

TERMS AND CONDITIONS

ACCEPTANCE OF ANY PURCHASE ORDER FROM A CUSTOMER FOR USE OF ANY EQUIPMENT AND SOFTWARE PROVIDED BY RX MONITORING SYSTEMS INC. (“RXMS”) IS CONDITIONED UPON THESE TERMS AND CONDITIONS.

1. ACCEPTANCE: Customer accepts and agrees to be bound by these terms and conditions by: (a) communicating its acceptance of these terms and conditions orally or in writing; (b) installing the RXMS equipment; or (c) activating software for use with RXMS equipment, whichever occurs first.

2. DEFINITIONS

- 2.1. “Monitoring Equipment” shall mean monitoring equipment provided by RXMS pursuant to a purchase order and all additions and accessions to and modifications, substitutions and replacements to that equipment.
- 2.2. “Monitoring Data” shall mean all data generated by the Monitoring Equipment including without limitation data representing power events, power conditions and environmental conditions.
- 2.3. “Monitoring Software” shall mean software developed by RXMS to acquire Monitoring Data from the Monitoring Equipment and to analyze the Monitoring Data.
- 2.4. “Documentation” shall mean all materials describing installation, activation and operation of the Monitoring Equipment or the Monitoring Software.
- 2.5. “RXMS Reports” shall mean power quality analysis reports generated by RXMS for the Customer from Monitoring Data obtained from Monitoring Equipment and provided by the Customer to RXMS.
- 2.6. “Site” shall mean the geographical location specified by Customer for use of the Monitoring Equipment pursuant to a purchase order.
- 2.7. “Intellectual Property Rights” shall mean all worldwide right, title and interest in, to and under any and all: (a) United States or foreign patents and pending patent applications therefore, including the right to file new and additional patent applications based thereon, including provisionals, divisionals, continuations, continuations-in-part, reissues and reexaminations; (b) copyrights; and (c) trade secrets, know-how, processes, methods, engineering data and technical information.
- 2.8. “Licensed Patents” shall mean U.S. Patent No. 6,598,003 and any patent that issues from U.S. Patent Application Serial No. 11/284,557, and any reexaminations, reissues or extensions thereof.

3. LICENSE GRANT

- 3.1. Subject to the terms and conditions contained herein, RXMS grants to Customer and Customer accepts a limited, nonexclusive, nontransferable, license under Licensed

Patents and other Intellectual Property Rights to use the Monitoring Equipment and the Monitoring Software at the Site and for the License Term.

- 3.2. Customer shall not have the right to disassemble, alter or modify the Monitoring Equipment in any way and shall not have the right to make or have made the Monitoring Equipment. Customer also shall not have the right to take possession of or relocate the Monitoring Equipment. RXMS or its assignee shall at all times retain the full legal title to the Monitoring Equipment used at any Site.
- 3.3. Additional terms and conditions applicable to the Monitoring Software are set forth in a separate End User License Agreement for RXMS Software, which is attached hereto and incorporated herein by reference.

4. DELIVERY, INSTALLATION, OPERATION, AND SERVICE

- 4.1. RXMS shall be responsible for delivery of the Monitoring Equipment and the associated Documentation to the Site specified by the Customer. RXMS shall not be responsible for installing, activating, and operating the Monitoring Equipment.
- 4.2. Customer shall be responsible, at its own expense, for installation, activation and operation of the Monitoring Equipment in accordance with the Documentation.
- 4.3. After activation of the Monitoring Equipment, RXMS may from time-to-time obtain test data from the Monitoring Equipment to verify the proper installation and operation of the Monitoring Equipment in accordance with the warranty provided in Section 6.3. In the event that the Monitoring Equipment does not operate in accordance with the warranty provided in Section 6.3, RXMS agrees to repair or replace the Monitoring Equipment at the Site as needed.
- 4.4. RXMS shall not be responsible for analyzing any Monitoring Data other than for verifying proper installation and operation pursuant to Section 4.3. Upon request by Customer, RXMS shall analyze Monitoring Data received from Customer and provide up to two (2) RXMS Reports from such Monitoring Data. Upon request and for an additional fee, RXMS may analyze Monitoring Data received from Customer and generate additional RXMS Reports from such Monitoring Data.
- 4.5. RXMS shall not be obligated to providing training or technical support under these Terms and Conditions for either the Monitoring Equipment or the Monitoring Software. Such training or technical support may be available upon request for an additional fee.

5. PROPRIETARY RIGHTS AND CONFIDENTIALITY

- 5.1. "Confidential Information" shall mean any material, data or information in whatever form or media that is provided or disclosed to Customer in connection with use of the Monitoring Equipment and Monitoring Software, except for any information that is: (a) publicly available or later becomes available other than through a breach of this agreement; (b) known to the Customer or its employees, agents or representatives prior to such disclosure or is independently developed by the Customer or its employees, agents or representatives without the use of the Confidential Information; or (c) subsequently lawfully obtained by the Customer or its employees, agents or representatives from a third party without obligations of confidentiality. Confidential

Information shall include without limitation the object code of the Monitoring Software, the Monitoring Data obtained from the Monitoring Equipment, and the RXMS Reports.

- 5.2. The Customer shall exercise the same degree of care and protection with respect to the Confidential Information that it exercises with respect to its own Confidential Information and shall not directly or indirectly disclose, copy, distribute, republish, or allow any third party to have access to any Confidential Information.
- 5.3. Notwithstanding the above, the Customer may disclose Confidential Information to employees, consultants, agents, distributors and contract manufacturers, who reasonably require same for the purposes of these Terms and Conditions and who are bound by like obligations as to confidentiality.
- 5.4. If the Customer becomes aware of any unauthorized use or disclosure of the Confidential Information, the Customer shall promptly and fully notify RXMS of all facts known to it concerning such unauthorized use or disclosure.
- 5.5. All Intellectual Property Rights and other proprietary rights in or related to the Monitoring Equipment, Monitoring Data, Monitoring Software, Documentation, and RXMS Reports are and will remain the exclusive property of RXMS, whether or not specifically recognized or perfected under the laws of the jurisdiction in which such are used or licensed. Customer will not take any action that jeopardizes RXMS's Intellectual Property Rights or other proprietary rights.
- 5.6. RXMS's trademarks and service marks are not within the scope of any license granted under these Terms and Conditions. However, Customer may use or otherwise refer to such trademarks, service marks or any other RXMS-approved descriptive phrase which is similar to or a derivative of any such service mark, to the extent appropriate to identify Customer's services as employing the Monitoring Equipment or the Monitoring Software; provided that any use or reference is accompanied by language acknowledging that the trademarks and/or service marks are the sole and exclusive property of RXMS, including information RXMS may request to protect its rights in and to those service marks.

6. REPRESENTATIONS AND WARRANTIES.

- 6.1. RXMS represents and warrants in respect to the Licensed Patents that it has legal power to extend the rights granted to Customer in these Terms and Conditions and that it has not made and will not make any commitments to others inconsistent with or in derogation of such rights.
- 6.2. RXMS further represents and warrants that, to the best of its knowledge and belief, Customer's contemplated use of the Monitoring Equipment and Monitoring Software as permitted under these Terms and Conditions does not infringe any valid rights of any third party, and that there are no actions for infringement against RXMS with respect to the Monitoring Equipment and Monitoring Software.
- 6.3. RXMS warrants that during the License Term, the Monitoring Equipment will be free from material defects and will be suitable for normal operation in accordance with the

Documentation. RXMS does not warrant that the operation of the Monitoring Equipment will be uninterrupted or error free.

- 6.4. EXCEPT AS OTHERWISE STATED IN THESE TERMS AND CONDITIONS, RXMS MAKES NO EXPRESS OR IMPLIED REPRESENTATION OR WARRANTIES WITH RESPECT TO THE MONITORING EQUIPMENT OR ITS CONDITION, QUALITY, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR USE BY CUSTOMER, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. RXMS FURNISHES THE ABOVE WARRANTIES IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 6.5. In the event of any breach of the warranties set forth in this Section, RXMS's sole and exclusive responsibility, and Customer's sole and exclusive remedy shall be for RXMS to correct or replace, at no additional charge to Customer, any portion of the Monitoring Equipment found to be defective; provided, however, that if within a commercially reasonable period RXMS neither corrects such defects nor replaces the defective Monitoring Equipment, then Customer's sole and exclusive remedy shall be to receive direct damages not to exceed a pro rata portion of the fees paid to RXMS for use of the defective Monitoring Equipment.
- 6.6. Any and all warranties and indemnifications shall be void as to the Monitoring Equipment where the non-compliance is caused by or related to: any alterations or modifications made to any Monitoring Equipment by Customer, its representatives or agents; or use of the Monitoring Equipment other than as expressly permitted under these Terms and Conditions.
- 6.7. Customer is responsible for damage to Monitoring Equipment due to abuse, misuse, or negligence and agrees to pay the charges to repair or replace any Monitoring Equipment so damaged and any incurred shipping charges.

7. INDEMNIFICATION AND LIMITATION OF LIABILITY

- 7.1. RXMS agrees to defend, indemnify and hold Customer and its officers, directors, agents, sublicensees, employees, and customers, harmless against all costs, expenses, and losses (including reasonable attorney fees and costs) incurred through claims of third parties against Customer based on a breach by RXMS of any representation and warranty made in these Terms and Conditions.
- 7.2. Customer agrees to defend, indemnify and hold RXMS and its officers, directors, agents, and employees, harmless against all liabilities, demands, damages, costs, expenses, or losses (including reasonable attorney fees and costs) arising out of the negligent installation or use of the Monitoring Equipment or the Monitoring Software by Customer, its employees, its agents, its contractors, or its transferees.
- 7.3. RXMS SHALL NOT BE LIABLE FOR ANY (A) SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, ARISING FROM OR RELATED TO A BREACH OF THIS

AGREEMENT OR ANY ORDER OR THE OPERATION OR USE OF THE MONITORING EQUIPMENT INCLUDING SUCH DAMAGES, WITHOUT LIMITATION, AS DAMAGES ARISING FROM LOSS OF DATA OR PROGRAMMING, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS, DAMAGE TO EQUIPMENT, AND CLAIMS AGAINST CUSTOMER BY ANY THIRD PERSON, EVEN IF RXMS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (B) DAMAGES (REGARDLESS OF THEIR NATURE) FOR ANY DELAY OR FAILURE BY RXMS TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT DUE TO ANY CAUSE BEYOND RXMS'S REASONABLE CONTROL; OR (C) CLAIMS MADE A SUBJECT OF A LEGAL PROCEEDING AGAINST RXMS MORE THAN TWO YEARS AFTER ANY SUCH CAUSE OF ACTION FIRST AROSE.

7.4. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, RXMS'S LIABILITIES UNDER THIS AGREEMENT, WHETHER UNDER CONTRACT LAW, TORT LAW, WARRANTY OR OTHERWISE SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE AMOUNTS ACTUALLY RECEIVED BY RXMS UNDER THIS AGREEMENT.

8. TERM AND TERMINATION

- 8.1. The License Term of any license granted herein shall commence on the date the Monitoring Equipment is received at the Site and shall continue for a one (1) year period. The License Term shall be renewable for subsequent one (1) year periods upon payment of an annual license fee to be determined by RXMS.
- 8.2. If Customer shall be in default of any obligation hereunder or any obligation to make payments under a purchase order, RXMS may terminate the license granted herein by giving sixty (60) days' notice to the Customer specifying the basis for the termination. If within sixty (60) days after the receipt of such notice, the Customer receiving notice shall remedy the condition forming the basis for termination, such notice shall cease to be operative, and the license shall continue in full force.
- 8.3. Upon expiration or termination of the license granted herein, Customer shall thereafter immediately cease all further use of the Monitoring Equipment and the Monitoring Software and all rights granted to Customer under these Terms and Conditions shall forthwith terminate and immediately revert to RXMS.
- 8.4. Upon expiration or termination of the license granted herein, Customer shall, at its own expense, uninstall the Monitoring Equipment in accordance with the Documentation and return the Monitoring Equipment to RXMS within ninety (90) days. Customer shall pack and ship any such Monitoring Equipment in accordance with standard commercial practices. In the event that Customer fails to return the Monitoring Equipment as required herein, Customer agrees to pay RXMS a pro rata portion of the license fee required to renew the License Term for the amount of time between expiration or termination and receipt of the Monitoring Equipment by RXMS. In the event that Customer fails to return the Monitoring Equipment as required herein, RXMS shall also have the right to shut down, uninstall and/or repossess the Monitoring Equipment at the Site at the expense of the Customer.

8.5. No expiration or termination of the license granted herein shall constitute a termination or a waiver of any rights of either party against the other party accruing at or prior to the time of such termination. The obligations of Sections 4, 5, 6, 7, 8 and 9 shall survive such expiration or termination.

9. GENERAL PROVISIONS

- 9.1. *Governing Law.* The validity, construction, interpretation and performance of these Terms and Conditions shall be governed by and construed in accordance with the law of the State of New Hampshire and the parties hereto submit to the exclusive jurisdiction and venue of the Federal District Court for the District of New Hampshire to resolve any disputes arising hereunder or related hereto.
- 9.2. *Assignment.* Neither party may assign the rights and obligations provided under these Terms and Conditions to any third party without the prior express written approval of the other party which shall not be unreasonably withheld.
- 9.3. *Severability.* If any of these Terms and Conditions shall be invalid or unenforceable under the laws of the jurisdiction where enforcement is sought, such invalidity or unenforceability shall not invalidate or render unenforceable other of these Terms and Conditions but rather the entire Terms and Conditions shall be construed as if not containing the particular invalid or unenforceable provision or provisions and the rights and obligations of RXMS and Customer shall be construed and enforced accordingly.
- 9.4. *Waiver.* No waiver of breach or failure to exercise any option, right or privilege under these Terms and Conditions shall be construed to be a waiver of the same or any other option, right or privilege on any other occasion.
- 9.5. *Relationship of the Parties.* RXMS and Customer agree that the other is acting as an independent contractor and not as an agent for the other party, that neither party shall have the right to bind or obligate the other party, and that these Terms and Conditions do not establish a partnership or joint venture between the parties.
- 9.6. *Force Majeure.* Neither party will be liable for any failure or delay in performance under these Terms and Conditions which might be due, in whole or in part, directly or indirectly, to any contingency, delay, failure, or cause of, any nature beyond the reasonable control of such party, including, without in any way limiting the generality of the foregoing, fire, explosion, earthquake, storm, flood or other weather, unavailability of necessary utilities or raw materials, strike, lockout, unavailability of components, activities of a combination of workmen or other labor difficulties, war, insurrection, riot, act of God or the public enemy, law, act, order, export control regulation, proclamation, decree, regulation, ordinance, or instructions of Government or other public authorities, or judgment or decree of a court of competent jurisdiction (not arising out of breach by such party of these Terms and Conditions). In the event of the happening of such a cause, the party whose performance is so affected will give prompt written notice to the other party, stating the period of time the same is expected to continue.

CUSTOMER COMPANY

Rx Monitoring Services

CUSTOMER SIGNATURE

RxMS SIGNATURE

CUSTOMER PRINT NAME

PRINT NAME

DATE

DATE