

**AMENDMENT NO. 2
TO THE SOFTWARE LICENSE AND SUPPORT AGREEMENT
BY AND BETWEEN
SIEMENS INDUSTRY, INC. AND
CITY OF SANTA CLARA, CALIFORNIA,**

PREAMBLE

This agreement (“Amendment No. 2”) is entered into between Siemens Industry, Inc., a Delaware corporation (“Licensor”) and the City of Santa Clara, California, a chartered California municipal corporation (“City or Licensee”). Licensor and Licensee may be referred to individually as a “Party” or collectively as the “Parties”

RECITALS

- A. WHEREAS, the Licensee and Licensor’s predecessor in interest, eMeter Corporation previously entered into an agreement entitled Software License and Maintenance Agreement, dated August 18, 2009 (“SLMA” or “Agreement”);
- B. WHEREAS, Licensor (Siemens Industry, Inc.) acquired eMeter Corporation and thereby Licensor assumed the rights, obligations, and liabilities under the SLMA;
- C. WHEREAS, the business unit from a division of SIEMENS ENERGY, INC which is the original reseller that acted as the reseller of the Agreement is now a part of Siemens Industry, Inc.;
- D. WHEREAS, the SLMA was previously amended by Amendment No. 1, dated September 17, 2012, and is again amended by this Amendment No. 2. The Agreement and all previous amendments are collectively referred to herein as the “Agreement as Amended”; and
- E. WHEREAS, the Parties entered into the Agreement as Amended for the purpose of having Licensor provide software products and maintenance and support services in consideration of certain payments to be made to Licensor and the Parties now wish to amend the Agreement as Amended to clarify certain terms and responsibilities.
- F. WHEREAS Licensee has made payment to Licensor in accordance with the SLMA in consideration for the license granted and maintenance and support services provided hereunder by Licensor to Licensee,

NOW THEREFORE, in consideration of the inducements, mutual covenants and conditions contained herein, the Parties agree as follows:

AMENDMENT TERMS AND CONDITIONS

1. The Agreement as Amended is hereby amended by changing any references to “eMeter” to “Siemens Industry, Inc.”
2. Article 4 of the Agreement as Amended is hereby amended by the deletion of the defined term Purchase Order.
3. The following definitions in Article 4 of the Agreement as Amended are hereby amended as follows:

"Scope of Work" means the implementation, integration services, and product licenses that were provided by Siemens pursuant to the Agreement for Services with SIEMENS ENERGY, INC. ("Siemens") effective August 18, 2009, and subsequent Scope of Work agreements as follows:

- Agreement for Services (August 18, 2009) – inclusive of change requests
- Agreement for Services (April 24, 2012) - inclusive of change requests

Scope of Work (Associated with SLSA Amendment 1) (September 25, 2012) – inclusive of change requests.

"Support Services" means the maintenance and support services that Licensor provides to Licensee under this SLMA in support of the Licensed Products as set forth in Article 9 of this SLMA and includes the right to receive then-current Releases and Updates but excludes the implementation and integration services that are the subject of the Scope of Work.

4. Section 6.1(f) of the Article 6 of the Agreement as Amended is amended to read as follows:

“(f) Additional Licenses. In the event that Licensee wishes to purchase additional licenses to be granted on the terms and conditions stated in this SLMA for meters in excess of the numbers designated in Exhibit A, Licensee may so indicate in writing to Licensor. Upon this request, Licensor shall provide a quote for such additional licenses. If Licensee accepts such quote, Licensee shall issue a purchase order to Licensor and make payment pursuant to that purchase order.”

5. Section 9.2 of Article 9 of the Agreement as Amended, is amended to read as follows:

“9.2 Extended Support Services. On the anniversary of the delivery date set forth in Section 8.1 above (i.e., upon expiration of the Initial Support Period), Support Services will automatically continue for subsequent 365-day periods (each such period, an "Extended Support Period"), unless Licensee notifies Licensor in writing of Licensee's intention not to continue Support Services no later than forty-five (45) days before any anniversary of the delivery date set forth in Section 8.1 above and/or fails to pay Licensor's invoice for such Extended Support Period within thirty (30) days of the date of such invoice. For services provided after July 1, 2025, Licensor shall present a quote to Licensor at least 60

days prior to the expiry of current agreement. If Licensee accepts such extended support, Licensee shall issue a purchase order to Licensor and make payment pursuant to that purchase order.”

6. Section 9.5 of Article 9 of the Agreement as Amended, entitled “Scope of Support Services” is amended to read as follows:

“9.5 Scope of Support Services. Subject to the timely payment of all Support Fees to Licensor, Licensor will provide Support Services for the current and previous two Releases of the Licensed Product (for such previous Releases for Severity 1 and Severity 2 issues). Support is only provided for the most current Update for each Release. Upon payment by Licensee of the Support Fees, the most current Releases that are then generally available shall be deemed Licensed Products, and all references to Licensed Products in this SLMA and the Scope of Work shall be deemed to include the Release. Licensor will provide Tier 2 and Tier 3 Customer Support Services. These services are specified defined above and described in further detail in Exhibit B, which may be changed by Licensor from time-to-time upon written notice to Licensee. Licensor shall have no obligation to provide Support Services for adaptations or derivative works of the Licensed Product unless agreed in writing. Tier 1 support may be provided by Siemens through a separate purchase order .”

7. Exhibit A of the Agreement as Amended is hereby deleted and replaced with Exhibit A – Updated Date, attached hereto and incorporated into the Agreement as Amended by reference.
8. Except as set forth herein, all other terms and conditions of the Agreement as Amended shall remain in full force and effect. In case of a conflict in the terms of the Agreement as Amended and this Amendment No. 2, the provisions of this Amendment No. 2 shall control.

The effective date of this Amendment No. 2 is the date of City’s execution of this amendment. The Parties acknowledge and accept the terms and conditions of this Amendment No. 2 as evidenced by the following signatures of their duly authorized representatives.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form: _____

Dated: _____

GLEN R. GOOGINS
City Attorney

JÖVAN D. GROGAN
City Manager
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

“CITY”

SIEMENS INDUSTRY, INC.
a Delaware corporation

Dated: _____

By (Signature): _____

Name:	Marcus McCarthy	Andy Schechter
Title:	Senior Vice President	Vice President
Principal Place of Business Address:	Siemens Grid Software 10900 Wayzata Blvd. Minnetonka, MN 55305	Siemens Advanta 100 Technology Drive Alpharetta, GA 30005
Email Address:	mccarthy@siemens.com	andy.schechter@siemens.com
Telephone:	+1 (817) 235-0015	+1 (914) 208-1558

By (Signature): _____

Name:	Kevin Lykins	David Matula
Title:	Controller	Chief Financial Officer
Principal Place of Business Address:	Siemens Grid Software 10900 Wayzata Blvd. Minnetonka, MN 55305	Siemens Advanta 100 Technology Drive Alpharetta, GA 30005
Email Address:	kevin.lykins@siemens.com	david.matula@siemens.com
Telephone:	_____	_____

“LICENSOR”

Exhibit A

Product Schedule

ORDERED PRODUCTS:

The following software programs shall be deemed Licenses Products Under the SLMA and are included in the original software purchase.

LICENSED PRODUCTS

Platform and Applications

Energy IP Core System
VEE
Advanced Billing
Data Aggregation
Remote Connect / Disconnect
Energy Engage*

* Energy Engage was added as part of SLSA Amendment 1 dated 14th September, 2012, Licensee is no longer using Energy Engage and the product has been deprecated, Energy Engage has been removed from any support pricing, will no longer be listed as part of Exhibit A, and licenses are terminated.

Adapters and Data Importers

AMI Adapter – Elster EnergyAxis
Data Importer – Itron MV90

Environments

Development
Test
Quality Assurance
Production

The net License Price include the right to use the Licensed Products for 88,000 meters (plus any increase in the number of meters Licensee serves due to Organic Population Growth).

Authorized Third Party Representatives:

- Milton Security, Inc.