitted Use. Customer expressly agrees to the terms and conditions set forth in Exhibit A. For clarity, this subsection (b) shall only apply so long as both; (i) pricing for that specific item of Harris Software has been provided to the Customer; and (ii) the Customer is current in its payments for that specific item of Harris Software.
- (c) 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 Software, related documentation, or any copy thereof; (b) improve, enhance, revise, modify or make any other derivatives of the Software, related documentation or any copy or part thereof. Customer shall not reverse assemble, reverse compile, reverse engineer or otherwise translate or decode the 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 Software or related documentation, or any copy thereof, and agrees to reproduce any such notice(s) on any copy thereof if it makes pursuant to this Software License.
- (d) 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 Software.** Customer shall ensure that only Customer employees and Customer independent contractors who need access to the 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 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 software Patches, Updates, ongoing software maintenance and remote telephone support of the 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 software maintenance shall increase by thirty-three percent (33%) per year until Customer upgrades to a supported version of the Software.

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

- B. **Intellectual Property.** Sensus and/or its supplier (as applicable) shall 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. To the extent, if any, that any ownership interest in and to such Intellectual Property 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 Intellectual Property.
- C. **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.

4. **Spectrum**

- A. **Definitions in this Section 4.** In this Section 4 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 ("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; if no Ongoing Fees are specifically listed for use of the Leased Spectrum, then Sensus shall partition \$900 from the other Ongoing Fees and such amount is hereby allocated to this spectrum lease pursuant to this Agreement.
- 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. Unless previously completed outside of this Agreement, 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.** 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 meters in support of Customer's primary utility business or any other operation approved by Sensus in writing. Without limiting the foregoing, Customer is prohibited from reselling, subleasing or sublicensing the Leased Spectrum or from transmitting voice communications over the Leased Spectrum.
- F. **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 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 Lease.
- G. **Termination of Spectrum Lease.** The 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.
- H. **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 reasonably to 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.
- I. **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.

5. **General Terms and Conditions.**

A. **Intentionally Omitted**

B. **Limitation of Liability.**

- i. 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 (iv) manual meter read costs and expenses; 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.

- ii. To the maximum extent permitted by law, no Cause of Action may be instituted by Customer against Sensus more than TWELVE (12) MONTHS after the Cause of Action first arose. In the calculation of any damages in any Cause of Action, no damages incurred more than TWELVE (12) MONTHS prior to the filing of the Cause of Action shall be recoverable.
- 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. In addition, Customer for its convenience may terminate this Agreement at any time upon not less than ninety (90) days written notice. 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. "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.
- E. **Intellectual Property.** No Intellectual Property is assigned to Customer hereunder. Sensus shall own or continue to own all Intellectual Property used, created, and/or derived in the course of performing this Agreement. To the extent, if any, that any ownership interest in and to such Intellectual Property 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 Intellectual Property. Customer agrees not to reverse engineer any Equipment purchased or provided hereunder.
- F. **Confidentiality.** 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, except to the extent reasonably required to perform and enforce this Agreement or as required under applicable law, court order or regulation. As used herein, "Confidential Information" means any and all non-public information of either party, including the terms of this agreement, all technical information about either party's products or services, pricing information, marketing and marketing plans, Customer's End Users' data, AMI System performance, AMI System architecture and design, AMI System software, other business and financial information of either party, and all trade secrets of either 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.
- G. **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.
- H. **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.
- I. **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.
- J. **Governing Law and Dispute Resolution.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Illinois. 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 the Parties attempting mediation in Illinois. If the Dispute is not resolved within sixty (60) days of the commencement of the mediation, it shall be litigated in the state or federal courts located in Illinois. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PARTIES AGREE TO A BENCH TRIAL AND THAT THERE SHALL BE NO JURY IN ANY DISPUTES.
- K. **Survival.** The provisions of this Agreement that are applicable to circumstances arising after its termination or expiration shall survive such termination or expiration.
- L. **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.
- M. **Four Corners.** This written Agreement 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. 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.
- N. **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.
- 6. **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. "AMI System" identifies the Sensus FlexNet Advanced Meter Infrastructure System comprised of the SmartPoint Modules, RF Field Equipment, Server Hardware, software licenses, FCC licenses, and other equipment provided to Customer hereunder. The AMI System only includes the foregoing, as provided by Sensus. The AMI System does not include goods, equipment, software, licenses or rights provided by a third party or parties to this Agreement.
 - C. "Echo Transceiver" identifies the Sensus standalone, mounted relay device that takes the radio frequency readings from the SmartPoint Modules and relays them by radio frequency to the relevant FlexNet Base Station.
 - D. "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.
 - E. "Field Devices" means the meters and SmartPoint Modules.
 - F. "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 Echo Transceiver) by radio frequency and passes those readings to the RNI by TCP/IP backhaul communication. For clarity, FlexNet Base Stations include Metro Base Stations.
 - G. "FlexWare™ 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.

- H. **"Harris Software"** means the specific items of software provided by N. Harris Computer Corporation only to the extent Customer; (i) has been provided pricing for that specific item of Harris Software; and (ii) is current in its payments for that specific item of Harris Software.
- I. **"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.
- J. **"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.
- K. **"LCM"** identifies the load control modules.
- L. **"Ongoing Fee"** means the annual or monthly fees, as applicable, to be paid by Customer 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 meters in the Service Territory. The Permitted Use does not include reading third party meters or reading meters outside the Service Territory.
- O. **"Release"** means both Updates and Upgrades.
- P. **"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.
- Q. **"RF Field Equipment"** means, collectively, FlexNet Base Stations, Echo Transceivers and Remote Transceivers.
- R. **"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.
- S. **"Service Territory"** identifies the geographic area where Customer provides electricity, water, and/or gas (as applicable) services to End Users as of the Effective Date. This area will be described in the parties' spectrum lease filing with the FCC.
- T. **"Server Hardware"** means the RNI hardware.
- U. **"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 take the readings of the meters and transmit those readings by radio frequency to the relevant FlexNet Base Station, Remote Transceiver or Echo Transceiver.
- V. **"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.
- W. **"TouchCoupler Unit"** identifies an inductive coupler connection from a water register to the SmartPoint Module.
- X. **"Updates"** means releases of the Software that constitute a minor improvement in functionality.
- Y. **"Upgrades"** means releases of the Software which constitute a significant improvement in functionality or architecture of the Software.
- Z. **"WAN Backhaul"** means the communication link between FlexNet Base Stations and Remote Transceivers and RNI.

**Exhibit A
Software Listing**

| THIRD PARTY SOFTWARE | | |
|--|---|--|
| Software | Version | |
| BUNDLED THIRD PARTY SOFTWARE | As determined by Sensus from time to time. | |
| NON-BUNDLED THIRD PARTY SOFTWARE | Database: Oracle OR MS SQL Server | Oracle 11g MS SQL Enterprise 2008 R2 |
| | MS Windows Server 2003 (Stats) | Enterprise Edition (64 bit installation) |
| | MS Windows Server 2008 (Database/Parser) | Enterprise Edition (64 bit installation) |
| | RedHat Linux | RedHat Enterprise Linux AS 5.8.Premium Edition |
| | Big Brother or HP Open View | Version 3.1 Version 7.51 or newer |
| | Red Gate SQL Backup or Veritas Netbackup | Standard Edition Version 6.0 or newer |
| | Google Earth | Version 4.1 or newer |
| SENSUS SOFTWARE LIST | | |
| Software | Version | |
| FLEXWARE™ SOFTWARE | Sensus RNI | Version 3.1 |
| | FlexNet Base Station Software | Version 100120 |
| HARRIS SOFTWARE LIST | | |
| MeterSense MDM (Logic) | Customer will have a license to a specific item of the Harris Software only to the extent Customer; (i) has been provided pricing for that specific item of Harris Software; and (ii) is current in its payments for that specific item of Harris Software. The MeterSense MDM (Logic) requires the Customer to use oracle 11g standard Edition License and requires the Customer to use RedHat Enterprise Linux AS 6.2 Premium Edition. | |
| Rules Editor | | |
| Outage Supervision | | |
| Advanced Reporting | | |
| Distribution Optimization | | |
| Customer & Home Connect | | |
| Weather Data Interface | | |
| Interface to Customer Information System (CIS) | | |
| Interface to Geographic Information System (GIS) | | |
| Supervisory Control and Data Acquisition (SCADA) Integration | | |

If Sensus is providing Customer with a license to use Harris Software, Customer agrees to the following:

Customer License Agreement

- No license is given to the Customer for the source code to the Harris Software. The Customer agrees that it will not attempt to derive, or permit or help others to derive the source code relating to the Harris Software or attempt to otherwise convert or alter the Harris Software into human readable code. The Customer further agrees that it will not attempt to duplicate, or permit or help others to duplicate, the source code relating to the Harris Software.
- The Customer shall have no right to modify the Harris Software supplied by Sensus for Customer's use under this Customer License Agreement without the prior written approval and direction of Sensus and Harris.
- Customer shall not sublicense or permit the sublicense of any of the rights granted to the Customer related to the Harris Software.
- The Customer agrees that it will not, except as otherwise expressly provided in this Customer License Agreement or except as dictated by Customer's standard computer system's backup procedures and/or test environments, make or allow others to make copies or reproductions of the Harris Software or other proprietary information in any form.
- The Customer will ensure that the Universal Copyright Convention symbol and other copyright and proprietary notices of Harris will remain on the Harris Software in machine-readable form.
- The Customer will take the same care to safeguard the Harris Software as it takes to safeguard its own confidential information and such care shall not be any less than would be taken by a reasonable person to safeguard its own confidential information.
- No third party, other than duly authorized agents or employees of the Customer authorized pursuant to the licenses issued hereunder, shall have access to or use of the Harris Software.
- To enable Harris to provide effective support, the Customer shall allow Harris to have remote access to the Harris Software and shall permit Harris to use online diagnostics if required during problem diagnosis

If Sensus is providing Customer with a license to use RedHat Linux Software, Customer agrees to the following:

By entering into this Agreement, Customer agrees to abide by and to be legally bound by the terms and conditions of the Red Hat End User License Agreements identified below, each of which are incorporated into this Agreement by reference and are available at the websites identified below. Please read the Red Hat End User License Agreements and incorporated references carefully.

Subscription: End User License Agreement:
 Red Hat Enterprise Linux http://www.redhat.com/licenses/rhel_eula.html
 JBoss Enterprise Middleware http://www.redhat.com/licenses/jboss_eula.html

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 and Sensus Lighting Control.
- 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 8:00AM EST to 6:00PM 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 Support 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 in which the call originated. The nature of the problem and severity levels will be 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 a support ticket for 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.

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).

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: 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.

Sev4 Minor system issues, questions, new features, or enhancement requests to be corrected in future versions.

Examples: Minor system issues, general questions, and "How-To" questions.

- 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-serve basis. A first 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 Support 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. | <ul style="list-style-type: none"> Satisfactory workaround is provided. Program patch is provided. Fix incorporated into future release. Fix or workaround incorporated into the Support Knowledge Base. |
| 2 | 4 hours | Assign trained and qualified Services Staff to correct the error. Provide communication as updates occur. | <ul style="list-style-type: none"> Satisfactory workaround is provided. Program patch is provided. Fix incorporated into future release. Fix or workaround incorporated into the Support Knowledge Base. |
| 3 | 1 Business Day | 90 business days | <ul style="list-style-type: none"> Answer to question is provided. Satisfactory workaround is provided. Fix or workaround incorporated into the Support Knowledge Base. Fix incorporated into future release. |
| 4 | 2 Business Days | 12 months | <ul style="list-style-type: none"> Answer to question is provided. Fix or workaround incorporated into the Support Knowledge Base. |

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. 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.
- 6.1.2. A customer may escalate an issue by calling 1-800-638-3748, Option 2. Please specify the Support ticket number and the reason why the issue is being escalated.
- 6.1.3. 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 Support ticket to Manager of Technical Services (1-800-638-3748, Option 2).

7. General Support Provisions and Exclusions.

- 7.1. 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.
- 7.2. 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.
- 7.3. In the event of a server hardware failure at the customer site, Sensus will provide replacement Sensus proprietary software (e.g., FlexWare) 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.
- 7.4. Sensus provides online documentation for Sensus products through the Sensus User Forum (<http://myflexnetsystem.com/Module/User/Login>). All Sensus customers are provided access to this online database, which includes operation, configuration and technical manuals. Sensus also hosts periodic user group teleconferences to facilitate the interchange of product ideas, product enhancements, and overall customer experiences. The customer shall provide names and email accounts to Sensus so Sensus may provide access to the Portal.
- 7.5. 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 maintenance contract. For example, specialized systems integration services or out of warranty network equipment repair that is not covered under a separate maintenance contract.