

SIEMENS RAM PROJECTS BUSINESS STANDARD TERMS AND CONDITIONS

PREAMBLE

THESE STANDARD TERMS AND CONDITIONS entered into by and between the entity identified in Siemens' proposal ("Buyer" or "Customer") and **Siemens Industry, Inc.**, a Delaware Corporation ("Siemens"), are effective as of the Effective Date hereof. These Standard Terms and Conditions incorporate Siemens' proposal (the "Proposal").

ARTICLE 1 **DEFINITIONS**

As used in this Agreement, the following terms have the meanings set forth below:

"Agreement" has the meaning set forth in Article 18.1.

"Affiliate" means, as to a specified Person, any other Person that, directly or indirectly, controls or is controlled by or is under common control with the Person in question and, with respect to Siemens or Buyer, is not a competitor of, or in litigation or arbitration with, Siemens or Buyer, as the case may be.

"Applicable Laws" means all applicable laws, including Environmental Laws, treaties, ordinances, rules, regulations and interpretations of any Governmental Authority having jurisdiction over the design, engineering, fabrication, manufacturing, delivery, assembly, erection, installation, and/or the performance of the Parties' obligations under this Agreement.

"Applicable Permits" means the permits, clearances, licenses, authorizations, consents, filings, exemptions or approvals from or required by any Governmental Authority that are necessary for the performance of the Parties' obligations under this Agreement.

"Asbestos" shall mean and include chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, and any of these minerals that has been chemically treated and/or altered.

"Buyer Caused Delay" means any delay in Siemens' or its Subcontractors' performance of the Work which is caused by (i) Buyer's or any Buyer Party's failure to timely perform its obligations under this Agreement, or (ii) any other event or cause which is beyond the control or not the responsibility of Siemens or any of its Subcontractors, and is not otherwise a Force Majeure Event.

"Buyer Party" or **"Buyer Parties"** means Buyer, any Affiliate of Buyer, and any of their respective contractors, subcontractors, employees, laborers, materialmen, agents or representatives which is not a competitor of Siemens.

"Contract Price" means the cumulative price payable by Buyer with respect to all Work which Siemens shall perform or provide in connection with this Agreement, as the same is set forth in Section 4.1 of this Agreement.

"Convenience Termination Payment" has the meaning set forth in Section 13.2.

"Deliverables" means collectively, (a) any Equipment and any Software deliverable to Buyer from Siemens in connection with the Work, and (b) any Work Product.

"Effective Date" means the last date on which this Agreement became fully executed (either electronically or otherwise).

"Environmental Laws" means applicable national, state, commonwealth, provincial, municipal, and local laws as well as all rules, regulations, codes, standards, permits, directives, or ordinances that impose liability or standards of conduct (including disclosure or notification requirements) concerning the protection of human health or the environment, including, without limitation, all laws affecting, controlling, limiting, regulating, pertaining, or relating to the manufacture, possession, presence, use, generation, storage, transportation, detection, monitoring, treatment, Release, disposal, abatement, cleanup, removal, remediation, or handling of Hazardous Materials.

“Equipment” means the installed physical equipment to be provided by Siemens as described in greater detail in the Proposal.

“Event of Default” has the meaning set forth in Section 13.1.

“Final Completion Date” means that the date on which all the Work has been completed including all punch list items.

“Force Majeure Event” has the meaning set forth in Section 10.2.

“Governmental Authority” means any federal, state, local or other governmental, judicial, public or statutory instrumentality, tribunal, agency, authority, body or entity, or any political subdivision thereof, having legal jurisdiction over the matter or Person in question.

“Hazardous Materials” means any material, substance, or waste, that, by reason of its composition or characteristics, is hazardous to human health and/or the environment, including any “solid waste” or “hazardous waste,” as those terms are defined by the Resource Conservation and Recovery Act of 1976, as amended, any “hazardous substance,” as that term is defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, and any other hazardous, toxic or radioactive chemical, waste, byproduct, pollutant, contaminant, compound, product, material or substance, including without limitation, Asbestos, Asbestos containing materials (“ACM”), polychlorinated biphenyls, petroleum (including crude oil or any fraction or byproduct thereof), hydrocarbons, radon, urea, urea formaldehyde, and any other material that is prohibited, controlled, limited or regulated in any manner under any Environmental Laws.

“Import Duties” means any taxes, customs duties, tariffs, fees, imposts and governmental charges of any kind that are payable upon or in relation to the importation of the components of the Equipment into the Country where the Work is to occur. Import Duties do not include any property, license, privilege, sales, use, excise, value added, gross receipts (including any business, occupation or similar taxes) and/or transactional taxes now or hereafter applicable to, measured by, or imposed upon or with respect to the transaction, the Equipment, or their sale, their value or their use, or any services performed in connection therewith imposed by any federal, state or local Governmental Authority in the location where the Work is to be performed.

“Indemnitor” has the meaning set forth in Section 14.1.

“Indemnitee” has the meaning set forth in Section 14.1.

“Notice to Proceed” shall mean the written notice issued by Buyer to Siemens stating that Siemens may begin the Work.

“Party” or “Parties” means, respectively, Buyer, Siemens or both, as the context requires.

“Patent Cooperation Treaty” means an international patent law treaty, concluded in 1970, that provides a unified procedure for filing patent applications to protect inventions in each of its more than one hundred and forty-five (145) contracting states.

“Person” or “Persons” means any individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, joint venture, government or political subdivision or agency thereof.

“Proposal” means the document that is made part of this Agreement that describes the Work and the pricing applicable to the Project.

“Project” is as identified in the Proposal.

“Project Site” means the particular site designated by Buyer on which the Project shall be located.

“Release” shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any Hazardous Materials into the environment, including the abandonment or discard of barrels, containers, and other closed receptacles containing any Hazardous Materials.

“Siemens Parties” means Siemens, any Affiliate of Siemens, and any of their respective Subcontractors, employees, laborers, materialmen, agents or representatives, and “Siemens Party” means any of the foregoing.

“Software” means any software that is owned or licensed by Siemens or its Affiliates and that is separately deliverable for use in the Equipment or in a computer system owned by Buyer or is delivered as firmware embedded in the Equipment.

“Subcontractor(s)” means any Person of any tier supplying material, equipment, labor, goods or services to Siemens in connection with the Work and obligations of Siemens under the Agreement.

“Substantial Completion” or “Substantially Complete” means that the Work, or any identifiable portion thereof, is sufficiently complete, in accordance with the provisions of this Agreement relating to the scope of the Work, such that the Buyer will be able to realize from such Work substantially all of the practical benefits intended to be gained therefrom, or otherwise employ the Work for its intended purpose with only punch list items remaining.

“Termination for Cause” has the meaning set forth in Section 13.1.

“Warranty” or “Warranties” has the meaning set forth in Section 9.1.

“Warranty Period” has the meaning set forth in Section 9.4.

“Work” means Siemens’ scope of work with respect to the Equipment, major components, spare parts and associated services and other work supplied by or on account of Siemens and its Subcontractors pursuant to its obligations specified in this Agreement and as identified as Siemens’ responsibility in the Proposal.

“Work Product” means the tangible form of a report or drawing specifically developed for, commissioned by and deliverable to Buyer in connection with the Work to be performed by Siemens under this Agreement

“Work Schedule” means that certain schedule governing Siemens’ provision of the Work as set forth in the Proposal.

ARTICLE 2 PERFORMANCE OF THE WORK AND OBLIGATIONS OF SIEMENS

2.1 Work to be Performed by Siemens.

2.1.1 General.

Buyer hereby retains Siemens as an independent contractor, not an agent or employee of Buyer, to perform and provide, or cause to be performed and provided, and Siemens hereby agrees to perform and provide, or cause to be performed or provided, all of the Work specified as being within Siemens’ scope of Work, all in accordance with the terms and conditions of this Agreement.

2.1.2 Standard of Care.

The Work shall be conducted in a manner consistent with the degree of care and skill ordinarily exercised by reputable firms performing the same or similar work in the same locale acting under similar circumstances or conditions.

Buyer agrees that Siemens shall be authorized, at its discretion and without consent, to utilize any of its world-wide affiliates to perform (subcontract) work under this Agreement. (Buyer agrees that) Buyer’s data may be viewed or accessed from outside the United States by Siemens world-wide affiliates.

Buyer data may be stored and/or accessed in the United States or other countries in which Siemens or our (subcontract) affiliates operate.

2.2 Scheduling and Monitoring of Milestones.

Except to the extent that Siemens is entitled to a Scope Change Order or other relief provided for in this Agreement, Siemens shall perform its Work in accordance with the Work Schedule. Further, Siemens shall provide periodic reports to Buyer concerning the status of Siemens' activities, including information pertaining to the progress of the Work and any circumstances known at the time of reporting which could be anticipated to cause a material deviation from the Work Schedule.

2.3 Siemens Documents.

Except as otherwise provided in this Agreement, within fifteen (15) days of receipt of any Siemens document required to be submitted to Buyer for review under this Agreement, Buyer shall notify Siemens of any resulting comments or questions. If Buyer fails to respond within such period, then such drawing or document shall be deemed to have been reviewed and approved by Buyer as submitted. Siemens shall, within fifteen (15) days of Buyer's notification of any comments or questions on any Siemens document respond to Buyer's comments or questions, provided that Siemens shall not be required to change the design of the Equipment pursuant to such Buyer comments or questions.

2.4 Permits.

Siemens shall obtain and maintain the Applicable Permits required to be obtained by Siemens in its name to perform the Work under Applicable Laws (the "Siemens Permits"). If any Siemens Permit (or application therefor) requires action by Buyer, Buyer shall, upon the request of Siemens, take such action as is reasonably appropriate.

2.5 Siemens' Labor.

Siemens shall be responsible for the conduct and deeds of its labor and its Subcontractor's labor in the performance of the Work under this Agreement. However, Siemens shall not interfere with any members of any police, military or security force in the execution of their duties.

2.6 Safety

Siemens may suspend its performance of the Work at the Project Site, if, in the reasonable opinion of Siemens, based upon industry standards and Siemens' applicable safety programs, conditions at the Project Site for which Siemens is not responsible become unsafe for the continued performance of the Work and such conditions are not rectified by Buyer immediately. Siemens shall resume its performance of the Work promptly after the unsafe conditions are rectified by Buyer. Siemens shall be entitled to a Scope Change Order to compensate Siemens for the increased cost of its performance and/or schedule delay resulting from such suspension of the Work.

ARTICLE 3 **SUBCONTRACTORS**

Buyer acknowledges that Siemens intends to have portions of the Work performed by Subcontractors qualified to perform such Work pursuant to written subcontracts between Siemens and such Subcontractors. No contractual relationship shall exist between Buyer and any Subcontractor with respect to the Work. Siemens shall not have any responsibility, duty or authority to direct, supervise or oversee any contractors of Buyer, or their work, or to provide the means, methods or sequence of their work or to stop their work.

ARTICLE 4 **CONTRACT PRICE AND PAYMENTS TO SIEMENS**

4.1 Contract Price and Payment.

The total Contract Price is as set forth and defined more specifically in the Proposal. Buyer shall pay the total Contract Price to Siemens in accordance with the Proposal. Each payment, except for the initial payment, shall be made by wire transfer, pursuant to wire transfer instructions to be provided by Siemens to Buyer, within thirty (30) days from the date of the Siemens invoice therefor or by such other payment method acceptable to Siemens.

The Contract Price is based upon Buyer performing its obligations set forth in this Agreement.

The Contract Price, schedule, warranty and guarantee obligations are based upon unrestricted working hours at, and free access seven (7) days a week, twenty-four (24) hours a day, to the Project Site, including free access to any components requiring assembly by Siemens as part of Siemens' scope of Work.

4.2 Taxes.

The Contract Price does not include, and Buyer agrees to reimburse Siemens for, any Import Duties levied upon the Equipment, or any federal, state, or local (other than net income taxes imposed on Siemens) property, license, privilege, sales, use, excise, value added, gross receipts (including any business, occupation or similar taxes) and/or transactional taxes now or hereafter applicable to, measured by, or imposed upon or with respect to the transaction, the Equipment or their sale, their value or their use, or any services performed in connection therewith

Should Buyer be exempt from any sales and/or use taxes, it shall provide Siemens with valid exemption documentation upon the Effective Date of the Agreement for the State(s) in which the delivery of the Equipment shall take place. Siemens shall not collect sales and/or use taxes from Buyer if Siemens is provided such valid exemption documentation for its files.

4.3 Disputed Invoices.

If there is any dispute about any amount invoiced by Siemens, the amount not in dispute shall be promptly paid and any disputed amount that is ultimately determined to have been payable shall be paid with interest calculated at the rate of one and one-half percent (1.5%) per month, limited by the maximum rate permitted by Applicable Law. The date of the original invoice on which there was a disputed amount shall determine the date upon which the disputed amount first became due and payable, irrespective of whether any subsequent invoice is issued or reissued in connection with the resolution and payment of the disputed amount.

ARTICLE 5 BUYER'S RESPONSIBILITIES

5.1 Buyer shall, at its own cost, do the following:

- (a) Designate a contact person with authority to make decisions for the Buyer regarding the Work and provide Siemens with information sufficient to contact such person in an emergency;
- b) Coordinate the work of contractors under Buyer's sole control so as not to disrupt the Work proceeding in an efficient manner;
- (c) Provide or arrange for 24-hour, 7-day per week access and make all reasonable provisions for Siemens to enter any Project Site where Work is to be performed so that Work may proceed in an efficient manner;
- (d) Provide for security for all components of the Work, materials, supplies, other equipment required to assemble, erect, install and commission the Work, and any other property owned or leased by Buyer, Siemens or any of its Subcontractors located at the Project Site;
- (e) Permit Siemens to control and/or operate all building controls, systems, apparatus, equipment and machinery necessary to perform the Work;
- (f) Furnish Siemens with blueprints, surveys, legal descriptions, waste management plans and all other available information pertinent to the Work and any Project Site where the Work is to be performed as may be reasonably requested by Siemens;
- (g) Furnish Siemens with all approvals, permits and consents from Governmental Authorities and others as may be required for performance of the Work, except for Siemens Permits;
- (h) Comply with Applicable Law and provide any notices required to be given to any Governmental Authority in connection with the Work, except such notices Siemens has expressly agreed in writing to give;
- (i) Furnish Siemens with any contingency plans, safety programs and other policies, plans or programs related to any Project Site where the Work is to be performed; and

(j) Provide and maintain at the Project Site: (1) suitable electrical service, including clean, stable, properly conditioned power, to all Equipment; (2) telephone lines, capacity and connectivity as required by such Equipment; and (3) heat, light, air conditioning or other environmental controls, and other utilities in accordance with the specifications for the Equipment.

5.2. Export Import Compliance.

Buyer acknowledges that Siemens is required to comply with applicable export / import laws and regulations relating to the sale, export, import, transfer, assignment, disposal and use of the Equipment, including any export / import license requirements. Buyer agrees that Equipment will not at any time directly or indirectly be used, exported, imported, sold, transferred, assigned or otherwise disposed of in a manner which will result in non-compliance with any export / import laws and regulations. Siemens' continuing performance hereunder is conditioned on compliance with such export / import laws and regulations at all times.

ARTICLE 6 HAZARDOUS MATERIALS

Prior to any Work being conducted at the Project Site, Buyer shall: (a) identify to Siemens the presence, location and quantity of ACM at the Project Site; and (b) either certify that the work area associated with Siemens' scope of Work is free of ACM or take such action as may be required under Environmental Laws to abate the ACM and, thereafter, certify that the work area associated with Siemens' scope of Work is free of ACM. Siemens makes no representation that it is licensed to abate ACM and shall not be obligated to install, disturb, handle, or remove any ACM.

Buyer represents and warrants that, prior to the execution of this Agreement, Buyer has notified Siemens in writing of any and all Hazardous Materials known to be present on the Project Site and has: (a) expressly identified the nature and location of such Hazardous Materials to Siemens, including the provision of a map identifying the same; and (b) provided a copy of any Project Site policies related to such pre-existing Hazardous Materials, including, without limitation, material safety data sheets, chemical hygiene plans, laboratory procedures, or other items covered or required to be disclosed or maintained pursuant to applicable Environmental Laws.

The Work does not include, either directly or indirectly, performing or arranging for the detection, monitoring, handling, storage, removal, transportation, disposal, or treatment of Hazardous Materials. If any Hazardous Materials, including ACM, are encountered at the Project Site, Siemens shall immediately stop all Work in the affected area and report the condition to Buyer. Buyer shall promptly, in accordance with all applicable Environmental Laws and at its sole cost and expense, remove or render harmless, or take other actions as may be necessary to remediate the hazards associated with any such Hazardous Material, including, without limitation, signing and listing Buyer (or the appropriate Buyer Party) as the generator of the Hazardous Materials on any waste manifest that may be required by Environmental Laws. Siemens' Work in the affected area shall not be resumed until Buyer has complied with the foregoing obligations.

If the existence and remedying of Hazardous Materials at the Project Site results in an increase in Siemens' costs and/or impacts Siemens' ability to meet its obligations, guarantees, or the Work Schedule under the Agreement, Siemens shall be entitled to a Scope Change Order in accordance with the applicable provisions of Article 8, increasing the Contract Price and providing an equitable extension of the Work Schedule and other provisions of the Agreement affected thereby or otherwise affected by Buyer's non-compliance, commensurate with the time reasonably required to overcome such delay and added cost, including without limitation, overtime charges for labor and equipment.

Buyer, on behalf of itself, all Buyer Parties, and the predecessors and successors in interest, insurers, and assigns of each of them, shall defend, release, indemnify and hold harmless Siemens, all Siemens Parties and the successors and assigns of each of them from and against any and all liability arising under Environmental Laws or as a result of any Hazardous Materials at or any environmental condition of the Project Site, including, without limitation, fines and penalties, reasonable fees for attorneys, consultants or other professionals, and the costs of reporting, investigation, monitoring, containment, cleanup, storage, disposal, transportation and any other remedial actions arising under applicable Environmental Laws that are incurred by any Indemnitee hereunder for and as a result of: (i) death or bodily injury to any person, (ii) destruction or damage to any property, (iii) contamination of or adverse effects on the environment, including

a Release of any kind, (iv) any violation by Buyer or any Buyer Party of Environmental Laws, and/or (v) a breach by Buyer or any Buyer Party of any legal duty arising under applicable Environmental Laws or any obligations under the environmental provisions of this Agreement. This release and indemnity shall survive the termination or expiration of this Agreement and shall be construed as broadly as possible under applicable Environmental Laws.

ARTICLE 7 **LIMITATION OF LIABILITY**

NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, SIEMENS SHALL NOT BE LIABLE TO BUYER, WHETHER BASED IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, FOR: LOSS OF USE, REVENUE, SAVINGS, PROFIT, INTEREST, GOODWILL OR OPPORTUNITY, COSTS OF CAPITAL, COSTS OF REPLACEMENT OR SUBSTITUTE USE OR PERFORMANCE, LOSS OF INFORMATION AND DATA, LOSS OF POWER, VOLTAGE IRREGULARITIES OR FREQUENCY FLUCTUATION, CLAIMS ARISING FROM THE OTHER PARTY'S THIRD PARTY CONTRACTS, OR FOR ANY TYPE OF INDIRECT, SPECIAL, LIQUIDATED, PUNITIVE, EXEMPLARY, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS OR COST OF A SIMILAR TYPE.

SIEMENS' MAXIMUM LIABILITY UNDER THIS AGREEMENT IS THE ACTUAL PURCHASE PRICE RECEIVED BY SIEMENS FOR THE EQUIPMENT THAT GAVE RISE TO THE CLAIM.

EACH PARTY AGREES THAT THE EXCLUSIONS AND LIMITATIONS IN THIS ARTICLE 7 WILL PREVAIL OVER ANY CONFLICTING TERMS AND CONDITIONS IN THIS AGREEMENT AND MUST BE GIVEN FULL FORCE AND EFFECT, WHETHER OR NOT ANY OR ALL SUCH REMEDIES ARE DETERMINED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THESE LIMITATIONS OF LIABILITY ARE EFFECTIVE EVEN IF EITHER PARTY HAS BEEN ADVISED BY THE OTHER OF THE POSSIBILITY OF SUCH DAMAGES. THE WAIVERS AND DISCLAIMERS OF LIABILITY, RELEASES FROM LIABILITY AND LIMITATIONS ON LIABILITY EXPRESSED IN THIS ARTICLE 7 EXTEND TO EACH PARTYS' AFFILIATES (AND THEIR EMPLOYEES), PARTNERS, PRINCIPALS, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, SUPPLIERS OF ANY TIER (AND THEIR EMPLOYEES), AGENTS, AND SUCCESSORS AND ASSIGNS.

ARTICLE 8 **CHANGES TO THE WORK**

Siemens shall deliver and/or perform the Work in accordance with the Applicable Laws in effect on the Effective Date. No change will be made to the scope of Work unless Buyer and Siemens agree in writing to the change and any resulting price, schedule or other contractual modifications associated therewith. If any change to any law, rule, regulation, order, code, standard or requirement impacts Siemens' obligations or performance under this Agreement, Siemens may request a change order for an equitable adjustment in the price and time of performance.

ARTICLE 9 **WARRANTY**

9.1. Warranties.

Siemens warrants that: (i) the Equipment is free from defects in material and workmanship; (ii) the Equipment is in compliance with Siemens' Proposal; and (iii) at the time of delivery, Siemens has title to the Equipment free and clear of liens and encumbrances (collectively, the "Warranties"). The Warranties do not apply to Software furnished by Siemens. The sole and exclusive warranties for any Software are set forth in the applicable Software License Agreement or Terms of Use to be provided with the Software.

9.2. Conditions to the Warranties.

The Warranties are conditioned on: (i) no repairs, modifications or alterations being made to the Equipment other than by Siemens or its authorized representatives; (ii) Buyer handling, using, storing, installing, operating and maintaining the Equipment in compliance with any parameters or instructions in any specifications attached to, or incorporated into this Agreement; (iii) compliance with all generally accepted

industry standards; (iv) Buyer discontinuing use of the Equipment after it has, or should have had, knowledge of any defect; (v) Buyer providing prompt written notice of any warranty claims within the Warranty Period described below; (vi) at Siemens' discretion, Buyer either removing and shipping the Equipment or non-conforming part thereof to Siemens, at Buyer's expense, or granting Siemens reasonable access to the Equipment to assess the warranty claims; (vii) Equipment not having been subjected to accident (including Force Majeure), alteration, abuse or misuse; (viii) Buyer not being in default of any payment obligation and (viii) Buyer allowing Siemens the opportunity to review the operating and maintenance records relating to the Equipment and the facility it is incorporated into, if applicable.

9.3. Exclusions from Warranty Coverage.

The Warranties do not apply to any equipment not provided by Siemens under this Agreement.

Any Equipment that is described as being experimental, developmental, prototype, or pilot is specifically excluded from the Warranties and is provided to Buyer "as is" with no warranties of any kind. Normal wear and tear is excluded, including any expendable items that comprise part of the Equipment (such as fuses, light bulbs and lamps). Siemens does not warrant or guarantee that any Equipment will be secure from cyber threats, hacking or similar malicious activity. Equipment that is networked, connected to the internet, or otherwise connected to computers or other devices must be appropriately protected by Buyer and/or end user against unauthorized access.

9.4. Warranty Period.

Buyer must provide written notice of any claims for breach of Warranties by the earlier of twelve (12) months from initial operation of the Equipment or eighteen (18) months from shipment ("Warranty Period"). Additionally, absent written notice within the Warranty Period, any use or possession of the Equipment after expiration of the Warranty Period is conclusive evidence that the Warranties have been satisfied.

9.5. Remedies.

Buyer's sole and exclusive remedies for breach of the Warranties are limited, at Siemens' discretion, to repair or replacement of the Equipment, or its non-conforming parts, within a reasonable time period, or refund of all or part of the purchase price applicable to the non-conforming part. The warranty on repaired or replaced parts is limited to the remainder of the original Warranty Period. Unless Siemens agrees otherwise in writing, Buyer will be responsible for any costs associated with: (i) gaining access to the Equipment; (ii) removal, disassembly, replacement, installation, or reinstallation of any equipment, materials or structures to permit Siemens to perform its warranty obligations; (iii) transportation to and from the Siemens factory or repair facility; and (iv) damage to Equipment components or parts resulting in whole or in part from non-compliance by the Buyer with Section 9.2 hereof or from their deteriorated condition. All exchanged Equipment replaced under this Warranty will become the property of Siemens.

9.6. Transferability.

The Warranties are only transferable during the Warranty Period and only to the Equipment's initial end-user.

9.7 THE WARRANTIES IN THIS ARTICLE 9 ARE SIEMENS' SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO THE LIMITS OF LIABILITY IN ARTICLE 7 ABOVE. SIEMENS MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE.

ARTICLE 10 DELAYS; EXCUSED PERFORMANCE

10.1 Change in Law and Buyer Caused Delay.

As the Work is performed, conditions may change or circumstances outside Siemens' reasonable control, including without limitation, changes of Applicable Law and Buyer Caused Delays, may develop which would require Siemens to expend additional costs, effort or time to complete the Work, in which case Siemens will notify Buyer and an equitable adjustment will be made to Siemens' Contract Price and Work Schedule pursuant to Article 8. In the event conditions or circumstances require the Work to be suspended or terminated, Siemens

shall be compensated for Work performed and for costs reasonably incurred in connection with the suspension or termination.

10.2 Force Majeure.

If Siemens' performance is delayed by any cause beyond its reasonable control (regardless of whether the cause was foreseeable), including without limitation acts of God, strikes, labor shortage or disturbance, fire, accident, war or civil disturbance, delays of carriers, cyber-attacks, terrorist attacks, failure of normal sources of supply, or acts or inaction of government ("Force Majeure Event"), Siemens' time of performance will be extended by a period equal to the length of the delay plus any consequences of the delay, and Siemens will get its reasonable costs for such extension of time pursuant to Article 8. Siemens will notify Buyer within a reasonable time after becoming aware of any such delay.

If Siemens is entirely prevented from performing the Work for a time period of one hundred eighty (180) aggregate days as a result of the occurrence of a Force Majeure Event suffered by Siemens, then either Party may terminate this Agreement with respect to the Work that has not been performed by the effective date of such termination at no cost or penalty, other than Buyer's obligation to pay Siemens either (a) the sum set forth in the termination payment schedule if applicable, or (b) that portion of the Contract Price reflecting the amount of Work performed, man hours expended and materials acquired 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. If the Agreement is terminated pursuant to this Section 10.2, then Siemens' remaining warranty and performance guarantee obligations shall automatically terminate.

ARTICLE 11 INSURANCE

11.1 Siemens' Insurance Coverage.

- (a) Siemens shall maintain in full force and effect the following insurance coverage and limits specified below commencing ten (10) days after Buyer's issuance of a Notice to Proceed and continuing until the Final Completion Date. Siemens shall provide Buyer applicable insurance certificates of such coverage prior to the shipment of any Equipment to the Project Site or the commencement of any Work at the Project Site. The required limits of insurance may be satisfied with any combination of primary and excess coverage.
- (b) Siemens or Siemens' insurance carrier shall endeavor to provide Buyer with thirty (30) days' prior notice of cancellation, termination or material alteration of any insurance coverage set forth in this Article 11. In addition, Siemens' insurance shall be maintained with insurance companies having an A.M. Best rating of "A-" or better and a financial size category of "VII" or higher (or a comparable rating by any other rating entity reasonably acceptable to Buyer and evidenced by Buyer's written confirmation, which acceptance shall not be unreasonably withheld).
- (c) Siemens has the responsibility and obligation to procure and maintain the following insurance policies:
 - (i) Workers' Compensation Insurance in accordance with Applicable Laws and regulations applicable to the jurisdiction in which the Work is performed;
 - (ii) Employer's Liability Insurance with a limit of One Million Dollars (\$1,000,000) per accident, per employee for occupational disease, and in the aggregate for occupational disease;
 - (iii) Commercial General Liability Insurance with coverage written for bodily injury and broad form property damage on an "occurrence" basis with a limit of One Million Dollars (\$1,000,000) per occurrence and Five Million Dollars (\$5,000,000) aggregate. This policy shall include blanket contractual coverage, railroad protective liability coverage, and coverage for premises, operations, explosion, collapse and underground (XCU) hazards, and products/completed operations. Siemens shall name Buyer as an additional insured to the extent bodily injury

(including death) or third-party property damage results from the negligent acts or omissions of Siemens or Siemens' Subcontractors and require that this policy contain a "separation of insureds" clause.

11.2 Subcontractor's Insurance Coverage.

Siemens shall require its Subcontractors performing Work at the Project Site to maintain the types, coverage and limits of insurance which are reasonable in accordance with prudent industry practice and commensurate with the Work to be performed by such Subcontractor.

11.3 Waiver of Rights.

In regard to insurance maintained by either Party, including any property insurance, each such Party hereby waives, for itself and its insurers, all rights of recovery and subrogation which may arise against the other Party and its Affiliates as a result of a payment made by an insurer.

ARTICLE 12 INTELLECTUAL PROPERTY RIGHTS

Siemens shall retain all intellectual property rights in the Deliverables. Upon receipt of all fees, expenses and taxes due in respect of the relevant Work, Siemens grants to the Buyer a non-transferable, non-exclusive, royalty-free license to copy and use the documents included in or with the Deliverables for their intended purpose only. If the Deliverables include Software, then Buyer agrees to take delivery of such Software subject to any applicable Siemens or third-party end-user license agreement (EULA) accompanying such Software, or if no EULA or third-party license accompanies such Siemens' Software, the EULA posted at www.usa.siemens.com/btcpseula (SIEMENS' EULA web site) for such Siemens Software.

ARTICLE 13 DEFAULT, TERMINATION AND SUSPENSION

13.1 Events of Default.

The occurrence of any one or more of the following events shall constitute an Event of Default by a Party hereunder:

- (a) A Party makes a general assignment for the benefit of its creditors, is generally unable to pay its debts as they become due, or becomes the subject of any voluntary or involuntary bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding under any Applicable Laws and, in the case of an involuntary proceeding instituted against a Party by a third party, the proceeding is not dismissed or stayed within forty-five (45) days after it is commenced;
- (b) With regard to Buyer, Buyer fails to pay to Siemens any required payment, which failure continues for ten (10) days after receipt of written notice thereof from Siemens;
- (c) A Party has made a material misrepresentation under the Agreement that is likely to have a material adverse effect on its ability to perform its obligations hereunder, and such representation is not made true within thirty (15) days after receipt of written notice thereof from the other Party; or
- (d) A Party is otherwise in material default of any provision of this Agreement or has materially failed to perform its obligations under this Agreement, provided that if such material default of this Agreement or material failure to perform this Agreement can be cured within a commercially reasonable timeframe, the defaulting Party shall be permitted such period of time within which to accomplish such cure, so long as the Party commences such cure efforts within thirty (30) days after written notice from the other Party and thereafter diligently proceeds to complete such cure within such time period.

Upon the occurrence and during the continuation of any Event of Default hereunder, the non-defaulting Party, in addition to its right to pursue any other remedy given under the Agreement, shall have the right to terminate this Agreement upon not less than five (5) days prior written notice to the defaulting Party (a "Termination for Cause"). A Termination for Cause shall be effective upon the sixth (6th) day following delivery of the notice with respect thereto.

13.2 Termination for Buyer's Convenience.

In addition to any other termination rights available to Buyer under this Agreement, Buyer shall have the right to terminate the delivery of Work due to the economic unfeasibility of the Project for Buyer upon fifteen (15) days prior written notice to Siemens. Buyer shall pay Siemens either (a) the sum set forth in the termination payment schedule if applicable, or (b) that portion of the Contract Price reflecting the amount of Work performed, man hours expended and materials acquired 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 Subcontractors, and any applicable cost allocated in contemplation of performance (the "Convenience Termination Payment"). All payments of the Contract Price made by Buyer and received by Siemens prior to the date of termination shall be credited toward the Convenience Termination Payment. Siemens shall submit an invoice to Buyer for the Convenience Termination Payment and Buyer shall pay such invoice by wire transfer within thirty (30) days after the date of such invoice. If the Agreement is terminated by Buyer pursuant to this Section 13.2, then Siemens' remaining warranty and performance guarantee obligations shall also automatically terminate.

ARTICLE 14 **INDEMNITIES**

Siemens and Buyer (each as an "Indemnitor") shall indemnify the other ("Indemnitee") from and against all third party claims alleging bodily injury, death or damage to a third party's tangible property, but only to the extent caused by the Indemnitor's negligent acts or omissions. If the injury or damage is caused by the parties' joint or contributory negligence, the loss and/or expenses shall be borne by each party in proportion to its degree of fault. No part of the Equipment(s) or Buyer's Project Site is considered third party property.

Indemnitee shall provide the Indemnitor with prompt written notice of and shall not acknowledge any third party claims covered by this Article 14. Indemnitor has the unrestricted right to select and hire counsel and the exclusive right to conduct the legal defense and/or settle the claim on the Indemnitee's behalf. The Indemnitee shall not make any admission(s) which might be prejudicial to the Indemnitor and shall not enter into a settlement without the express permission of the Indemnitor.

ARTICLE 15 **REPRESENTATIONS**

Each Party represents that on the Effective Date:

(a) Organization and Corporate Action.

Siemens is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified to do business in the jurisdictions in which the Project is located. Buyer is as identified in the Proposal and is duly organized, validly existing and in good standing under the laws of the State or Commonwealth identified in the Proposal. Each Party has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by the Party of this Agreement have been duly authorized by all necessary action on its part; and this Agreement has been duly and validly executed and delivered by the Party and constitutes the legal, valid and binding obligation of the Party enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

(b) No Violation of Law; Litigation.

It is not in violation of any Applicable Laws or judgment entered by any Governmental Authority which violations, individually or in the aggregate, would materially and adversely affect its performance of any of its obligations under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Governmental Authority now pending or (to the best knowledge of the Party) threatened against the Party which, if

adversely determined, could reasonably be expected to have a material adverse effect on the ability of the Party to perform under this Agreement.

(c) No Breach.

None of the execution and delivery of this Agreement, the consummation of the transactions herein contemplated or compliance with the terms and provisions hereof and thereof shall conflict with or result in a breach of, or require any consent under, the charter or by-laws of the Party, or any Applicable Laws or regulation, order, writ, injunction or decree of any court, or any agreement or instrument to which the Party is a party, or by which it is bound, or to which it is subject, or constitute a default under any such agreement or instrument.

ARTICLE 16
PATENT AND COPYRIGHT INFRINGEMENT

Siemens will, at its option and expense, defend or settle any suit or proceeding brought against Buyer based on an allegation that any Equipment or use thereof for its intended purpose constitutes an infringement of any Patent Cooperation Treaty country member's patent or misappropriation of a third party's trade secret or copyright in the country where the Equipment is delivered by Siemens. Buyer will promptly give Siemens written notice of the suit or proceeding and the authority, information, and assistance needed to defend the claims. Buyer shall not acknowledge any such third-party proceedings defined under this Article 16. Siemens shall have the full and exclusive authority to defend and settle such claim(s) and will pay the damages and costs awarded in any suit or proceeding so defended. Buyer shall not make any admission(s) which might be prejudicial to Siemens and shall not enter into a settlement without Siemens' written consent. Siemens is not responsible for any settlement made without its prior written consent. If the Equipment, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement, or its use by Buyer is enjoined, Siemens will, at its option and expense, either: (i) procure for Buyer the right to continue using said Equipment; (ii) replace it with substantially equivalent non-infringing Equipment; or (iii) modify the Equipment so it is non-infringing.

Siemens will have no duty or obligation under this Article 16 if the Equipment is: (i) supplied according to Buyer's design or instructions and compliance therewith has caused Siemens to deviate from its normal course of performance; (ii) modified by Buyer or its contractors after delivery; or (iii) combined by Buyer or its contractors with devices, methods, systems or processes not furnished hereunder and by reason of said design, instruction, modification, or combination a suit is brought against Buyer. In addition, if by reason of such design, instruction, modification or combination, a suit or proceeding is brought against Siemens, Buyer must protect Siemens in the same manner and to the same extent that Siemens has agreed to protect Buyer under this Article 16.

THIS ARTICLE 16 IS AN EXCLUSIVE STATEMENT OF SIEMENS' DUTIES AND BUYER'S REMEDIES RELATING TO PATENTS, TRADE SECRETS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY INFRINGEMENT THEREOF.

ARTICLE 17
CONFIDENTIALITY

Both during and for a period of ten (10) years after the term of this Agreement, the parties will: (i) treat as confidential all information obtained from the disclosing party, and (ii) use such confidential information for its intended purpose only. Confidential information includes all information compiled or generated by the disclosing party under this Agreement for the receiving party, including but not limited to business information, manufacturing schedule information, technical data, drawings, flow charts, program listings, software, plans and projections. Neither party may disclose or refer to the work to be performed under this Agreement in any manner that identifies the other party without advance written permission. However, Siemens has the right to share confidential information with its Affiliates and subcontractors, provided those recipients are subject to the same confidentiality obligations set forth herein.

Nothing in this Agreement requires a party to treat as confidential any information which: (i) is or becomes generally known to the public, without the fault of the receiving party; (ii) is disclosed to the receiving party, without obligation of confidentiality, by a third party having the right to make such disclosure; (iii) was

previously known to the receiving party, without obligation of confidentiality, which fact can be demonstrated by means of documents which are in the possession of the receiving party upon the date of this Agreement; (iv) was independently developed by receiving party or its representatives, as evidenced by written records, without the use of discloser's confidential information; or (v) is required to be disclosed by law, except to the extent eligible for special treatment under an appropriate protective order, provided that the party required to disclose by law will promptly advise the originating party of any requirement to make such disclosure to allow the originating party the opportunity to obtain a protective order and assist the originating party in so doing.

Within thirty (30) days from the effective date of termination of this Agreement pursuant to Section 10,2, 13.1 or 13.2 , Buyer shall either (a) return to Siemens any of Siemens' confidential information which had been in Buyer's possession (excluding this Agreement), or (b) certify to Siemens that all of Siemens' confidential information which had been in Buyer's possession has been destroyed.

ARTICLE 18

MISCELLANEOUS PROVISIONS

18.1 Entire Agreement.

This agreement, including the Proposal and all Exhibits thereto (the "Agreement") contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior and/or contemporaneous agreements and commitments with respect thereto. There are no other understandings, oral or written, nor other terms or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement. Any modification to the Agreement must be in writing and executed by both Parties.

18.2 Applicable Law and Jurisdiction.

This Agreement is governed by and construed in accordance with the laws of the State or Commonwealth where the Project Site is located, without regard to its conflict of laws principles. The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded. BOTH SIEMENS AND BUYER KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVE ALL RIGHTS TO A JURY TRIAL IN ANY ACTION OR PROCEEDING RELATED IN ANY WAY TO THIS AGREEMENT. Each Party agrees that claims and disputes arising out of this Agreement must be decided exclusively in a federal or state court of competent jurisdiction located in a State or Commonwealth in which the Project Site is located. Each Party submits to the personal jurisdiction of such courts for the purpose of litigating any claims or disputes.

18.3 Notice.

All notices, reports, demands, claims, elections, requests and other official communications required or permitted by this Agreement or by law to be served upon or given to a Party by the other Party shall be in writing signed by the Party giving such notice and shall be deemed duly served, given to and received by the other Party when delivered by first class registered or certified mail, return receipt requested, postage prepaid, or by a nationally recognized courier, in each case addressed to those respective representatives of each Party as identified in the Proposal.

The Parties, by like notice in writing, may designate, from time to time, another address, addressee or office to which notices shall be delivered pursuant to this Agreement, which change of address shall become effective five (5) Business Days after delivery of such Notice.

18.4 No Rights in Third Parties.

Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties and shall not imply or create any rights on the part of, or obligations to, any other Person, except as specifically provided herein with respect to Subcontractors.

18.5 Compliance with Laws.

The Parties agree to comply with all Applicable Laws, including but not limited to those relating to the manufacture, purchase, resale, exportation, transfer, assignment or use of the Equipment.

18.6 Conflicting Provisions.

In the event of any inconsistencies in this Agreement, the following order of precedence in the interpretation hereof or resolution of such conflict hereunder shall prevail:

- (1) Duly authorized and executed Scope Change Orders and written amendments to the Agreement executed by both Parties, with the latest ones having precedence over the earlier ones;
- (2) This Agreement.

Any differing or additional terms and conditions in any purchase order or other document are of no force and effect unless specifically accepted in writing by the Parties. Siemens' failure to object to any such additional, different or conflicting terms does not operate as a waiver of the terms of this Agreement.

18.7 No Partnership Created.

Nothing contained in this Agreement shall be construed as constituting a joint venture or partnership between Siemens and Buyer.

18.8 Captions; Shortened Names for Convenience.

The captions contained in this Agreement are for convenience of reference only and in no way define, describe, extend or limit the scope of intent of this Agreement or the intent of any provision contained herein. Similarly, the references to "Buyer" and "Siemens" in this Agreement are shorthand used for convenience only.

18.9 Counterparts and Facsimile Execution.

This Agreement may be signed in any number of counterparts and each counterpart shall represent a fully executed original as if signed by both Parties, with all such counterparts together constituting but one and the same instrument. Facsimile or electronic pdf signatures of the Parties shall be deemed to constitute original signatures and executed facsimile copies hereof shall be deemed to constitute duplicate originals.

18.10 Joint Effort.

Preparation of the Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other. Each Party represents that it has obtained the professional advice (including legal, tax and accounting advice on Applicable Laws and regulations) as it has deemed appropriate or convenient.

18.11 Appendixes.

All appendixes, attachments, or exhibits referenced in this Agreement shall be incorporated into this Agreement by such reference and shall be deemed to be an integral part of this Agreement.

18.12 Non-Waiver.

Any waiver by a Party of strict compliance with this Agreement must be in writing, and any failure by the Parties to require strict compliance in one instance will not waive its right to insist on strict compliance thereafter.

18.13 Modification of Terms.

This Agreement may only be modified by a written instrument signed by authorized representatives of both Parties.

18.14 Assignment.

Neither Party may assign all or part of this Agreement, or any rights or obligations under this Agreement, without the prior written consent of the other; but either Party may assign its rights and obligations, without recourse or consent, to any parent, wholly owned subsidiary, or Affiliate or Affiliate's successor organization (whether as a result of reorganization, restructuring or sale of substantially all of a party's assets). However, Buyer shall not assign this Agreement to: a competitor of Siemens; an entity in litigation with Siemens; or an entity lacking the financial capability to satisfy Buyer's obligations. Any assignee expressly assumes the performance of any obligation assigned. Siemens may grant a security interest in this Agreement and/or assign proceeds of this Agreement without Buyer's consent.

18.15 Severability.

If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will not in any way be affected or impaired. A court may modify the invalid, illegal or unenforceable provision to reflect, as closely as possible, the Parties' original intent.

18.16 Survival.

The articles titled "Patent and Copyright Infringement," "Limitation of Liability," "Confidentiality," "Title and Risk of Loss," "Indemnitees," and "Export/Import Compliance," survive termination, expiration or cancellation of this Agreement.