

Siemens Water Technologies Corp. Remote Monitoring Services Terms and Conditions

These terms and conditions govern the purchase of Remote Monitoring Services stated on Siemens offer, such offer or acceptance is conditioned on Purchaser's assent to these terms. Each offer is valid for 60 days from the date of the offer unless extended, modified or withdrawn in writing by Siemens. The return of a purchase order, if any, and/or the completed, executed offer to Siemens during such validity period will be sufficient to form an Agreement and acceptance of the Siemens offer and these terms and conditions.

1. Definitions

Whenever used in this document with initial capitalization, the following definitions shall be applicable:

- A. "Agreement" or "Contract" shall mean the Siemens Form, the terms and conditions stated herein, Purchaser's purchase order, if any, (excluding any preprinted terms and conditions on said purchase order and in any attachment or attachments to said purchase order) or other document evidencing acceptance of the Siemens offer as set forth in the Form; or an integrated agreement signed by Siemens and Purchaser; for Monitoring Services.
- B. "Data" shall mean any process information, alarms, notifications, reports, and user commands, organized, transmitted and/or generated by the Purchaser's use of the monitoring service.
- C. "Device" shall mean the equipment used by the Purchaser to send/receive wireless transmissions on the Network, including any wireless modem, SIM (Subscriber Identity Module) Card, and any accessories or related equipment.
- D. "Monitoring Services" shall mean the communications, data storage, notifications and Web based user interface provided by Siemens and their Suppliers as further described in Siemens Form.
- E. "Network" shall mean those integrated mobile switching facilities, data routers, servers, cell sites, and any other related facilities or equipment used to provide Monitoring Services.
- F. "Professional Services" shall mean (i) technical information provided by Siemens including data interpretation and reports, (ii) advice and consultation given to Purchaser's personnel at Purchaser's facility or at a Siemens facility by a Siemens engineer or technician or sales person.
- G. "Purchaser" shall mean the entity purchasing Monitoring Services, as well as any other owners of the facility where the Monitoring Services are to be provided.
- H. "Remote Monitoring Services Proposal & Information Form" (hereinafter the "Form" or "Offer") shall mean the Siemens Form for execution by Purchaser detailing the services purchased, the price and the effective date of the agreement.
- I. "Siemens" shall mean Siemens Water Technologies Corp. or an affiliated company and their subsidiaries, successors and assigns.
- J. "Site" shall mean each of the Purchaser's facilities to be monitored.
- K. "Supplier" shall mean any subcontractor or supplier of any tier who supplies goods, facilities, and services to Siemens in connection with the obligations of Siemens under the Agreement.
- L. "Work" shall mean the Monitoring Services supplied by Siemens under the Agreement.

2. Scope

Siemens will furnish Monitoring Services as specified in the Form and pursuant to the Agreement. Equipment is sold under separate agreement and terms.

3. Price

The Siemens offer and prices are firm for Monitoring Services which are scheduled to be performed for the year or years originally stated in the offer. The period of service begins upon the customers request for activation of the individual site. At the conclusion of the original agreement period of service, the Agreement shall renew automatically for subsequent additional (1) one year periods of service, unless canceled by written notice to Siemens at least (60) sixty days prior to the expiration of the then current period of service. At any time prior to renewal, Siemens may upon 30 days written notice, establish new prices for Monitoring Services.

4. Terms of Payment

- A. Siemens shall at the time of activation and subsequent renewals, invoice Purchaser for the full value of the services purchased as stated in the Agreement.
- B. Payments are due within thirty (30) days from date of invoice.
- C. Any past due amounts shall, without prejudice to the right of Siemens to payment when due, bear interest at a one and one-half per cent per month, payable each month or portion thereof that payment is delayed. If payments are not made when due, then Siemens may, upon fifteen (15) days written notice and at its option, suspend all further work hereunder. Resumption of work thereafter is contingent upon correction of the payments deficiency. The schedule for the resumed work will be established by Siemens based on its then current work load and the availability of other resources. All Siemens expenses associated with any such suspension and resumption of services shall be for the account of Purchaser.
- D. If there exists a good faith dispute over the amounts to be paid and provided that Purchaser has notified Siemens in writing that such dispute exists, then Purchaser shall pay the undisputed amount. Thereafter, the disputed portion may be held in abeyance until resolution of the matter with that portion, together with the interest charge specified above, due thirty (30) days after said resolution.

5. Purchasers Representations

A. Purchaser is responsible for the content of any and all data transmitted over the network.

B. Purchaser understands that Purchaser, Siemens or any other third party authorized and directed by the Purchaser may, through the website execute changes to Purchasers system configuration. The Purchaser shall be solely responsible for changes executed by the Purchaser, Siemens or any other third party. Siemens shall not be responsible for or have any direct or indirect liability for any incorrect or incomplete system configuration, nor shall Siemens be responsible for any direct or indirect consequences resulting from the execution of such changes.

C. Purchaser understands that Purchaser, Siemens or any other third party authorized and directed by Purchaser may, through the website execute a manual override to the operation of equipment or execute parameter changes affecting the operation of equipment on the Purchaser's site. The Purchaser shall be solely responsible for the execution of manual overrides or equipment parameter changes executed by Purchaser, Siemens or third parties authorized and directed by purchaser. Siemens shall have no direct or indirect liability for the consequences of any manual override or equipment parameter changes executed.

D. Ownership of Numbers. Purchaser acknowledges that subject to FCC number portability rules, Purchaser shall not have or acquire any property right in any specific Subscriber Identity Module (SIM) number provide by Siemens.

E. Purchaser acknowledges that Siemens will not with its own employees, respond to or take action related to those events for which Siemens is providing monitoring and notifications Services.

F. Purchaser understands they are responsible for ongoing, testing, periodic maintenance, calibration and functionality of the equipment to be monitored, and should immediately notify Siemens if any failures are identified. Siemens shall use all reasonable efforts to assist the Purchaser in identification of any perceived failures, but in no case is Siemens obligated to visit the Purchasers site to troubleshoot or provide remedy.

G. Purchaser acknowledges that Siemens reserves the right to suspend Monitoring Services on any Site that generates excessive data or false messages in any thirty day period. Siemens may take the monitoring of a specific site out of service until Siemens and the Purchaser have made alternate arrangements or the Purchaser has corrected the cause of the false and excessive messages. In such event Siemens shall make reasonable efforts to notify Purchaser. Siemens shall not be responsible and shall have no direct or indirect liability for any false, incomplete or incorrect messages.

H. The purchaser acknowledges the Siemens may, pursuant to the description of services as set forth in the Form, invoice Purchaser for excessive use events.

I. Purchaser further understands and agrees that Siemens Monitoring Services are intended only to monitor and provide notice to Purchaser of conditions relating to Purchaser's non-critical mechanical and electrical equipment and are not intended to be used as a primary life-safety, security, fire detection and alarm system.

J. Purchaser represents that should the purchaser elect to purchase Monitoring services from Siemens, Siemens shall perform such services only on a best efforts basis.

6. Permitted Outages

Siemens or its Supplier is not responsible for the following outages (hereinafter, the "Permitted Outages")

A. Periods of scheduled maintenance (maintenance that may be performed between 10:00 p.m. and 12:00 a.m. Central Time) and emergency unscheduled maintenance (and Siemens Supplier will provide to Siemens prior written notice of the scheduled maintenance at least five (5) business days prior to such scheduled maintenance and emergency unscheduled maintenance as soon as is reasonably practicable under the circumstances);

B. Periods the Monitoring Service is not available for the Purchaser's use due to (i) the inoperability of the Purchaser's Equipment, Purchaser's network connectivity, or (ii) the negligent actions or omission, willful misconduct of Purchaser, its employees, consultants, or third party agents acting on behalf of the Purchaser;

C. Periods the Monitoring Service is not available for Purchaser's use due to Network coverage limitations and outages and coverage gaps or other Monitoring Service interruptions attributable to other Supplier's or carriers and its network including scheduled Maintenance.

D. Periods the Monitoring Service in not available for the Purchaser's use as a result of suspension of the Monitoring Services as a result of a breach of this Agreement by Purchaser, including non-payment of amounts owed or unlawful or improper use of the Monitoring Services.

E. Periods the Monitoring Service is not available for Purchaser's use as a result of (i) widespread, common failure or failures of Devices that affects the Monitoring Service; or (ii) hostile network attacks by any third party, including a customer of the Purchaser, that are directly (in whole or in part attributable to Device vulnerabilities.

7. Warranties and Disclaimer

Services Warranty

THE MONITORING SERVICES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND SIEMENS DOES NOT MAKE ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. SIEMENS MAKES NO REPRESENTATIONS OR WARRANTIES THAT THE MONITORING SERVICES ARE FREE OF RIGHTFUL CLAIMS OF ANY THIRD PARTY FOR INFRINGEMENT OF PROPRIETARY RIGHTS. THE ENTIRE RISK ASSOCIATED WITH THE USE OF THE MONITORING SERVICES SHALL BE BORNE SOLELY BY PURCHASER.

SIEMENS MAKES NO WARRANTY THAT THE MONITORING SERVICES WILL BE COMPLETELY SECURE, ERROR FREE, WITHOUT INTERRUPTIONS OR MEET PURCHASER'S REQUIREMENTS.

SIEMENS DOES NOT REPRESENT THE MONITORING SERVICES AS SUITABLE FOR AUTOMATED CONTROL OF ANY EXTERNAL EQUIPMENT. USE OF THE MONITORING SERVICES FOR THIS PURPOSE IS SOLELY AT PURCHASERS OWN RISK AND IS NOT RECOMMENDED BY SIEMENS.

THE MONITORING SERVICES MAY BE USED TO MANUALLY EXECUTE CHANGES TO THE OPERATION OF EXTERNAL EQUIPMENT AT THE PURCHASER' SITE. SIEMENS STRONGLY RECOMENDS THAT PURCHASER MAKE ALTERNATE ELECTRICAL OR MECHANICAL PROVISIONS AT THE EQUIPMENT SITE THAT WILL MITIGATE, OR REDUCE THE RISK ASSOCIATED WITH THE MONITORING SYSTEM'S FAILURE TO EXECUTE SUCH CHANGES. SIEMENS SHALL HAVE NO LIABILITY FOR A FAILURE OF EXTERNAL EQUIPMENT FOR ANY REASON WHATSOEVER UNDER ANY CIRCUMSTANCES WHATSOEVER.

THE WARRANTIES PROVIDED BY SIEMENS AS SET FORTH IN THIS ARTICLE 7 ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER STATUTORY, EXPRESS, OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE).

8. Taxes

The price paid or to be paid to Siemens under the Agreement does not include any federal (other than federal income taxes imposed on Siemens), state, or local property, license, privilege, sales, use, excise, telecommunications, utility, value added, gross receipts, or similar taxes now or hereafter applicable to, measured by, or imposed upon or with respect to the transaction,, or any services performed in connection therewith. Purchaser shall be solely responsible for the payment and agrees to pay or reimburse Siemens for any such taxes which Siemens or its Suppliers are required to pay.

9. Purchaser Indemnity

Purchaser agrees to indemnify and hold Siemens and its Suppliers harmless from and against all claims, damages, lawsuits, and losses related to, concerning or arising out of Purchasers use of the Monitoring Services provided by Siemens under this Agreement.

10. Force Majeure

- A. Siemens will not be liable for failure to perform any obligation or delay in performance resulting from or contributed to by any cause beyond the reasonable control of Siemens or its Suppliers or from any act of God; act of civil or military authority; act of war whether declared or undeclared; act (including delay, failure to act, or priority) of any governmental authority or Purchaser; act of terrorism; civil disturbance; insurrection or riot; sabotage; fire; inclement weather conditions; earthquake; flood; strike; work stoppage or other labor difficulty; major equipment breakdown; or failure or delay beyond its reasonable control.
- B. In the event of a delay in performance excusable under this Article 10 - Force Majeure, the date of performance of the Monitoring Services will be extended by a period of time reasonably necessary to overcome the effect of such delay.

11. Termination

Purchaser may, upon sixty (60) days prior written notice to Siemens and payment of reasonable and proper termination charges, terminate the Monitoring Services or any remaining portion thereof under the Agreement. Termination charges will include a portion of the purchase price reflecting the amount of work performed at the date of termination. These charges will also include the expenses associated with the termination, including, but not limited to, any additional expense incurred by reason of termination or cancellation of agreements between Siemens and its Suppliers, and any applicable cost allocated in contemplation of performance. Siemens will make every reasonable effort to minimize such termination charges. All termination charges shall be due and payable thirty (30) days from the date of the Siemens invoice. Siemens shall have the right to terminate the Agreement immediately in the event of a material breach of the Agreement by the Purchaser.

12. Suspension

Purchaser may, upon sixty (60) days prior written notice to Siemens and payment of reasonable and proper suspension and reactivation charges, suspend the scheduled Monitoring Services or portions thereof under the Agreement for a defined period of service. Suspension charges will include any reactivation charges at the time services are resumed. All suspension charges shall be due and payable thirty (30) days from the date of the Siemens invoice. Should the suspension exceed a period of six (6) months, at the option of Siemens, the Agreement or any portions thereof may be deemed to have been terminated by Purchaser. Such termination shall be subject to charges as stated in term 11 herein these terms.

13. Intellectual Property

- A. Siemens will, at its own expense, defend or at its option settle any suit or proceeding brought against Purchaser so far as based on an allegation that any Services, constitutes an infringement of any United States patent, copyright or misappropriation of a third party's trade secret, if Siemens is notified promptly in writing and given authority, information, and assistance in a timely manner for the defense of said suit or proceeding. Siemens will pay the damages and costs awarded in any suit or proceeding so defended. Siemens will not be responsible for any settlement of such suit or proceeding made without its prior written consent. In case the Services, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement of any United States patent, copyright or misappropriation of a third party's trade secret, or its use by

Purchaser is enjoined, Siemens will, at its option and its own expense, either: (a) procure for Purchaser the right to continue using the Services;; or (b) modify it so it becomes non-infringing.

- B. Siemens will have no duty or obligation to Purchaser under this Article 13 - Intellectual Property to the extent that the Services are (a) supplied according to Purchaser's design or instructions wherein compliance therewith has caused Siemens to deviate from its normal course of performance, (b) modified by Purchaser or its contractors after activation by Siemens, or (c) combined by Purchaser or its contractors with services not furnished hereunder. In addition, if by reason of such design, instruction, modification or combination, a suit, claim or proceeding is brought against Siemens, Purchaser shall protect Siemens in the same manner and to the same extent that Siemens has agreed to protect Purchaser under the provisions of Paragraph A above.
- C. THIS ARTICLE IS AN EXCLUSIVE STATEMENT OF ALL THE DUTIES OF SIEMENS RELATING TO PATENTS, COPYRIGHTS OR TRADE SECRETS AND DIRECT OR CONTRIBUTORY INFRINGEMENT THEREOF AND OF ALL THE REMEDIES OF PURCHASER RELATING TO ANY CLAIMS, SUITS, OR PROCEEDINGS INVOLVING PATENTS, COPYRIGHTS OR TRADE SECRETS. Compliance with this Article 13 – Intellectual Property as provided herein shall constitute fulfillment of all liabilities of the parties under the Agreement with respect to patents, copyrights or trade secrets.

14. Proprietary Information

- A. Siemens may have a proprietary interest in information that may be furnished pursuant to the Agreement. Purchaser will keep in confidence and will not disclose any such information which is specifically designated as being proprietary to Siemens, other than to Purchaser's employees, without the prior written permission of Siemens or use any such information for other than the purpose for which it is supplied. The provisions of this paragraph shall not apply to information, notwithstanding any confidential designation thereof, which is known to Purchaser without any restriction as to disclosure or use at the time it is furnished, which is or becomes generally available to the public without breach of any agreement, or which is received from a third party, including Purchaser's subsidiaries or affiliates, without limitation or restriction on said third party or Purchaser at the time of disclosure.
- B. Siemens also has a proprietary interest in (i) the Form, (ii) the Agreement and (iii) the processes and procedures used by its personnel in performance of the Agreement. Accordingly, neither the Form, the Agreement or, such processes and procedures will be disclosed or viewed in whole or in part to third parties without the prior written permission of Siemens.
- C. Purchaser shall indemnify and hold Siemens harmless from and against any loss, damage or liability arising or resulting from non-compliance with the provisions of this Article 14 – Proprietary Information.
- D. When required by appropriate governmental authority, including governmental regulations, applicable law or regulation, by order of a court of competent jurisdiction or lawful subpoena (hereinafter collectively referred to as "Governmental Authority"), Purchaser may disclose such proprietary information to such Governmental Authority; provided, however, that prior to making any such disclosure, Purchaser will: (a) provide Siemens with timely advance written notice of the proprietary information requested by such Governmental Authority and Purchaser's intent to so disclose; (b) minimize the amount of proprietary information to be provided consonant with the interests of Siemens and its Suppliers and the requirements of the Governmental Authority involved; and (c) make every reasonable effort (which shall include participation by Siemens in discussions with the Governmental Authority involved) to secure confidential treatment and minimization of the proprietary information to be provided. In the event that efforts to secure confidential treatment are unsuccessful, Siemens shall have the prior right to revise such information to minimize the disclosure of such information in a manner consonant with its interests and the requirements of the Governmental Authority involved.

15. Ownership of Data

All DATA generated pursuant to this Remote Monitoring Services Agreement Shall be the sole property of Siemens and Siemens shall have all rights and title to such Data. Siemens may use such Data for any purpose or transfer to sell such Data; provided, Siemens will not transfer to sell Purchaser specific Data unless specifically agreed to by the Purchaser.

16. Limitation of Liability

PURCHASER EXPRESSLY AGREES THAT NEITHER SIEMENS NOR ITS SUPPLIERS WILL UNDER ANY CIRCUMSTANCES BE LIABLE UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), UNDER WARRANTY, OR OTHERWISE, FOR: ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE OR PUNITIVE DAMAGES WHATSOEVER; DAMAGE TO OR LOSS OF PROPERTY OR EQUIPMENT; LOSS OF PROFITS OR REVENUE; LOSS OF USE OF EQUIPMENT, LOSS OF DATA; INCREASED COSTS OF ANY KIND.

PURCHASER EXPRESSLY AGREES THAT THE REMEDIES PROVIDED IT HEREIN ARE EXCLUSIVE AND THAT UNDER NO CIRCUMSTANCES SHALL THE TOTAL AGGREGATE LIABILITY OF SIEMENS UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), UNDER WARRANTY, OR OTHERWISE, EXCEED THE TOTAL PRICE PAID TO SIEMENS UNDER THIS AGREEMENT.

THE PROVISIONS OF THIS ARTICLE SHALL PREVAIL OVER ANY CONFLICTING OR INCONSISTENT PROVISIONS SET FORTH ELSEWHERE IN THIS AGREEMENT.

17. Compliance with Laws

In the performance of work under the Agreement, Siemens and its Suppliers shall comply with all applicable laws and regulations governing the performance of the Work. The price for such work is based on compliance by Siemens with these laws and requirements as they are in effect on the date of the offer submitted by Siemens (or the effective date of the Agreement if no offer is provided).

18. Export Law Compliance

Purchaser acknowledges that Siemens is required to comply with applicable export laws and regulations relating to the sale, exportation, transfer, assignment, disposal and usage of the Monitoring Services, or one or more of them, provided under the Contract, including any export license

requirements. Purchaser agrees that such Monitoring Services, or one or more of them, shall not at any time directly or indirectly be used, exported, sold, transferred, assigned in a manner which will result in non-compliance with such applicable export laws and regulations. It shall be a condition of the continuing performance by Siemens of its obligations hereunder that compliance with such export laws and regulations be maintained at all times.

19. Changes

Purchaser may request changes within the scope of the Agreement and, if accepted by Siemens, the price, performance, schedule and other pertinent provisions of the Agreement will be adjusted by mutual agreement of the parties prior to implementation of the change.

Expenses incurred by Siemens due to (i) delays, other than delays which are deemed to be within the reasonable control of Siemens, and (ii) changes in applicable laws and requirements after the date of the offer submitted by Siemens, as applicable, will be treated as changes to the scope of work and the Agreement will be adjusted as set forth in the previous paragraph.

20. Miscellaneous Provisions

- A. Waivers: The failure of either party to enforce at any time any of the provisions of the Agreement or to require at any time performance by the other party of any of such provisions, shall in no way be construed to be a waiver of such provision, nor in any way to affect the validity of the Agreement or any parts thereof, or the right of either party thereafter to enforce each and every provision.
- B. Modification: No waiver, modification, or amendment of any of the provisions of the Agreement shall be binding unless it is in writing and signed by duly authorized representatives of both parties.
- C. Headings: The headings used in the Agreement are not to be construed as modifying, limiting or expanding in any way the scope or extent of the provisions in the Agreement.
- D. Assignment: The Agreement will not be assigned by Purchaser without the prior written consent of Siemens. Any purported assignment without such prior written consent shall be null and void.
- E. Governing Law: The Agreement will be construed and interpreted in accordance with the laws of the State of Pennsylvania without application of its choice-of-law rules.
- F. Integration: The Agreement contains the entire agreement and understanding between the parties as to the subject matter of the Agreement, and merges and supersedes all prior agreements, commitments, representations, writings, and discussions between them. Neither of the parties will be bound by any prior obligations, conditions, warranties, or representations with respect to the subject matter of the Agreement.
- G. Survival: The provisions entitled "Intellectual Property," "Proprietary Information," "Ownership of Data," "Limitation of Liability," shall survive termination, expiration or cancellation of the Agreement.