



**Office of Management and Budget
Division of Purchasing
Non-Competitive Contract Request Form**

Department	The Parking Authority of River City	Department Contact	Stacie Gary
Contact Email	stacie.gary@louisvilleky.gov	Contact Phone	502-574-1476

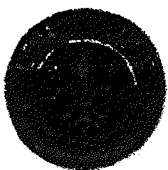
Contract Type: check one	New	Amendment		
		Additional Funds	Time Extension	Scope
Professional Service				
Sole Source (goods/services)	✓			
	Start	End		
Requested Contract Dates (MM/DD/YYYY)	07/01/2019	06/30/2020		

VENDOR INFORMATION

Vendor Legal Name	Siemens Industry Inc.				
DBA					
Point of Contact	Jamie Martin	Email	james.g.martin@siemens.com		
Street	2700 Stanley Gault Pkwy				
Suite/Floor/Apt	135	Phone	502-297-7978		
City	Louisville	State	KY	Zip Code	40223
Federal Tax ID#		SSN# (if sole proprietor)			
Louisville Revenue Commission Account #					
<u>Human Relations Commission Certified Vendors</u>	Certified Minority Owned Business	Certified Woman Owned business	Disabled Owned business		
Select if applicable					

FINANCIAL INFORMATION

Not to Exceed Contract Amount	\$50,000		(including reimbursement expenses, if applicable)		
Fund Source: General Fund					
Federal Grant		Federal Granting Agency			
Other	✓	Describe:			
Account Code String #	9502	954	9054	954000	562001
Payment Rate		per hour		per day	per service
		per month		Other	as work is completed
Payment Frequency		Monthly		Upon Completion / Delivery	
		Quarterly		Other	as invoiced



**Office of Management and Budget
Division of Purchasing
Non-Competitive Contract Request Form**

CONTRACT SCOPE and PURPOSE (Attach additional documentation if necessary)

Amendments: Describe the circumstances under which a time extension or scope change is needed.

New: Be specific about the work to be performed / product to be purchased including but not limited to: scope of work; description of service; work product created; why the service / product is necessary; and benefit to Louisville Metro Government.

Modernization/upgrades to fire panels at various garages (the work at the Muhammad Ali garage was previously approved; however the contract expired prior to service start & completion).

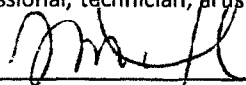
JUSTIFICATION FOR NON-COMPETITIVE GOOD/SERVICE (Attach additional documentation if necessary)

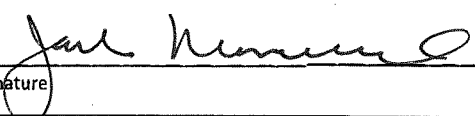
Provide justification including but not limited to: a description of the unique features that prohibit competition; research conducted to verify the vendor as the only known source (sole source); why the service (PSC) is not feasible to be provided by LMG staff or expertise does not exist; known compatibility, proprietary and/or timing issues.

The garages were constructed with Siemens' alarms. As this equipment is proprietary and the original equipment has phased out, PARC must migrate to the new alarm panel to maintain maximum functionality.

Attached are four proposals totaling \$32,056. There additional garages pending proposals to be included in this Agreement depending on the amount PARC will include one or two of them.

AUTHORIZATIONS: Per KRS 45A.380, I have determined that competition is not feasible for the above described good / service and there is a single source within a reasonable geographical area of the good / service to be procured; or the resulting contract is for the services of a licensed professional, technician, artist, or other non-licensed professional service.

Department Director  Date 8/27/19
 Signature _____
 Printed Name Tiffany Smith

Purchasing Director  Date 9/3/19
 Signature _____
 Printed Name Joel Neaveill

SIEMENS

Ingenuity for life

PROPOSAL

PARC 115 W. Jefferson St. Garage FS-250 Fire Panel Migration

PREPARED BY

Jamie Martin - Building Technologies Division of Siemens Industry Inc.

PREPARED FOR

William Heitzman - PARC

DELIVERED ON

March 10, 2020

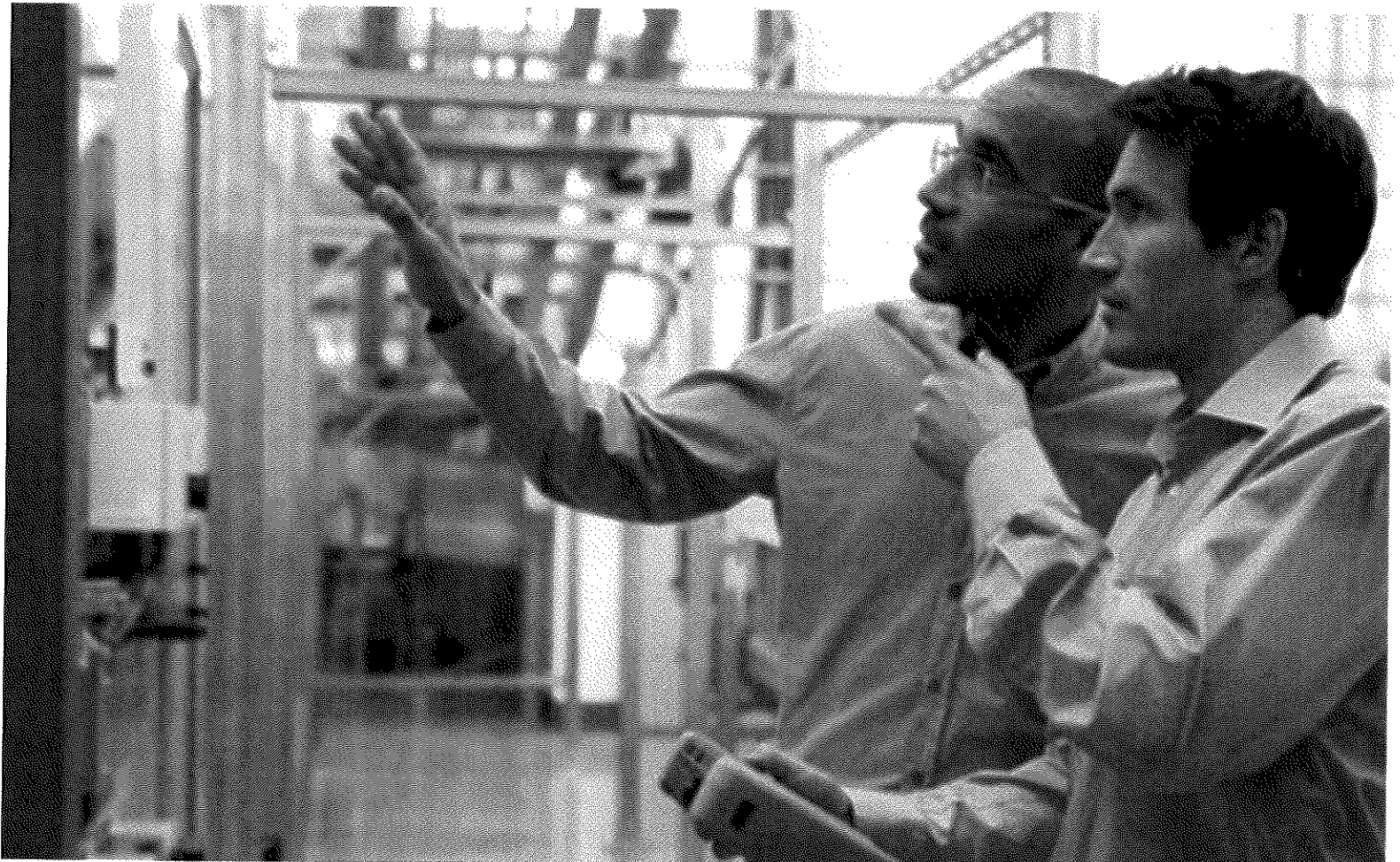


Table of Contents

SIEMENS PROPOSAL	3
Contact Information	3
Scope of Work	4
Inclusions	5
Exclusions	6
Sell Price	7
Payment Terms	8
Terms and Conditions	9
Terms & Conditions Link(s)	9
Signature Page	10
Signature Page	10

Contact Information

Proposal #:	4652518
Date:	March 10, 2020

Sales Executive:	James Martin
Branch Address:	2700 Stanley Gault Parkway Suite 135 Louisville, Kentucky, 40223
Telephone:	502-297-7978
Email Address:	james.g.martin@siemens.com

Attn:	William Heitzman - Parking Facilities Coordinator
Customer:	PARC
Address:	222 S. First St., Ste. 400 Louisville, Kentucky 40202
Phone:	502-475-7161
Email Address:	william.heizman@louisvilleky.gov
Project Name	PARC 115 W. Jefferson St. Garage FS-250 Fire Panel Migration
Project Location:	115 W. Jefferson St., Louisville, Kentucky 40202

Scope of Work

We at Siemens Industry, Inc. Building Technologies Division, are pleased for the opportunity to present a fire and life safety solution proposal for PARC. This scope statement shall include the following:

- Main Siemens FS-250 Fire Panel Migration to Siemens Desigo.
- Installation of Siemens Desigo Dialer and programming to maintain Siemens fire monitoring.
- Programming of the Siemens Desigo Fire Panel to include existing fire system field devices (if existing field devices are deficient, replacement of existing field devices is not included). Existing field devices are compatible with the Siemens Desigo System and can remain, which is a huge cost savings to PARC. However, PARC should plan to replace the existing field devices in the near future.
- Final Siemens Desigo fire system re-certification testing and inspection following the migration; includes Siemens fire panels and field devices; excludes sprinkler system if applicable and any other systems.

This solution proposal intends to deliver to PARC the most innovative, cost effective, and industry supported approach to fire and life safety.

This fire system migration is necessary as the Siemens FS-250 fire system and its replacement parts have been discontinued and no longer fully supported as of October 1, 2018. FS-250 replacement parts for repairs are very limited, if available at all.

*Any additional material, equipment and/or labor beyond this Scope of Work will be at additional cost to PARC via a change order. We don't expect this, but must include this in our proposal.

Inclusions

1. Material Taxes
2. Freight
3. Engineering
4. Project Management for Siemens Scope of work
5. System Re-certification Testing
6. Demolition of the existing fire alarm system
7. DACT (Digital Dialer for Monitoring)
8. Customer equipment orientation
9. Final connection to the control panel
10. Programming
11. One (1) year warranty

Exclusions

1. Offsite monitoring systems fees
2. Cost associated with multiple trips to the job site due to incompleion by others
3. Working in areas containing hazardous materials
4. Cost associated with schedule acceleration or multiple unplanned phases
5. Telephone line (s) for DACT
6. Ceiling removal or replacement, patching and painting
7. Costs associated with bypassing the system during construction
8. Building and construction permit fees
9. Base building cad drawings from which to base or design
10. Ceiling and/or wall removal, replacement, patching, and painting
11. Overtime
12. After hours work
13. Additional testing due to others
14. Dedicated phone lines (if required for monitoring)
15. 120vac power
16. Conduit raceway, and supports
17. Performance or payment bonds
18. Bonding or special insurance
19. Fire caulking
20. Electrical boxes and supports
21. Scaffolding and lifts
22. Knox box
23. Shunt trip breakers
24. Security system interface or door lock release

SIEMENS

Ingenuity for life

Sell Price

Total Quote Price

\$7,995.00

Payment Terms

Payment Terms Acceptance Agreement

The total price of: \$7,995.00 and the estimated return on investment are based on the items outlined in this proposal. ANY statements made herein regarding savings that may be achieved by implementing the services offered in this proposal are estimates only. No warranty, either expressed or implied, shall be construed to arise from such statements, nor shall such statements be construed as constituting a guarantee by Siemens that such savings will occur if the services are implemented.

Terms and Conditions Disclaimer

The Customer acknowledges that when approved by the Customer and accepted by Siemens Industry, Inc.: (i) the Proposal and the Contract Terms and Conditions, (together with any other documents incorporated into the forgoing) shall constitute the entire agreement of the parties with respect to its subject matter (collectively, hereinafter referred to as the "Agreement") and (ii) in the event of any conflict between the terms and conditions of the Proposal and the terms and conditions of The Contract Terms and Conditions, the Contract Terms and Conditions shall control.

BY EXECUTION HEREOF, THE SIGNER CERTIFIES THAT (S)HE HAS READ ALL OF THE TERMS AND CONDITIONS AND DOCUMENTS, THAT SIEMENS OR ITS REPRESENTATIVES HAVE MADE NO AGREEMENTS OR REPRESENTATIONS EXCEPT AS SET FORTH THEREIN, AND THAT (S)HE IS DULY AUTHORIZED TO EXECUTE THE SIGNATURE PAGE ON BEHALF OF THE CUSTOMER.

This Proposal is based on the Siemens Industry, Inc. Standard Terms and Conditions and the "Scope of Work" and are to be considered part of this proposal. Proposal is valid for thirty (30) days from the delivery date of March 10, 2020. Payment is due within 30 days of invoice date.

Payment Terms: 25% mobilization in advance, progress payments

Total: \$7,995.00

Terms & Conditions Link(s)

Terms and Conditions (Click to download)

[Terms & Conditions](#)

(http://w3.usa.siemens.com/buildingtechnologies/us/en/legal_information/Documents/Siemens-Projects-Business-Standard-Terms-and-Conditions-FINAL-US.pdf)

Attachment A

Riders (Click on rider below to download)

[BT Fire Life Safety Rider](#)

(http://w3.usa.siemens.com/buildingtechnologies/us/en/legal_information/Documents/Siemens-Standard-Terms-BT-FLS-Rider-Final.pdf)

[BT Mass Notification Rider](#)

(http://w3.usa.siemens.com/buildingtechnologies/us/en/legal_information/Documents/Siemens-Standard-Terms-BT-Mass-Notification-Rider-Final.pdf)

[BT Monitoring Rider](#)

(http://w3.usa.siemens.com/buildingtechnologies/us/en/legal_information/Documents/Siemens-Standard-Terms-BT-Monitoring-Rider-Final.pdf)

[BT Software License Warranty](#)

(http://w3.usa.siemens.com/buildingtechnologies/us/en/legal_information/Documents/Siemens-Standard-Terms-SOFTWARE-LICENSE-WARRANTY-RIDER-Final.pdf)

[BT Consulting Rider](#)

(http://w3.usa.siemens.com/buildingtechnologies/us/en/legal_information/Documents/Consulting-Rider.pdf)

Signature Page

Proposed by:

Siemens Industry Inc.

Company

James Martin

Name

4652518

Proposal #

\$7,995.00

Proposal Amount

March 10, 2020

Date

Accepted by:

PARC

Company

TIFFANY SMITH

Name (Printed)

[Handwritten Signature]

Signature

DIRECTOR

Title

03-10-2020

Date

Purchase Order #

SIEMENS

Ingenuity for life

PROPOSAL

PARC 120 S. 8th St. Garage FS-250 Fire Panel Migration

PREPARED BY

Jamie Martin - Building Technologies Division of Siemens Industry Inc.

PREPARED FOR

William Heitzman - PARC

DELIVERED ON

March 10, 2020

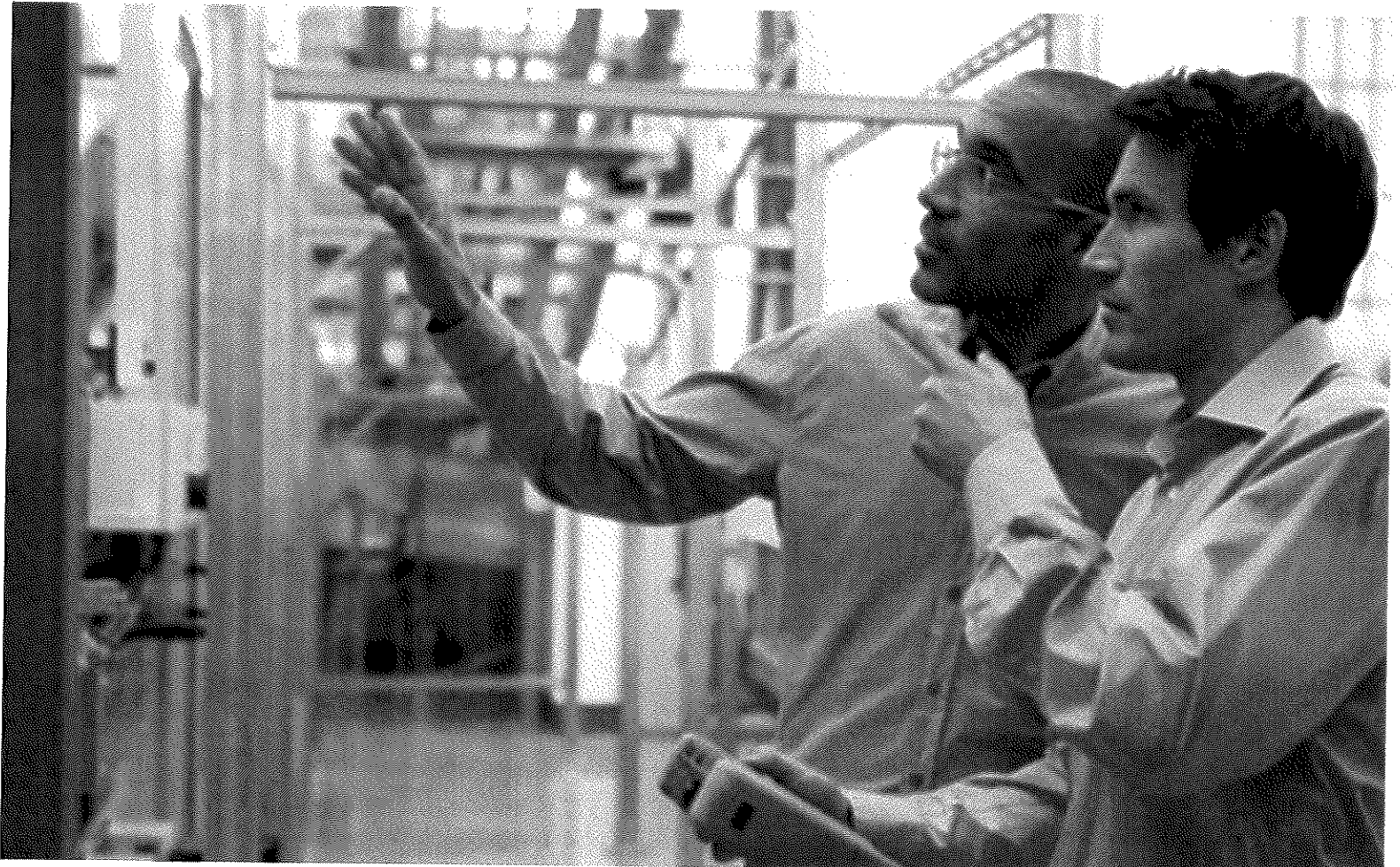


Table of Contents

SIEMENS PROPOSAL	3
Contact Information	3
Scope of Work	4
Inclusions	5
Exclusions	6
Sell Price.....	7
Payment Terms.....	8
Terms and Conditions.....	9
Terms & Conditions Link(s)	9
Signature Page	10
Signature Page	10

Contact Information

Proposal #:	4652545
Date:	March 10, 2020

Sales Executive:	James Martin
Branch Address:	2700 Stanley Gault Parkway Suite 135 Louisville, Kentucky, 40223
Telephone:	502-297-7978
Email Address:	james.g.martin@siemens.com

Attn:	William Heitzman - Parking Facilities Coordinator
Customer:	PARC
Address:	222 S. First St., Ste. 400 Louisville, Kentucky 40202
Phone:	502-475-7161
Email Address:	william.heizman@louisvilleky.gov
Project Name	PARC 120 S. 8th St. Garage FS-250 Fire Panel Migration
Project Location:	120 S. 8th St., Louisville, Kentucky 40202

Scope of Work

We at Siemens Industry, Inc. Building Technologies Division, are pleased for the opportunity to present a fire and life safety solution proposal for PARC. This scope statement shall include the following:

- Main Siemens FS-250 Fire Panel Migration to Siemens Desigo.
- One (1) remote annunciator fire panel migration to Siemens Desigo on ground level at elevators.
- Programming of the Siemens Desigo Fire Panel to include existing fire system field devices (if existing field devices are deficient, replacement of existing field devices is not included). Existing field devices are compatible with the Siemens Desigo System and can remain, which is a huge cost savings to PARC. However, PARC should plan to replace the existing field devices in the near future.
- Final Siemens Desigo fire system re-certification testing and inspection following the migration; includes Siemens fire panels and field devices; excludes sprinkler system if applicable and any other systems.
- *There was an existing NC 04 Trouble noted on the fire system during the site walk through. Siemens technicians will attempt to resolve this issue during the allowed project time. However, if this trouble resolution is extensive, this issue will be billed via a change order for additional labor and all necessary material.
- This system currently has a Silent Knight dialer and 3rd party services for fire monitoring. This Silent Dialer and 3rd party services will remain and no Siemens dialer will be supplied or programmed. It is possible your current fire monitoring service provider will have to re-program the dialer to their monitoring station.

This solution proposal intends to deliver to PARC the most innovative, cost effective, and industry supported approach to fire and life safety.

This fire system migration is necessary as the Siemens FS-250 fire system and its replacement parts have been discontinued and no longer fully supported as of October 1, 2018. FS-250 replacement parts for repairs are very limited, if available at all.

*Any additional material, equipment and/or labor beyond this Scope of Work will be at additional cost to PARC via a change order.

Inclusions

1. Material Taxes
2. Freight
3. Engineering
4. Project Management for Siemens Scope of work
5. System Re-certification Testing
6. Demolition of the existing fire alarm system
7. Customer equipment orientation
8. Final connection to the control panel
9. Programming
10. One (1) year warranty

Exclusions

1. Offsite monitoring systems fees
2. Cost associated with multiple trips to the job site due to incompleteness by others
3. Working in areas containing hazardous materials
4. Cost associated with schedule acceleration or multiple unplanned phases
5. Telephone line (s) for DACT
6. Ceiling removal or replacement, patching and painting
7. Costs associated with bypassing the system during construction
8. Building and construction permit fees
9. Base building cad drawings from which to base or design
10. Ceiling and/or wall removal, replacement, patching, and painting
11. Overtime
12. After hours work
13. Additional testing due to others
14. Dedicated phone lines (if required for monitoring)
15. 120vac power
16. Conduit raceway, and supports
17. Performance or payment bonds
18. Bonding or special insurance
19. Fire caulking
20. Electrical boxes and supports
21. Scaffolding and lifts
22. Knox box
23. Shunt trip breakers
24. Security system interface or door lock release

SIEMENS

Ingenuity for life

Sell Price

Total Quote Price

\$8,941.00

Payment Terms

Payment Terms Acceptance Agreement

The total price of: \$8,941.00 and the estimated return on investment are based on the items outlined in this proposal. ANY statements made herein regarding savings that may be achieved by implementing the services offered in this proposal are estimates only. No warranty, either expressed or implied, shall be construed to arise from such statements, nor shall such statements be construed as constituting a guarantee by Siemens that such savings will occur if the services are implemented.

Terms and Conditions Disclaimer

The Customer acknowledges that when approved by the Customer and accepted by Siemens Industry, Inc.: (i) the Proposal and the Contract Terms and Conditions, (together with any other documents incorporated into the forgoing) shall constitute the entire agreement of the parties with respect to its subject matter (collectively, hereinafter referred to as the "Agreement") and (ii) in the event of any conflict between the terms and conditions of the Proposal and the terms and conditions of The Contract Terms and Conditions, the Contract Terms and Conditions shall control.

BY EXECUTION HEREOF, THE SIGNER CERTIFIES THAT (S)HE HAS READ ALL OF THE TERMS AND CONDITIONS AND DOCUMENTS, THAT SIEMENS OR ITS REPRESENTATIVES HAVE MADE NO AGREEMENTS OR REPRESENTATIONS EXCEPT AS SET FORTH THEREIN, AND THAT (S)HE IS DULY AUTHORIZED TO EXECUTE THE SIGNATURE PAGE ON BEHALF OF THE CUSTOMER.

This Proposal is based on the Siemens Industry, Inc. Standard Terms and Conditions and the "Scope of Work" and are to be considered part of this proposal. Proposal is valid for thirty (30) days from the delivery date of March 10, 2020. Payment is due within 30 days of invoice date.

Payment Terms: 25% mobilization in advance, progress payments

Total: \$8,941.00

Terms & Conditions Link(s)

Terms and Conditions (Click to download)

Terms & Conditions

(http://w3.usa.siemens.com/buildingtechnologies/us/en/legal_information/Documents/Siemens-Projects-Business-Standard-Terms-and-Conditions-FINAL-US.pdf)

Attachment A

Riders (Click on rider below to download)

BT Fire Life Safety Rider

(http://w3.usa.siemens.com/buildingtechnologies/us/en/legal_information/Documents/Siemens Standard Terms - BT FLS Rider Final.pdf)

BT Mass Notification Rider

(http://w3.usa.siemens.com/buildingtechnologies/us/en/legal_information/Documents/Siemens Standard Terms - BT Mass Notification Rider Final.pdf)

BT Monitoring Rider

(http://w3.usa.siemens.com/buildingtechnologies/us/en/legal_information/Documents/Siemens Standard Terms - BT Monitoring Rider Final.pdf)

BT Software License Warranty

(http://w3.usa.siemens.com/buildingtechnologies/us/en/legal_information/Documents/Siemens Standard Terms -SOFTWARE LICENSE-WARRANTY RIDER Final.pdf)

BT Consulting Rider

(http://w3.usa.siemens.com/buildingtechnologies/us/en/legal_information/Documents/Consulting-Rider.pdf)

Signature Page

Proposed by:

Siemens Industry Inc.

Company

James Martin

Name

4652545

Proposal #

\$8,941.00

Proposal Amount

March 10, 2020

Date

Accepted by:

PARC

Company

TIFFANY SMITH

Name (Printed)



Signature

DIRECTOR

Title

03-10-2020

Date

Purchase Order #

PROPOSAL

PARC 324 W. Chestnut St. Garage FS-250 Fire Panel Migration

PREPARED BY

Jamie Martin - Building Technologies Division of Siemens Industry Inc.

PREPARED FOR

William Heitzman - PARC

DELIVERED ON

March 10, 2020

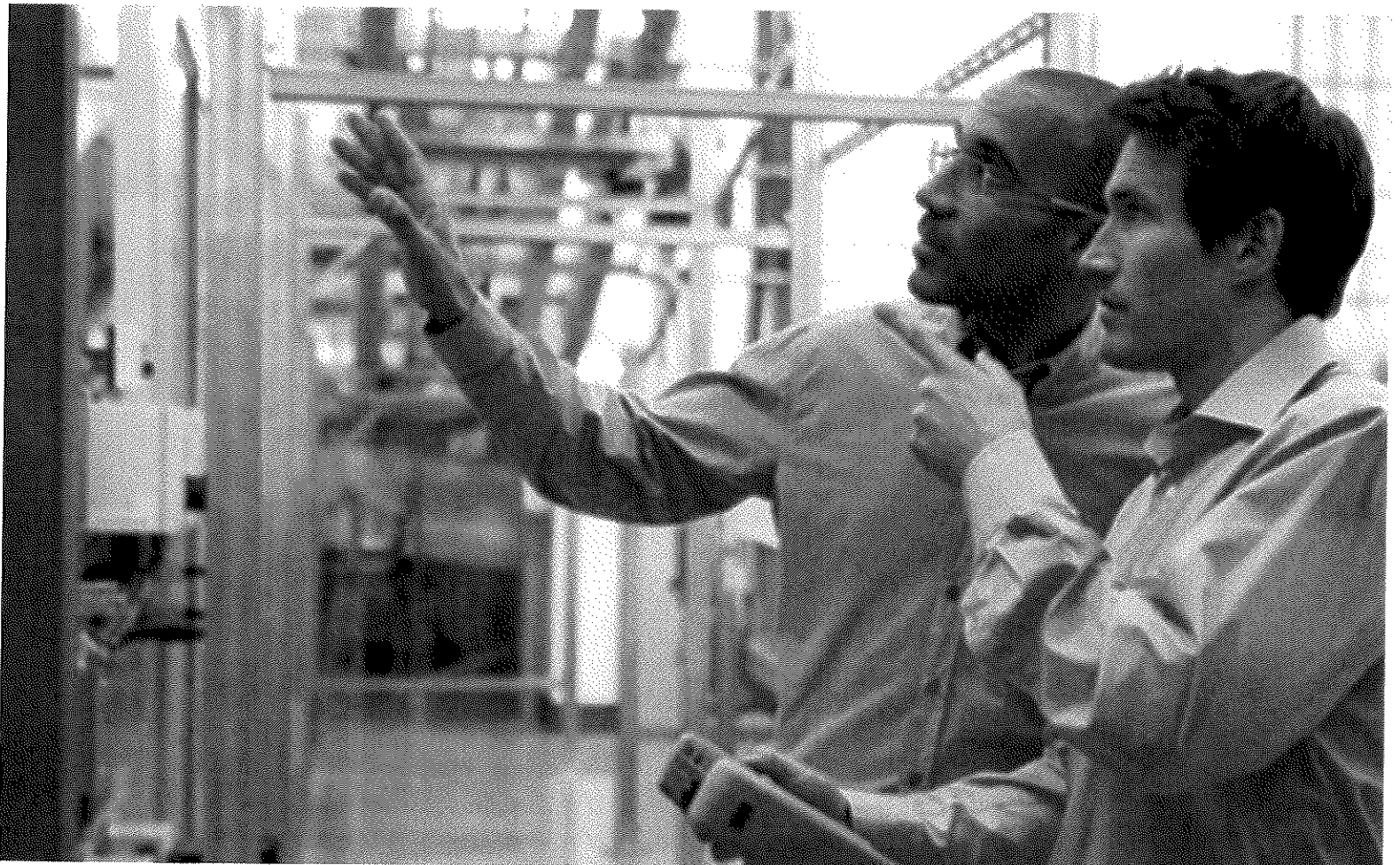


Table of Contents

SIEMENS PROPOSAL	3
Contact Information	3
Scope of Work	4
Inclusions	5
Exclusions	6
Sell Price	7
Payment Terms.....	8
Terms and Conditions.....	9
Terms & Conditions Link(s)	9
Signature Page	10
Signature Page	10

Contact Information

Proposal #:	4652680
Date:	March 10, 2020

Sales Executive:	James Martin
Branch Address:	2700 Stanley Gault Parkway Suite 135 Louisville, Kentucky, 40223
Telephone:	502-297-7978
Email Address:	james.g.martin@siemens.com

Attn:	William Heitzman - Parking Facilities Coordinator
Customer:	PARC
Address:	222 S. First St., Ste. 400 Louisville, Kentucky 40202
Phone:	502-475-7161
Email Address:	william.heizman@louisvilleky.gov
Project Name	PARC 324 W. Chestnut St. Garage FS-250 Fire Panel Migration
Project Location:	324 W. Chestnut St., Louisville, Kentucky 40202

Scope of Work

We at Siemens Industry, Inc. Building Technologies Division, are pleased for the opportunity to present a fire and life safety solution proposal for PARC. This scope statement shall include the following:

- Main Siemens FS-250 Fire Panel Migration to Siemens Desigo (no remote annunciator noted or included).
- Programming of the Siemens Desigo Fire Panel to include existing Siemens fire system field devices (if existing field devices are deficient, replacement of existing field devices is not included). Existing Siemens field devices are compatible with the Siemens Desigo System and can remain, which is a huge cost savings to PARC. However, PARC should plan to replace the existing field devices in the near future.
- Final Siemens Desigo fire system re-certification testing and inspection following the migration; includes Siemens fire panels and field devices; excludes sprinkler system if applicable and any other systems.
- This fire system currently has no dialer nor fire monitoring services. I offered a Siemens dialer and fire monitoring services, but the customer said neither is needed at this time.

This solution proposal intends to deliver to PARC the most innovative, cost effective, and industry supported approach to fire and life safety.

This fire system migration is necessary as the Siemens FS-250 fire system and its replacement parts have been discontinued and no longer fully supported as of October 1, 2018. FS-250 replacement parts for repairs are very limited, if available at all.

*Any additional material, equipment and/or labor beyond this Scope of Work will be at additional cost to PARC via a change order.

Inclusions

1. Material Taxes
2. Freight
3. Engineering
4. Project Management for Siemens Scope of work
5. System Re-certification Testing
6. Demolition of the existing fire alarm system
7. Customer equipment orientation
8. Final connection to the control panel
9. Programming
10. One (1) year warranty

Exclusions

1. Offsite monitoring systems fees
2. Cost associated with multiple trips to the job site due to incompleion by others
3. Working in areas containing hazardous materials
4. Cost associated with schedule acceleration or multiple unplanned phases
5. Telephone line (s) for DACT
6. Ceiling removal or replacement, patching and painting
7. Costs associated with bypassing the system during construction
8. Building and construction permit fees
9. Base building cad drawings from which to base or design
10. Ceiling and/or wall removal, replacement, patching, and painting
11. Overtime
12. After hours work
13. Additional testing due to others
14. Dedicated phone lines (if required for monitoring)
15. 120vac power
16. Conduit raceway, and supports
17. Performance or payment bonds
18. Bonding or special insurance
19. Fire caulking
20. Electrical boxes and supports
21. Scaffolding and lifts
22. Knox box
23. Shunt trip breakers
24. Security system interface or door lock release

SIEMENS

Ingenuity for life

Sell Price

Total Quote Price

\$7,560.00

Payment Terms

Payment Terms Acceptance Agreement

The total price of: \$7,560.00 and the estimated return on investment are based on the items outlined in this proposal. ANY statements made herein regarding savings that may be achieved by implementing the services offered in this proposal are estimates only. No warranty, either expressed or implied, shall be construed to arise from such statements, nor shall such statements be construed as constituting a guarantee by Siemens that such savings will occur if the services are implemented.

Terms and Conditions Disclaimer

The Customer acknowledges that when approved by the Customer and accepted by Siemens Industry, Inc.: (i) the Proposal and the Contract Terms and Conditions, (together with any other documents incorporated into the forgoing) shall constitute the entire agreement of the parties with respect to its subject matter (collectively, hereinafter referred to as the "Agreement") and (ii) in the event of any conflict between the terms and conditions of the Proposal and the terms and conditions of The Contract Terms and Conditions, the Contract Terms and Conditions shall control.

BY EXECUTION HEREOF, THE SIGNER CERTIFIES THAT (S)HE HAS READ ALL OF THE TERMS AND CONDITIONS AND DOCUMENTS, THAT SIEMENS OR ITS REPRESENTATIVES HAVE MADE NO AGREEMENTS OR REPRESENTATIONS EXCEPT AS SET FORTH THEREIN, AND THAT (S)HE IS DULY AUTHORIZED TO EXECUTE THE SIGNATURE PAGE ON BEHALF OF THE CUSTOMER.

This Proposal is based on the Siemens Industry, Inc. Standard Terms and Conditions and the "Scope of Work" and are to be considered part of this proposal. Proposal is valid for thirty (30) days from the delivery date of March 10, 2020. Payment is due within 30 days of invoice date.

Payment Terms: 25% mobilization in advance, progress payments

Total: \$7,560.00

Terms & Conditions Link(s)

Terms and Conditions (Click to download)

Terms & Conditions

(http://w3.usa.siemens.com/buildingtechnologies/us/en/legal_information/Documents/Siemens-Projects-Business-Standard-Terms-and-Conditions-FINAL-US.pdf)

Attachment A

Riders (Click on rider below to download)

BT Fire Life Safety Rider

(http://w3.usa.siemens.com/buildingtechnologies/us/en/legal_information/Documents/Siemens Standard Terms - BT FLS Rider Final.pdf)

BT Mass Notification Rider

(http://w3.usa.siemens.com/buildingtechnologies/us/en/legal_information/Documents/Siemens Standard Terms - BT Mass Notification Rider Final.pdf)

BT Monitoring Rider

(http://w3.usa.siemens.com/buildingtechnologies/us/en/legal_information/Documents/Siemens Standard Terms - BT Monitoring Rider Final.pdf)

BT Software License Warranty

(http://w3.usa.siemens.com/buildingtechnologies/us/en/legal_information/Documents/Siemens Standard Terms -SOFTWARE LICENSE-WARRANTY RIDER Final.pdf)

BT Consulting Rider

(http://w3.usa.siemens.com/buildingtechnologies/us/en/legal_information/Documents/Consulting-Rider.pdf)

Signature Page

Proposed by:

Siemens Industry Inc.

Company

James Martin

Name

4652680

Proposal #

\$7,560.00

Proposal Amount

March 10, 2020

Date

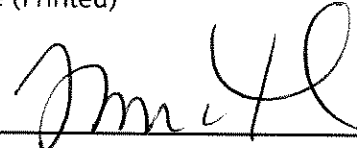
Accepted by:

PARC

Company

TIFFANY SMITH

Name (Printed)



Signature

DIRECTOR

Title

03-10-2020

Date

Purchase Order #

SIEMENS

Ingenuity for life

PROPOSAL

PARC 838 W. Market St. Garage FS-250 Fire Panel Migration

PREPARED BY

Jamie Martin - Building Technologies Division of Siemens Industry Inc.

PREPARED FOR

William Heitzman - PARC

DELIVERED ON

March 10, 2020

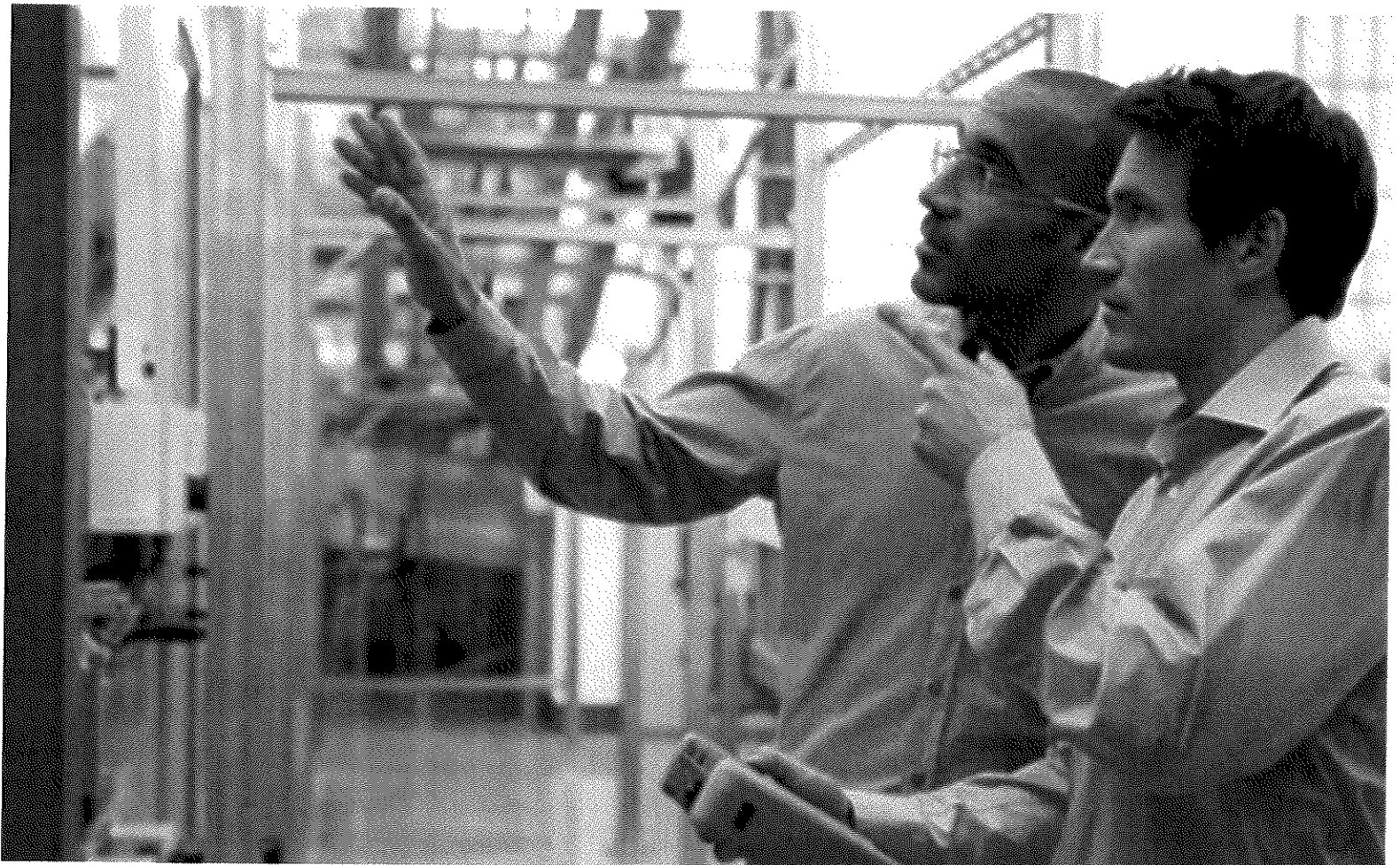


Table of Contents

SIEMENS PROPOSAL	3
Contact Information	3
Scope of Work	4
Inclusions	5
Exclusions	6
Sell Price.....	7
Payment Terms.....	8
Terms and Conditions.....	9
Terms & Conditions Link(s)	9
Signature Page	10
Signature Page	10

Contact Information

Proposal #:	4652582
Date:	March 10, 2020

Sales Executive:	James Martin
Branch Address:	2700 Stanley Gault Parkway Suite 135 Louisville, Kentucky, 40223
Telephone:	502-297-7978
Email Address:	james.g.martin@siemens.com

Attn:	William Heitzman - Parking Facilities Coordinator
Customer:	PARC
Address:	222 S. First St., Ste. 400 Louisville, Kentucky 40202
Phone:	502-475-7161
Email Address:	william.heizman@louisvilleky.gov
Project Name	PARC 838 W. Market St. Garage FS-250 Fire Panel Migration
Project Location:	838 W. Market St., Louisville, Kentucky 40202

Scope of Work

We at Siemens Industry, Inc. Building Technologies Division, are pleased for the opportunity to present a fire and life safety solution proposal for PARC. This scope statement shall include the following:

- Main Siemens FS-250 Fire Panel Migration to Siemens Desigo (no remote annunciator noted or included).
- Programming of the Siemens Desigo Fire Panel to include existing Siemens fire system field devices (if existing field devices are deficient, replacement of existing field devices is not included). Existing Siemens field devices are compatible with the Siemens Desigo System and can remain, which is a huge cost savings to PARC. However, PARC should plan to replace the existing field devices in the near future.
- Final Siemens Desigo fire system re-certification testing and inspection following the migration; includes Siemens fire panels and field devices; excludes sprinkler system if applicable and any other systems.
- This fire system currently has no dialer nor fire monitoring services. I offered a Siemens dialer and fire monitoring services, but the customer said neither is needed at this time.
- *There was an existing Battery Trouble noted on the fire system during the site walk through. I recommended the fire panel batteries be replaced. The customer said his staff would replace the batteries.

This solution proposal intends to deliver to PARC the most innovative, cost effective, and industry supported approach to fire and life safety.

This fire system migration is necessary as the Siemens FS-250 fire system and its replacement parts have been discontinued and no longer fully supported as of October 1, 2018. FS-250 replacement parts for repairs are very limited, if available at all.

*Any additional material, equipment and/or labor beyond this Scope of Work will be at additional cost to PARC via a change order.

Inclusions

1. Material Taxes
2. Freight
3. Engineering
4. Project Management for Siemens Scope of work
5. System Re-certification Testing
6. Demolition of the existing fire alarm system
7. Customer equipment orientation
8. Final connection to the control panel
9. Programming
10. One (1) year warranty

Exclusions

1. Offsite monitoring systems fees
2. Cost associated with multiple trips to the job site due to incompleteness by others
3. Working in areas containing hazardous materials
4. Cost associated with schedule acceleration or multiple unplanned phases
5. Telephone line (s) for DACT
6. Ceiling removal or replacement, patching and painting
7. Costs associated with bypassing the system during construction
8. Building and construction permit fees
9. Base building cad drawings from which to base or design
10. Ceiling and/or wall removal, replacement, patching, and painting
11. Overtime
12. After hours work
13. Additional testing due to others
14. Dedicated phone lines (if required for monitoring)
15. 120vac power
16. Conduit raceway, and supports
17. Performance or payment bonds
18. Bonding or special insurance
19. Fire caulking
20. Electrical boxes and supports
21. Scaffolding and lifts
22. Knox box
23. Shunt trip breakers
24. Security system interface or door lock release

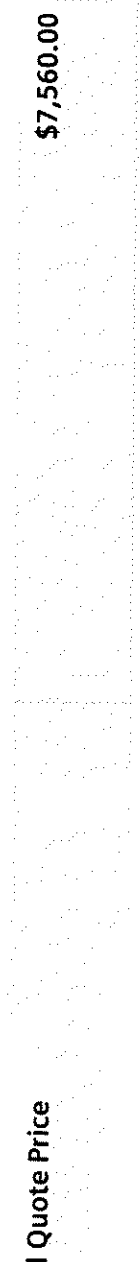
SIEMENS

Ingenuity for life

Sell Price

Total Quote Price

\$7,560.00



Payment Terms

Payment Terms Acceptance Agreement

The total price of: \$7,560.00 and the estimated return on investment are based on the items outlined in this proposal. ANY statements made herein regarding savings that may be achieved by implementing the services offered in this proposal are estimates only. No warranty, either expressed or implied, shall be construed to arise from such statements, nor shall such statements be construed as constituting a guarantee by Siemens that such savings will occur if the services are implemented.

Terms and Conditions Disclaimer

The Customer acknowledges that when approved by the Customer and accepted by Siemens Industry, Inc.: (i) the Proposal and the Contract Terms and Conditions, (together with any other documents incorporated into the forgoing) shall constitute the entire agreement of the parties with respect to its subject matter (collectively, hereinafter referred to as the "Agreement") and (ii) in the event of any conflict between the terms and conditions of the Proposal and the terms and conditions of The Contract Terms and Conditions, the Contract Terms and Conditions shall control.

BY EXECUTION HEREOF, THE SIGNER CERTIFIES THAT (S)HE HAS READ ALL OF THE TERMS AND CONDITIONS AND DOCUMENTS, THAT SIEMENS OR ITS REPRESENTATIVES HAVE MADE NO AGREEMENTS OR REPRESENTATIONS EXCEPT AS SET FORTH THEREIN, AND THAT (S)HE IS DULY AUTHORIZED TO EXECUTE THE SIGNATURE PAGE ON BEHALF OF THE CUSTOMER.

This Proposal is based on the Siemens Industry, Inc. Standard Terms and Conditions and the "Scope of Work" and are to be considered part of this proposal. Proposal is valid for thirty (30) days from the delivery date of March 10, 2020. Payment is due within 30 days of invoice date.

Payment Terms: 25% mobilization in advance, progress payments

Total: \$7,560.00

Terms & Conditions Link(s)

Terms and Conditions (Click to download)

[Terms & Conditions](#)

(http://w3.usa.siemens.com/buildingtechnologies/us/en/legal_information/Documents/Siemens-Projects-Business-Standard-Terms-and-Conditions-FINAL-US.pdf)

Attachment A

Riders (Click on rider below to download)

[BT Fire Life Safety Rider](#)

(http://w3.usa.siemens.com/buildingtechnologies/us/en/legal_information/Documents/Siemens Standard Terms - BT FLS Rider Final.pdf)

[BT Mass Notification Rider](#)

(http://w3.usa.siemens.com/buildingtechnologies/us/en/legal_information/Documents/Siemens Standard Terms - BT Mass Notification Rider Final.pdf)

[BT Monitoring Rider](#)

(http://w3.usa.siemens.com/buildingtechnologies/us/en/legal_information/Documents/Siemens Standard Terms - BT Monitoring Rider Final.pdf)

[BT Software License Warranty](#)

(http://w3.usa.siemens.com/buildingtechnologies/us/en/legal_information/Documents/Siemens Standard Terms -SOFTWARE LICENSE-WARRANTY RIDER Final.pdf)

[BT Consulting Rider](#)

(http://w3.usa.siemens.com/buildingtechnologies/us/en/legal_information/Documents/Consulting-Rider.pdf)

Signature Page

Proposed by:

Siemens Industry Inc.

Company

James Martin

Name

4652582

Proposal #

\$7,560.00

Proposal Amount

March 10, 2020

Date

Accepted by:

PARC

Company

TIFFANY SMITH

Name (Printed)

Tiffany Smith

Signature

DIRECTOR

Title

03-10-2020

Date

Purchase Order #

Addendum A to (4) PARC Migration Contracts dated August 8, 2019

- (a) **Records Audit.** Contractor shall maintain during the course of the work, and retain not less than five years from the date of final payment on the contract, complete and accurate records of all of Contractor's costs which are chargeable to Customer under this Agreement; and Customer shall have the right, at any reasonable time, to inspect and audit those records by authorized representatives of its own or of any public accounting firm selected by it. The records to be thus maintained and retained by Contractor shall include (without limitation): (a) payroll records accounting for total time distribution of Contractor's employees working full or part time on the work (to permit tracing to payrolls and related tax returns), as well as canceled payroll checks, or signed receipts for payroll payments in cash; (b) invoices for purchases receiving and issuing documents, and all the other unit inventory records for Contractor's stores stock or capital items; and (c) paid invoices and canceled checks for materials purchased and for subcontractors' and any other third parties' charges.

Language above is required in every contract by Metro OMB regulations and Metro Ordinance LMCO 20.20.

- (b) 2. Pursuant to KRS 45A.455:
- (1) It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his knowledge:
- _____ (a) He, or any member of his immediate family has a financial interest therein; or
- _____ (b) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or
- _____ (c) Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a party. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.
- (2) It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.
- (3) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- (4) The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation therefor.
- (5) It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.
- (c) 3. Contractor shall reveal any final determination of a violation by Contractor or its subcontractor within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to Contractor or its subcontractor. Contractor shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to Contractor or its subcontractor for the duration of this Agreement.

This language is required by KRS 45A.343(2) to appear in all Metro contracts.

SIEMENS STANDARD TERMS AND CONDITIONS
Standard Terms Addendum for Mass Notification Services

The terms and conditions of this Addendum for Mass Notification Services are applicable only to the Mass Notification Services identified in the Proposal (“MN”) and supplements and modifies the Standard Terms and Conditions with the following additional Articles:

MN Article 1: Definitions

- 1.1 “*Buyer Content*” means the Contact List and/or any messages, communications, information, data, text, sound, sender or recipient information sent via MN and any other Buyer materials.
- 1.2 “*Contact List*” means a list containing contact information for Buyer’s employees, agents, authorized representatives, or other individuals to be used by Siemens and its Service Providers in connection with the provision of MN.
- 1.3 “*Scope of Control*” means those areas of functionality and technology, including hardware and software used in the provision of MN that are under the direct control of a party (excluding Third Party Factors).
- 1.4 “*Service Provider(s)*” means telecommunications carriers and any other third party providers that Siemens uses for the delivery of MN to its subscribers.
- 1.5 “*Third Party Factors*” means the facilities, networks, connectivity, or any acts and/or omissions of Service Providers

MN Article 2: Buyer Obligations

2.1 Buyer shall be responsible for providing the Contact List. Buyer shall make all reasonable efforts to ensure that the Contact List contains accurate and complete information, and that the Contact List is updated and maintained on a timely basis (including without limitation conflicts with the National Do Not Call Registry, or similar registry, if any).

2.2 All Buyer Content is the property of Buyer. Buyer is solely responsible for the content of all messages sent from Buyer’s account, and for the accuracy, integrity, completeness, and appropriateness (including offensiveness, indecency, or objectionable nature) of Buyer Content. Buyer acknowledges that the MN System is simply a passive conduit for the distribution and transmission of Buyer Content. Under no circumstances shall Siemens or any Service Provider be liable in any way for any errors or omissions or for any defamatory, libelous, offensive or otherwise objectionable or unlawful content in any Buyer Content, or for any loss or damage of any kind incurred as a result of the use of any Buyer Content sent, accessed, posted, or otherwise transmitted via the MN System.

2.3 Buyer hereby grants Siemens and its Service Providers a license to use Buyer Content solely in connection with MN, specifically, to communicate with and coordinate individuals on the Contact List and/or to assist with managing the flow of information before, during and after an expected or unexpected situation.

2.4 Buyer shall promptly inform Siemens of any actual or potential unauthorized access to, or use of, MN of which Buyer has knowledge.

MN Article 3 Third Party Factors and Scope of Control

Buyer acknowledges that Siemens’ provision of MN is dependent Third Party Factors. Buyer acknowledges that the performance of MN may be affected by such Third Party Factors. SIEMENS AND ITS SERVICE PROVIDERS WILL NOT BE LIABLE FOR ANY REDUCTION, INTERRUPTION, TERMINATION OR SUSPENSION OF MN RELATED TO ANY ISSUES OUTSIDE SUCH PARTY’S SCOPE OF CONTROL, INCLUDING BUT NOT LIMITED TO ILLEGAL ACTS OF THIRD PARTIES (INCLUDING BUT NOT LIMITED TO THIRD PARTY FACTORS). Buyer shall be liable to Siemens for

any additional labor or material costs, expenses or charges arising out of software, technology or communication issues relating to the operation of the MN system.

MN Article 4 Data Privacy

4.1 Buyer acknowledges that the portion of the locations (of Siemens or its Service Providers) through which content shall pass and the servers on which content shall be stored may not be segregated or in a separate physical location from servers on which Siemens' (or its Service Providers') other Buyer Content is or shall be transmitted or stored.

4.2 Each party shall abide by all applicable local, state, national and international laws, treaties, rules and regulations, including those related to data privacy, international communications and the transmission of technical or personal data, and the terms and conditions of its privacy policy in connection with its use of MN and its collection of data in the Contact List.

MN Article 5 Unlawful or Prohibited Conduct

Buyer covenants that it shall only use MN pursuant to these Terms and Conditions and shall not knowingly use MN in connection with any unlawful or prohibited activity and/or in connection with Buyer's transmission or other association with spam or other unsolicited messaging activities. Such activities can cause harm to Siemens (and its customer base) by damaging the brand name and reputation of Siemens, its customers, and Service Providers. Any such unlawful or prohibited use of MN shall entitle Siemens to suspend and/or terminate this Agreement.

MN Article 6 Siemens Practices

6.1 Buyer acknowledges, as applicable, that either (1) MN is a fully hosted application; or (2) MN is part of a combined system that includes a fully hosted application; or (3) MN is a premised based system only.

6.2 In the event that Siemens believes that Buyer is abusing MN, Siemens shall notify the Buyer of the abuse in writing and shall have the right to immediately suspend MN Services. If such abuse is not remedied or corrected within thirty (30) days, Siemens shall have the right to terminate its provision of MN Services.

6.3 Siemens shall not wrongfully or negligently disclose, modify, copy, display, distribute, transfer, provide access to, or sell Buyer Content to any third party, other than to government and law enforcement officials when required by law (e.g., in compliance with a subpoena or court order) and to Service Providers in order to provide MN. Siemens shall notify Buyer as soon as practicable upon receipt of a subpoena or court or governmental order requiring Siemens to disclose confidential Buyer Content with the intention of providing Buyer with the opportunity to oppose the disclosure. Siemens shall never sell, lease, barter or share any identifiable information (names, addresses, and contact device identifiers) from any account and safeguards the privacy of each and every Buyer. Siemens shall preclude the use or knowing disclosure of the Buyer Content within Siemens own organization or its Service Providers, except as necessary to perform MN.

MN Article 7 Buyer Representations and Warranties

Buyer represents and warrants that: (i) it will not make any unauthorized representation or warranty relating to MN to any user that accesses MN through Buyer or to any third party; (ii) it has the right and authority to

provide to Siemens and its Service Providers all of the individual information that appears in the Contact List and to authorize Siemens and its Service Providers to use such information in connection with Siemens provision of MN; and (iii) it shall abide by the use restrictions with respect to MN set forth in this Agreement.

MN Article 8 Siemens Representations and Warranties

8.1 Siemens represents and warrants that: (i) MN will conform in all material respects to Siemens published user documentation; (ii) all support and training to be performed hereunder in connection with Siemens provision of MN shall be performed in a professional manner consistent with industry standards; (iii) it has put in place commercially reasonable procedures to protect Buyer privacy.

8.2 EXCEPT AS OTHERWISE PROVIDED HEREIN, MN IS PROVIDED "AS IS." EXCEPT AS OTHERWISE PROVIDED HEREIN, SIEMENS DOES NOT MAKE ON BEHALF OF ITSELF OR ITS SERVICE PROVIDERS ANY, AND HEREBY DISCLAIMS ALL, REPRESENTATIONS, CONDITIONS, OR WARRANTIES, ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE ARISING FROM COURSE OF DEALING OR OTHERWISE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, REGARDING MN OR ANY OTHER MATTER PERTAINING TO THIS AGREEMENT.

MN Article 9 Text Messages

Under no circumstances shall Siemens be liable to Buyer, to any individual on the Contact List, or to any other person for any charges that arise from a Buyer's or an individual person's receipt of a text message.

MN Article 10 Indemnification

10.1 To the extent permitted by Kentucky law, Buyer agrees to indemnify, defend, and hold harmless Siemens, the Service Providers, and each of its and their officers, directors, owners, employees, agents, or vendors, from and against all third party actions, suits, losses, liabilities, claims, expenses, damages, and costs of every kind and description including reasonable legal fees (collectively, "Losses") arising out of or in connection with (i) a breach of this Agreement by Buyer, (ii) Buyer's use of MN (except to the extent of Siemens indemnification obligations below), and (iii) a claim that the Buyer Content, or any use of such content by Siemens or a Service Provider in connection with the performance of MN, violates a third party's intellectual property, proprietary, or other rights, including, without limitation, the right of publicity and the right of privacy.

10.2 To the extent that Siemens is providing the MN via connection through a third-party system which has not been installed by Siemens, Siemens disclaims any and liability to the extent that such third-party system malfunctions during or following commissioning of MN with the exception that Siemens' indemnity obligations shall apply if Siemens acted negligently in such installation and such negligence caused the Buyer damage.

MN Article 11 Limitation of Liability

IN NO EVENT SHALL THE COLLECTIVE LIABILITY OF SIEMENS, ITS AFFILIATES, SERVICE PROVIDERS, AND ITS AND THEIR DIRECTORS, OFFICERS, AND EMPLOYEES FOR ANY DAMAGES INCURRED BY BUYER EXCEED THE GREATER OF \$1000 OR 10% OF THE TOTAL FEES ACTUALLY PAID BY BUYER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRIOR TO THE TIME AT WHICH THE DAMAGES AROSE, REGARDLESS OF THE FORM OF ACTION.

MONITORING SERVICE TERMS AND CONDITIONS (Rev. 11/17)

Article 1: General

1.1 This Agreement governs the sale and performance of Central Station Monitoring (CMS) or Buyer Support Center (CSC) Monitoring Services provided by Siemens ("Services"). These terms, any other applicable addenda, Siemens' proposal, price quote, purchase order or acknowledgement issued by Siemens form the parties' final agreement ("Agreement"). In the event of any ambiguity or conflict between these documents, precedence shall apply in accordance with the order written in the previous sentence. Siemens' proposal, offer or acceptance is conditioned on Buyer's acceptance of this Agreement. Any additional or conflicting terms in Buyer's request for proposal, specifications, purchase order or any other written or oral communication are not binding on Siemens unless separately signed by Siemens. Siemens' failure to object to Buyer's additional or conflicting terms does not operate as a waiver of the terms contained in this Agreement.

1.2 "Monitored Site" means the Buyer's site for which Services are to be provided.

1.3 "Authority Having Jurisdiction" or "AHJ" means an organization, office, or individual responsible for enforcing the requirements of a code or standard, or for approving equipment, materials, and installation, or a procedure.

1.4 After the expiration of the Initial Term, this Agreement shall automatically renew for successive one year periods beginning on the anniversary date of the Initial Term unless stated otherwise in the Agreement.

Article 2: Pricing & Payment

2.1 Unless stated in Siemens' proposal, all payments are due net thirty (30) days from the invoice date in United States Dollars.

2.2 Siemens' performance of Services is subject to credit approval by Siemens. If there is doubt as to Buyer's financial condition, Siemens may withhold performance of Services, require cash payments or advance payments, or require other satisfactory financial security before performance of Services. Unless otherwise prohibited by law, Siemens may terminate this Agreement immediately in the event of a material adverse change in the Buyer's financial condition, including, but not limited to bankruptcy, insolvency, or liquidation.

2.3 Unless stated in writing by Siemens, Siemens' rates exclude charges for taxes, excises, fees, duties or other government charges related to the Services. Buyer will pay these amounts or reimburse Siemens. If Buyer claims a tax or other exemption or direct payment permit, Buyer will provide a valid exemption certificate or permit and indemnify, defend and hold Siemens harmless from any taxes, costs and penalties arising from same. Increases, changes (including in application), adjustments or surcharges which may be incurred are for Buyer's account.

2.4 Late payments shall bear interest at an annual percentage rate of twelve percent (12%) or the highest rate allowed by law, whichever is lower.

2.5 If Buyer disputes all or any portion of an invoice, it must first deliver written notice to Siemens of the disputed amount and the basis for the dispute within twenty-one (21) days of receiving the invoice. Failure of Buyer to timely notify Siemens of any dispute constitutes a waiver of Buyer's claim. If Buyer only disputes a portion of the invoice Buyer must pay the undisputed portion in accordance with Article 2.1. Upon resolution of the dispute in favor of Siemens, Buyer must pay the invoice or the remainder of the invoice, plus any accrued interest on the late payment.

2.6 Siemens may suspend Services if an undisputed invoice is more than fifteen (15) days past due. Siemens may terminate this Agreement if an undisputed invoice is more than thirty (30) days past due.

2.7 Unless agreed otherwise, the pricing for each year after the Initial Term of the Agreement and each year of each renewal of the Agreement shall be determined as the immediate prior year price plus a price escalator of three percent (3%). In addition, each renewal term pricing shall be adjusted for any additions or deletions to Services selected for the renewal term. Except for where the Initial Term annual pricing is specifically identified in the Proposal, this escalator shall be applicable to each annual term, whether a renewal term or an annual term after the first year of the Initial Term.

Article 3: Risk of Loss and Schedule

3.1 Services shall be performed at the Monitored Site identified in the proposal. Risk of loss of or damage to Buyer's equipment shall remain with Buyer at all times during the performance of the Services hereunder. If Buyer procures or has procured property damage insurance applicable to occurrences at the Monitored Site, Siemens Industry, Inc.

Buyer shall obtain a waiver by the insurers of all subrogation rights against Siemens.

3.2 Except as expressly provided herein, Siemens shall not be responsible for the adequacy of the security, safety or health programs or precautions related to Buyer's activities or operations, or the Monitored Site's conditions.

Article 4: Services by Siemens

4.1 Siemens may provide alarm monitoring and/or notification services to Buyer under this Agreement. Buyer acknowledges and agrees that in the event an alarm is received at Siemens' monitoring center, Siemens will attempt to contact Buyer or any representative provided to Siemens on Buyer's Emergency contact list by telephone/ two-way voice to confirm the alarm is not false. In the event Siemens fails to contact Buyer or its representative, Siemens will attempt to notify the police department or fire department. Buyer agrees that Siemens shall have no liability pertaining to any two way voice communications, text messaging or internet video recordings or their publication. Siemens shall not be liable for any damages or alarm signal failures due to communication disruptions to telephone lines, cell phones, internet connections, radio frequency, internet, any other transmission modes, including but not limited to DSL, Cable, ADSL, and VOIP. Siemens shall have no responsibility or liability for interruptions of service or any resulting consequence.

4.2 Siemens' response to receipt of signals from the alarm system and signaling initiation devices (collectively, "System") shall be in accordance with Siemens' Standard Operating Procedures and with this Agreement. Siemens reserves the right, in its sole judgment, to first investigate the cause of such signals by either telephoning Buyer at Buyer's designated telephone number(s), or dispatching a representative to Buyer's premises to determine whether an emergency condition exists, warranting transmission of the signal(s) to the Police ("security monitoring"), Fire Department ("fire monitoring"), and/or Buyer's designated representative ("mechanical monitoring").

4.3 The Services performed by Siemens shall be conducted in a manner consistent with the degree of care and skill ordinarily exercised by reputable companies performing the same or similar Services in the same locale acting under similar circumstances and conditions.

4.4 SIEMENS is not required to conduct safety or other tests, install or maintain devices or equipment or make modifications to the System.

Article 5: Force Majeure/Delays.

If either party is unable to perform or suffers delay in performance, due to any cause beyond its reasonable control (regardless of whether the cause was foreseeable), the time of performance will be extended by a period equal to the length of time it takes to overcome the effect of the event. In addition, Siemens shall be entitled to be compensated by Buyer for reasonable and direct additional costs incurred during such event. Siemens will notify Buyer within a reasonable time after becoming aware of any such event. If there are force majeure delays exceeding 180 days in the aggregate, Siemens may terminate the Agreement. For the avoidance of doubt, failure to pay shall not constitute a force majeure delay.

Article 6: Buyer's Requirements

6.1 Buyer, without cost to Siemens, shall, at its sole expense:

(a) Furnish Siemens with a written list of names, titles, and contact phone numbers of all persons authorized to enter the Monitored Site after business hours and provide Siemens with written updates of any change prior to close of business at the Monitored Site on the day of such change;

(b) Furnish Siemens with a written list of names, titles, and contact phone numbers of persons to be notified in the event a System signal is received and provide Siemens with written updates of any change prior to close of business at the Monitored Site on the day of such change;

(c) Furnish Siemens written notice of any changes in the System or any applicable bureau or authority having jurisdiction for same;

(d) Notify Siemens of any alterations, remodeling, or any stock, fixture or structural changes, and to perform and bear the cost of changes in the System required as a result of such changes;

(e) Operate, maintain, repair, service, and/or assure the proper operation of the System and any other property (including but not limited to any refinishing arising from same), equipment, system or device to which the System may be attached or connected in accordance with all manufacturers' and installers' recommendations;

(f) Protect the System from tampering, vandalism, disturbance,

Remote Monitoring Only (04/19)

damage, misuse, abuse, removal or other actions which may interfere with the proper operation of the System;

(g) Carefully and properly test and set the System immediately prior to closing the Monitored Site, understanding particularly that the sensitivity and area of coverage of space protection devices may change, that Siemens is unable to detect such changes, and that "walk tests" in the area of such coverage are necessary to assure that adequate sensitivity is maintained;

(h) Turn off or remove from the Monitored Site anything which does or may interfere with the effectiveness of the System; and,

(i) Furnish telephone or network service connecting the Monitored Site to Siemens monitoring facilities.

6.2 Buyer understands that calls made to Siemens in connection with signals or access to the Monitored Site may be recorded by Siemens. Buyer, for itself, its agents, and employees consents to such recording.

6.3 Buyer shall use reasonable efforts to prevent false alarms. In the event of any false alarm (not caused by the negligence or willful misconduct of Siemens), taxes, fees or other charges of any police or fire department, or any other governmental body are the sole responsibilities of the Buyer. Buyer agrees to pay Siemens to reprogram the system if necessary to comply with any area code, telephone numbering or other changes. Buyer shall directly pay or, to the extent paid by Siemens, reimburse Siemens, for any false alarm fine, penalty or fee assessed against Siemens by any governmental or municipal agency as a result of such false alarms and, in addition, pay a processing fee of ten percent of each invoice that Siemens submits to the Buyer for such false alarms.

6.4 Buyer acknowledges that the technical and pricing information contained in this Agreement is confidential and proprietary to Siemens and agrees not to disclose it or otherwise make it available to others without Siemens express written consent.

Article 7: Termination

7.1 Except for Siemens right to terminate in accordance with Articles 2.2, 2.6 and this Article 6, this Agreement is non-cancellable during the Initial Term. Thereafter, either party may terminate this Agreement effective at the end of the Initial Term or at the end of a renewal period by giving the other party at least sixty (60) days prior written notice of its intent to cancel the Agreement. Either party may terminate this Agreement for material breach of the other party, provided that the breaching party has not remedied the breach or commenced to cure the breach within a reasonable period, having due regard to the nature of the breach.

7.2 Siemens reserves the right to terminate the Services at any time after seven (7) days written notice, upon the happening of any of the following: (a) Buyer does not follow proper operation or maintenance procedures or does not use the System properly; (b) Buyer fails to comply with any of the terms of this Agreement. In addition, Siemens shall have the right to terminate the Services immediately if: (a) Siemens is unable either to secure or to retain the wire connections or privileges necessary for the transmission of signals between the Monitored Site, Siemens' monitoring facility and the municipal fire or police department; or (b) the monitoring facility, connecting wires, or systems within Siemens' premises are destroyed by fire or other catastrophe, or so substantially damaged that it is impractical to continue service. The Services may be terminated immediately by Buyer if the Monitored Site is destroyed or so damaged as to be unusable for its pre-damage use provided that it pays any unpaid balance of the charges accrued hereunder for Services rendered prior to the effective date of termination.

7.3 In the event of termination of the Services for any reason, to the extent applicable to the Service, Buyer authorizes Siemens to make the necessary arrangements with the telephone company to disconnect the telephone service between the Monitored Site and the monitoring.

Article 8: Insurance

Insurance, if any, covering personal injury and property loss or damage on any of Buyer's premises shall be obtained by Buyer. Buyer agrees to proceed exclusively against Buyer's insurer to recover any damages.

Article 9: Indemnity

9.1 Buyer agrees to indemnify, defend and hold harmless Siemens from any and all such claims and lawsuits including the payment of all damages, expenses, costs, and attorney fees incurred by Siemens, its employees and agents, from and against all claims, lawsuits and losses, by persons not a party to this Agreement, against Siemens for failure of the Services in any respect, whether due or alleged to be due to malfunction or non-function of the System, or by the negligence, active or passive, of Siemens, or in the event that Siemens notifies the local police or fire

Siemens Industry, Inc.

department, as the case may be. Siemens does not represent or warrant that the Work will not be compromised, interrupted or circumvented; that the Work will prevent any loss from any cause; or that the Work will in all cases provide the protection for which it is performed, installed or intended (collectively "Protections"). Buyer acknowledges and agrees that it assumes all risk of loss or damage to its facilities and sites including the contents thereon, and that Siemens has neither made representations nor warranties, nor has Buyer relied on any representation or warranties, express or implied regarding said Protections. **IT IS UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT SIEMENS IS NOT AN INSURER AND THIS AGREEMENT IS NOT INTENDED TO BE AN INSURANCE POLICY OR A SUBSTITUTE FOR AN INSURANCE POLICY. SIEMENS EXPRESSLY EXCLUDES AND DISCLAIMS ALL WARRANTIES, STATUTORY, EXPRESS, OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SIEMENS MAKES NO WARRANTY, EXPRESS OR IMPLIED, THAT SERVICES PROVIDED HEREUNDER WILL PREVENT ANY LOSS, OR WILL IN ALL CASES PROVIDE THE PROTECTION FOR WHICH IT IS INTENDED. THE EXPRESS EXCLUSION OF WARRANTIES IS AS SET FORTH IN THIS AGREEMENT.**

9.2 Buyer hereby, for it and any parties claiming under it, releases and discharges Siemens from any liability arising out of all hazards covered by Buyer's insurance, and all claims against Siemens arising out of such hazards, including any right of subrogation by Buyer's insurance carrier, are hereby waived by Buyer, and Buyer shall promptly so notify its insurance carrier.

Article 10: Liquidated Damages

From the nature of the Services, it is impractical and extremely difficult to fix the actual damages, if any, which may proximately result from the failure of Siemens to perform and its obligations hereunder. If Siemens is found liable for loss or damage due to a failure on the part of Siemens, in any respect, its liability related to Services shall be limited in the aggregate for the term of the Agreement to the sum of Two Thousand Five Hundred (\$2500.00) Dollars as liquidated damages. Such limit of liability is not a penalty and this limited liability shall be complete and exclusive. The provisions of this paragraph shall apply in the event loss or damage, irrespective of cause or origin, results directly or indirectly from the performance or nonperformance of the obligations set forth by this Agreement or from negligence, active or otherwise, of Siemens its agents or employees. The parties acknowledge that the price which Siemens has agreed to perform the Services and obligations is calculated based upon the foregoing liquidated damages as limitations of liability, and that Siemens has expressly relied on, and would not have entered into this Agreement but for such limitations of liability.

Article 11: Authorization to Notify Authorities

If applicable, Buyer hereby authorizes and directs Siemens, as its agent, to direct the local police department, or fire department as the case may be, having jurisdiction to investigate the Monitored Site to the extent that the Scope indicates that the situation may require such notification to be made by Siemens.

Article 12: Intellectual Property

12.1 Siemens will, at its own option and expense, defend or settle any suit or proceeding brought against Buyer based on an allegation that any processes performed by Siemens in connection with the Services constitutes an infringement of any Patent Cooperation Treaty ("PCT") country member's patent or misappropriation of a third party's trade secret or copyright in the country where the Buyer's Site is located. Buyer will promptly give Siemens written notice of the suit or proceeding and the authority, information, and assistance needed to defend the claims. Siemens shall have full and exclusive authority to defend and settle such claim and will pay the damages and costs awarded against Siemens 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' consent. If and to the extent any process performed by Siemens in connection with the Services 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 process; (ii) replace it with substantially equivalent non-infringing process; or (iii) modify the process so its use is non-infringing.

12.2 Siemens will have no duty or obligation under this Article 12 if the process is: (i) performed 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 performance; 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 12.

12.3 THIS ARTICLE 12 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 13: Confidentiality

13.1 Both during and after the term of this Agreement, the parties will treat as confidential all information obtained from the disclosing party and all information compiled or generated by the disclosing party under this Agreement for the receiving party, including but not limited to business information, the quotation, the Agreement, processes and procedures, know-how, methods and techniques employed by Siemens in connection with the Services, technical data, drawings, flow charts, program listings, software code, and other software, plans and projections. Neither party may disclose or refer to the Services to be performed under this Agreement in any manner that identifies the other party without advance written permission. Except for security surveillance, the observing or recording of the Services or any part thereof, whether by photographic, video or audio devices or in any other manner is prohibited. In the event any such prohibited observation or recording occurs, Siemens may (in addition to any other legal or equitable rights and remedies) stop the Services until Siemens has satisfied itself that the prohibited conduct has ceased, and in such event (a) the date of delivery or time for performance will be extended by a period of time which Siemens determines necessary and (b) Buyer will reimburse Siemens for Siemens' and its Suppliers' additional costs and expenses resulting from such delay, including but not limited to any for demobilization or remobilization. Unless required by appropriate governmental authorities, neither party shall, without the prior written consent of the other party, issue any public statement, press release, publicity hand-out or other material relating to the Services. However, Siemens has the right to share confidential information with its affiliate and subcontractors provided those recipients are subject to the same confidentiality obligations set forth herein.

13.2 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; or (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.

13.3 It is Siemens' policy not to unlawfully or improperly receive or use confidential information, including trade secrets, belonging to others. This policy precludes Siemens from obtaining, directly or indirectly from any employee, contractor, or other individual rendering services to Siemens confidential information of a prior employer, client or any other person which such employee, contractor, or individual is under an obligation not to disclose. Buyer agrees to abide by this policy.

13.4 Siemens shall retain all intellectual property rights in the Services, works, Siemens' documents, processes, Siemens' confidential information, and any design information and/or documents made by (or on behalf of) Siemens. Upon receipt of all fees, expenses and taxes due in respect of the relevant Services, Siemens grants to the Buyer a non-transferable, non-exclusive, royalty-free license to copy, use and communicate Siemens' documents for the sole purpose of operation and maintenance of the facility upon which the Services have been performed.

Article 14: Miscellaneous

Siemens Industry, Inc.

14.1 The parties agree to comply with all applicable laws and regulations.

14.2 No change will be made to the scope of Services unless Buyer and Siemens agree in writing to the change and any resulting price, schedule or other contractual modifications. If any change to any law, rule, regulation, order, code, standard or requirement impacts Siemens' obligations or performance under this Agreement, Siemens shall be entitled to a change order for an equitable adjustment in the price and time of performance.

14.3 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.

14.4 These terms may only be modified by a written instrument signed by authorized representatives of both parties.

14.5 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.

14.6 This Agreement is governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflict of laws principles. TO THE EXTENT PERMITTED BY LAW, BOTH SIEMENS AND BUYER KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVE ALL RIGHTS TO A JURY TRIAL IN ANY ACTION OR PROCEEDING FILED IN ANY WAY TO THIS AGREEMENT. Each party agrees to waive all 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 in which either Buyer or Siemens maintains its principal place of business. Each party submits to the personal jurisdiction of such courts for the purpose of litigating any claims or disputes.

14.7 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.

14.8 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 goods or information provided in the performance of the Services, including any export/import license requirements. Buyer agrees that such goods or information shall 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.

14.9 The Articles entitled "Risk of Loss and Schedule," "Indemnity," "Liquidated Damages," "Intellectual Property," "Confidentiality," and, 14.8, survive any termination, expiration or cancellation of this Agreement

SIEMENS STANDARD TERMS AND CONDITIONS

Standard Terms Addendum for Software License/Warranty Addendum

The terms and conditions of this Software License/Warranty Addendum (“Addendum”) govern Licensee’s license to Software furnished by Siemens in conjunction with the sale of Products or Services under the terms and conditions of a Sales Agreement.

ARTICLE 1: ORDER OF PRECEDENCE AND CONTRADICTION OF TERMS

1.1 Licensee shall comply with the terms of this Addendum and the Exhibits hereto in addition to the terms of the Sales Agreement, which terms and conditions shall also apply to Software licensed under this Addendum. In the event of inconsistency between or among these provisions, the following order of precedence shall govern: 1) Exhibits to this Addendum; 2) This Addendum; and, 3) The Sales Agreement. For the avoidance of doubt, if provisions of this Addendum expand the scope of any provision of the Sales Agreement, but without contradicting it, then the provision shall apply to the Software licensed under this Addendum as augmented by this Addendum.

1.2 If Licensee received the Software prior to executing a written agreement, and installs, copies or otherwise uses the Software, Licensee shall, by doing so, indicate that Licensee has read and understood this Addendum and the Sales Agreement and accepted these terms and conditions. Licensee is not entitled to install or use the Software if Licensee does not agree with these terms. In such an event, Licensee should promptly contact Siemens for instructions on return or certified destruction of the Software.

ARTICLE 2: SOFTWARE LICENSE TERMS AND CONDITIONS

2.1 **Definitions.** The following terms have the meanings set forth below.

- (a) “Authorized Agents” means Licensee’s consultants, agents and contractors who are working on Licensee’s premises and who require access to the Software and/or Documentation solely for their support of Licensee’s internal business.
- (b) “Authorized Users” means (i) Licensee’s employees and (ii) Authorized Agents, provided the Authorized Agents comply with the terms of this Addendum.
- (c) “Confirmation of Order” means a statement or document provided by Siemens acknowledging and accepting the Licensee’s order including the purchase of a license to Software or otherwise acknowledging the Software license grant to Licensee, including but not limited to a certificate of license.
- (d) “Documentation” means the explanatory printed or electronic functional specification materials provided by Siemens with respect to the Software, including, but not limited to, license specifications, instructions for the use of the Software and technical specifications.
- (e) “Products and Services” means the items, other than Software, as described on an order and purchased by Licensee from Siemens under a Sales Agreement.
- (f) “License Metrics” means the particular metric restrictions for a relevant Software License Type as indicated in the Confirmation of Order, the Product Specific Terms or other written document by Siemens and may include concurrent user, named user, per machine, per server, per device, or per time usage, or any other metric agreed to by Siemens and Licensee.
- (g) “License Type” means a Limited Term License, Perpetual License or Extended Term License.
- (h) “Limited Term License” means a license of the Software that is limited in term to a period of time mutually agreed by Siemens and Licensee. Limited Term Licenses include, but are not limited to Rental Licenses.
- (i) “Licensee” means the party that is acquiring rights to the Software pursuant to the terms of this Addendum and any applicable Sales Agreement.
- (j) “Maintenance Services” means the maintenance, enhancement and support services provided by, or on behalf of, Siemens with respect to the Software under terms and conditions either in a separate written agreement or an exhibit to this Addendum. Maintenance Services do not include services performed by Siemens during the Warranty period.
- (k) “Perpetual License” or “Extended Term License” means a license of Software that is not limited in term, but, subject to the terms of this Addendum and applicable Sales Agreement, extends indefinitely. Unless a license of Software is specified as a Subscription, a Rental License or another type of Limited Term License in this Addendum, the Product Specific Terms, or a separate contract between the parties and the Software is embedded in the Product (as identified in the applicable Sales Agreement) as delivered, then the license of Software is deemed to be a Perpetual License. Perpetual Licenses do not include Maintenance Services or professional services which must be purchased separately.
- (l) “Product Specific Terms” means those terms and conditions that are (i) different or additional to this Addendum that apply to the Software or to specific use of the Software with a Product and (ii) which terms

are available to Licensee either as an Exhibit to this Addendum or in a separate document outside of this Addendum. If there is a conflict between the terms of this Addendum and the Product Specific Terms, then the Product Specific Terms will prevail.

- (m) "Rental License" means a license whose term is limited to an agreed to period of time.
- (n) "Sales Agreement" means any agreement for the sale of Products or Services between Siemens and Licensee under which Software is licensed or otherwise distributed by Siemens.
- (o) "Software" means the software that is licensed or distributed by Siemens to Licensee under the terms and conditions of a Sales Agreement including this Addendum. "Software" includes the related Documentation.
- (p) "Territory" means the country in which Siemens has licensed rights to the Software as indicated in the Confirmation of Order, Product Specific Terms or applicable Sales Agreement. If no Territory is identified, the Territory shall be limited to the country in which the Software is delivered or otherwise made available to Licensee.

2.2 License Grant and Conditions.

- (a) License Grant. Subject to the terms and conditions of this Addendum, the Sales Agreement, and any Product Specific Terms, Siemens grants to Licensee a nonexclusive, nontransferable, limited license to allow Authorized Users to access and use the executable form of the Software, to the extent to which the same has been enabled by Siemens through use of license key or other mechanism for use by Licensee, in the Territory. The license granted to Licensee shall be of the License Type and be subject to the License Metrics set forth in the Confirmation of Order, the Product Specific Terms or other written document by Siemens. No title to or ownership in the Software is transferred to Licensee. Title to the Software, and all applicable rights in patents, copyrights, trade secrets and other intellectual property rights inherent in the Software, will remain in Siemens or third parties from whom Siemens has obtained the right to license the Software. Siemens reserves all rights in the Software not explicitly granted herein.
- (b) Delivery of Software. Delivery of the Software shall be as identified in the Confirmation of Order or from the Software purchase order number contained in the Confirmation of Order, in conjunction with the associated order data of the Siemens catalog valid at the time of the Confirmation of Order. If the Software is provided by Siemens on a data medium or made available for electronic download by Siemens, the license granted to Licensee in 2.2(a) shall include the right to install such Software in accordance with the Confirmation of Order.
- (c) Use of Unauthorized Software. Licensee represents and warrants that it will only use Siemens software that has been validly licensed to it by Siemens or its authorized partner. Any Siemens software not duly licensed from Siemens or its authorized partner constitutes unauthorized software. If Licensee downloads, installs and/or uses unauthorized software, then Siemens has the right to terminate this Addendum in accordance with the terms of Article 4.3 below.
- (d) Software Security and Monitoring. Siemens reserves the right to embed a software security mechanism within the Software to monitor usage of the Software and to verify Licensee's compliance with this Addendum. Such security mechanism may communicate with computers controlled by Siemens to exchange communications and report and store data relating to the usage of the Software, its installation, the system on which it has been installed and the number of times it has been copied or accessed. Siemens reserves the right to use license administration software, a license authorization key to control access to the Software and/or a hardware lock device. Licensee may not take any steps to avoid or defeat the purpose of any such measures. Use by Licensee of any Software without any required security mechanism is prohibited. Where Software licensed hereunder or Product(s) sold under a Sales Agreement have a remote service capability, Siemens shall be entitled to access data available from the Licensee for the Software licensed or Product(s) maintained by remote service for the term of the Sales Agreement. Licensee grants Siemens the further right to use data collected from said products for Siemens product and service optimization purposes.
- (e) Third Party and Open Source Software. The Software may contain or require the use of third party technology that is provided with the Software, including open source software ("OSS"). Third party technology is licensed to Licensee either under the terms of this Agreement or under separate license terms that shall be specified in the relevant Documentation, "read me" files, notice files, or other such documents or files ("Technology Subject to a Third-Party License"). Licensee's rights to use Technology Subject to a Third-Party License are subject to such separate license terms and are not restricted in any way by this Addendum and to the extent that a term of this Addendum is in conflict with any applicable mandatory right

granted by a third-party license, such term shall not apply. If applicable, Siemens will furnish OSS source code contained in the Technology Subject to a Third-Party License upon written request and subject to Licensee's payment of shipping and handling charges. Third party technology that is not Technology Subject to a Third-Party License shall be deemed part of the Software and is licensed to Licensee under the terms of this Addendum. The terms of any third-party license (if any) that apply to the licensed Software are either: a) specified in the Product Specific Terms, b) separately accompany the licensed Software and are automatically presented for acceptance prior to first use of such Software by an Authorized User in accordance with the Confirmation of Order (such as applicable License Type and License Metrics) obtained from Siemens, or c) are specified in the "read me" file or document for the licensed Software. The terms of such third-party licenses are herein incorporated by reference to this Addendum.

- (f) Other Third Party Software Not Provided. Except where the parties agree in writing to the contrary, Licensee is solely responsible for ensuring that: (i) the system on which the licensed Software is installed, run and/or used contains all third party software not contained in or bundled with the Software as delivered and that is necessary to run, install, interface with, and/or use such Software ("Other Third Party Software") and (ii) Licensee and/or Licensee's system fulfill the requirements of all required licenses for such Other Third Party Software.
- (g) U.S. Government Restricted Rights. The Software is a commercial product that has been developed exclusively at private expense. If the Software is acquired directly or indirectly on behalf of a unit or agency of the United States Government under the terms of (i) a United States Department of Defense ("DOD") contract, then the Software and Documentation are considered "Commercial Items", as that term is defined in 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are defined in 48 C.F.R. §252.227-7014(a)(5) and 48 C.F.R. §252.227-7014(a)(1), and used in 48 C.F.R. §12.212 and 48 C.F.R. 227.7202, as applicable, consistent with 48 C.F.R. §12.212, 48 C.F.R. §252.227-7015, 48 C.F.R. §227.7202 through 227.7202-4, 48 C.F.R. §52.227-14, and other relevant sections of the Code of Federal Regulations ("C.F.R."); or (ii) a Civilian agency contract, then use, reproduction, or disclosure is subject to the restrictions set forth in clause 27.405(b)(2)(i) of the Federal Acquisition Regulation ("FAR"), entitled Acquisition of Existing Computer Software, and any restrictions in the agency's FAR supplement and any successor regulations thereto, and the restrictions set forth in this Addendum. The United States Government will only have the rights set forth in this Addendum. Siemens Software licensed to United States Government end users with only those rights as granted to all other end users, according to the terms and conditions contained in this Addendum. Siemens shall not be required to obtain a security clearance or otherwise be involved in accessing classified information as described in FAR 52.204-2 and the National Industrial Security Program Operating Manual (DoD 5220.22-M).

2.3 Backup of Software. Licensee may make one copy of the Software for archival backup purposes only, unless otherwise restricted under the applicable Product Specific Terms. Licensee shall retain and reproduce all copyright or proprietary notices in the backup copy of the Software. Siemens retains all rights to the original and backup copy of the Software. The backup copy will also be subject to the terms and conditions of this Addendum.

2.4 Licensee Responsibilities and Prohibited Actions.

- (a) Remarketing of Software. Licensee will not cause or permit the loan, publication, transfer of possession (whether by sale, exchange, gift, operation of law or otherwise) of the Software, in whole or in part, to or for any third party, and/or use of the Software as a service bureau.
- (b) Transfer of Software. Unless specifically allowed by the terms of the Sales Agreement or this Addendum, or as may be required by applicable law, Licensee may not distribute, rent, lease, sell, sublicense or otherwise transfer all or any portion of the Software, or any rights granted in this Addendum, to any other person without the prior written consent of Siemens.
- (c) Reverse Engineering or Modifying the Software.
 - (i) **Prohibitions.** Licensee will not reverse engineer, decompile, translate, disassemble, or otherwise attempt to discover the source code of the Software. The prohibition against modifying or reverse engineering the Software does not apply to the extent that Licensee is allowed to do so by applicable law.
 - (ii) Licensee shall not be entitled to remove any alphanumeric identifiers, trademarks or copyright notices from the Software, the data medium, or Documentation supplied under this Addendum.

- (d) Host Identifier. With respect to each order for Software under this Agreement, Licensee or Siemens' authorized channel partner will provide Siemens with the host identifier required by Siemens and such other information reasonably requested by Siemens for each workstation and/or server on which the license management portion of the Software will be installed to permit Siemens to generate a license file that will restrict end-user access to only those Software modules licensed under this Agreement and limit use of such Software modules at any given time to the maximum number of licensed Authorized Users.
- (e) Authorized Agents; Indemnity. To the extent permitted by Kentucky law, Licensee will ensure that Authorized Agents comply with the terms of this Agreement and agrees to indemnify Siemens from and against any and all liabilities, losses, claims, costs and/or expenses incurred by Siemens and/or its affiliates as a result of any violation of the terms of this Addendum by any Authorized Agent.

2.5 Warranties and Disclaimers.

- (a) Unless otherwise stated in the Sales Agreement, Confirmation of Order, or other Siemens writing, Siemens warrants that, as of the date the Software is delivered or otherwise made available to Licensee via electronic download and for a period of ninety (90) days thereafter (the "Warranty Period"), the Software will provide the features and functions generally described in the Documentation and that the media on which the Software is furnished, if any, will be free from defects in materials and workmanship. Notwithstanding the foregoing, the warranty period for the Product(s) set forth in the Sales Agreement shall control with respect to Software embedded in such Product(s). Siemens' entire liability, and Licensee's exclusive remedy, during the Warranty Period will be, at Siemens' sole option, to attempt to correct or work around errors, to replace defective media on which Software is installed, if any, or to refund the license fees for the Software involved. Any refund is subject to the return or destruction of the Software or defective media to Siemens.
- (b) This warranty does not apply to Software delivered by Siemens but produced by others. The warranty for Software produced by others shall be the warranty as stated by the relevant software producer.
- (c) This warranty will apply only provided that: (i) the Software is not modified, changed, or altered by anyone other than Siemens or its suppliers, unless authorized by Siemens in writing; (ii) there is no change by anyone other than Siemens to the Products for which the Software is ordered; (iii) Licensee is using the Software in a proper manner in compliance with all operating instructions included in the Documentation; (iv) the nonconformity is not caused by Licensee, Licensee's Siemens-authorized transferee, or any of their agents, servants, employees, or contractors, or any third party; (v) Licensee or Licensee's Siemens-authorized transferee promptly notifies Siemens in writing of the nonconformity after it is discovered; and (vi) all fees for the Software due to Siemens have been paid.
- (d) Licensee is responsible for the prevention of security issues with regard to its own systems and data, including Software hosted on Licensee's systems. Licensee's responsibility includes, but is not limited to, undesired invaders of the software such as malware, viruses, spyware or trojans and Siemens disclaims responsibility for any damages incurred as a result of Licensee's failure to secure its systems and data.
- (e) EXCEPT FOR THE EXPRESS LIMITED WARRANTIES PROVIDED IN THIS ARTICLE 2.5, SIEMENS MAKES AND LICENSEE RECEIVES NO EXPRESS WARRANTIES. ANY STATEMENTS OR REPRESENTATIONS ABOUT THE SOFTWARE AND ITS FUNCTIONALITY IN ANY COMMUNICATION WITH LICENSEE CONSTITUTE TECHNICAL INFORMATION AND NOT AN EXPRESS WARRANTY OR GUARANTEE. IN ADDITION, SIEMENS SPECIFICALLY DISCLAIMS ANY OTHER WARRANTY INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, SIEMENS DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE.

ARTICLE 3: SOFTWARE MAINTENANCE TERMS AND CONDITIONS

- 3.1 Software Maintenance.** In addition to any warranty services that Siemens may provide as set forth in Article 2, Licensee may purchase (if offered by Siemens) Maintenance Services consistent with the terms and conditions set forth in an exhibit attached hereto or other written agreement between the parties.

ARTICLE 4: GENERAL TERMS AND CONDITIONS

4.1 Limitation of Liability. Siemens' entire liability for all claims or damages arising out of or related to this Addendum, regardless of the form of action, whether in contract, tort or otherwise, will be limited to and will not exceed, in the aggregate the amount paid to Siemens for the Software licensed under this Addendum. This limitation is not applicable to claims covered by Article 4.2 of this Addendum.

4.2 Intellectual Property Infringement Indemnity.

- (a) Siemens will, at its option and expense, defend or settle any suit or proceeding brought against Licensee based on an allegation that the Software 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 Software is delivered by Siemens. Licensee will promptly give Siemens written notice of the suit or proceeding and the authority, information, and assistance needed to defend the claims. 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. Licensee shall not make any admission(s) which might be prejudicial to Siemens and shall not enter into a settlement without Siemens' consent. Siemens is not responsible for any settlement made without its prior written consent. If the Software, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement or its use by Licensee is enjoined, Siemens will, at its option and expense, either: (i) procure for Licensee the right to continue using the Software; (ii) replace it with substantially equivalent non-infringing Software; or (iii) modify the Software so it is non-infringing.
- (b) Siemens will have no duty or obligation under this Article 4.2 if the Software is: (i) supplied according to Licensee's design or instructions and compliance therewith has caused Siemens to deviate from its normal course of performance; (ii) modified by Licensee or its contractors after delivery; (iii) combined by Licensee 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 Licensee; or (iv) any refusal or failure by Customer to install and use the most current version or a non-infringing version of the Software offered or otherwise made available by Siemens to Customer as long as such non-infringing version performs substantially the same functions. In addition, if by reason of such design, instruction, modification or combination, a suit or proceeding is brought against Siemens, Licensee must protect Siemens in the same manner and to the same extent that Siemens has agreed to protect Licensee under this Article 4.2.
- (c) THIS ARTICLE 4.2 IS AN EXCLUSIVE STATEMENT OF SIEMENS' DUTIES AND LICENSEE'S REMEDIES RELATING TO PATENTS, TRADE SECRETS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY INFRINGEMENT THEREOF.

4.3 Termination. Licensee may terminate this Addendum at any time by removing all copies of the Software from Licensee's systems, destroying them and certifying the destruction to Siemens in writing. Siemens will have the right to terminate this Addendum and/or any Limited Term License and/or Perpetual License granted hereunder immediately on notice to Licensee if Licensee: (a) violates the license restrictions of this Addendum, (b) breaches Article 2.2(c) above, or (c) files a petition in bankruptcy, has such a petition filed against it, which petition is not discharged within sixty (60) days after such filing, makes an assignment for the benefit of creditors, if a receiver, trustee, custodian or similar agent is appointed or takes possession of Licensee's assets, or if Licensee becomes insolvent or otherwise ceases doing business in the ordinary course. In addition, Siemens will have the right to terminate this Addendum and/or any Limited Term License and/or Perpetual License granted hereunder if Licensee breaches any other obligation or provision of this Agreement which breach remains uncured for a period of thirty (30) days after receipt of notice thereof from Siemens.

4.4 Effect of Termination. Upon termination of this Addendum or the associated Sales Agreement, the licenses granted hereunder and all other provisions of this Addendum (except those specified in this Article) shall be terminated and Licensee shall immediately cease using the Software, the Documentation and other Siemens confidential information and shall permanently delete all electronic copies thereof from Licensee's systems. Except as specifically set forth in this Addendum, all license fees and Maintenance Services fees are non-refundable. Termination or expiration of this Agreement or any license granted hereunder shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve

Licensee's obligation to pay all fees that have accrued or are otherwise owed by Licensee up to the effective date of termination. All Licensee obligations under this Addendum shall survive and continue in full force and effect after any termination of this Addendum or Sales Agreement to which this Addendum is attached.

4.5 Confidentiality and Data Protection.

- (a) The parties agree that the Software and Documentation shall be considered Confidential Information and be subject to the confidentiality terms and conditions under the Sales Agreement. If Licensee conducts benchmarks or other tests concerning the Software, including any content or functionality of Siemens' third party licensors, or hardware, then the results shall constitute Siemens' Confidential Information and shall not be published or otherwise revealed to any third party, without the prior written consent of Siemens.
- (b) Licensee has the right to share Siemens' Confidential Information with Authorized Users and Authorized Agents provided those recipients are subject to the same confidentiality obligations set forth herein. If a party breaches any of its obligations with respect to confidentiality or unauthorized use or disclosure of the other party's Confidential Information hereunder, the disclosing party shall be entitled to obtain equitable and injunctive relief in addition to all other remedies that may be available to protect the disclosing party's interests.
- (c) Nothing in this Agreement requires a party to treat as confidential any information which was independently developed by receiving party or its representatives, as evidenced by written records, without the use of discloser's Confidential Information.
- (d) Data Protection. Licensee represents and warrants that it is in compliance with all applicable data protection laws and that it has obtained all necessary consents as required by applicable law in respect of personal data Licensee transfers or makes available to Siemens for processing in the course of this Addendum or any related maintenance and/or support services and will indemnify Siemens in respect of all costs, claims, liabilities and demands incurred by Siemens in respect of any breach of this warranty.
- (e) Survival of Confidentiality Obligations. This Article 4.5 will survive the expiration or termination of this Addendum or Sales Agreement for any reason.

4.6 Audits. Licensee will at all times maintain records specifically identifying the Software licensed under this Addendum, the location of each copy thereof, and the location and identity of the workstations and servers on which the Software is installed. Siemens may, during regular business hours and upon reasonable advance notice, conduct an audit to determine Licensee's compliance with the terms and conditions of this Addendum. Licensee will permit Siemens or its authorized agents to access Licensee's facilities, workstations and servers and otherwise cooperate fully with Siemens in any such investigation and will take all commercially reasonable actions to assist Siemens in accurately determining Licensee's compliance with the terms and conditions of this Addendum. Siemens and its authorized agents will comply with Licensee's reasonable security regulations while on Licensee's premises.

4.7 Assignment. Neither party may assign all or part of this Addendum, or any rights or obligations under this Addendum 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 affiliates successor organization (whether as a result of reorganization, restructuring or sale of substantially all of a party's assets). However, Licensee shall not assign this Addendum to: a competitor of Siemens; an entity in litigation with Siemens; or an entity lacking the financial capability to satisfy Licensee's obligations. Any assignee expressly assumes the performance of any obligation assigned. Siemens may grant a security interest in this Addendum and/or assign proceeds of this Addendum without Licensee's consent.

- 4.8 Feedback.** To the extent that Licensee gives feedback on the Software to Siemens or its subcontractors, Licensee hereby assigns to Siemens all rights to such feedback (including any suggestions, enhancement requests, recommendations or other feedback) provided by the Licensee and its Authorized Users of the Software and shall treat such feedback as Confidential Information of Siemens in accordance with the obligations set forth herein. Licensee further agrees to ensure that it obtains such rights to Feedback from the Authorized Users and to provide Siemens all reasonable assistance necessary to perfect any intellectual property rights resulting from any feedback
- 4.9 Relationship of the Parties.** For all purposes, Licensor and Licensee will be deemed to be independent contractors and nothing contained herein will be deemed to constitute a joint venture, partnership, employer-employee relationship or other agency relationship. Neither party is, nor will either party hold itself out to be, vested with any power or right to contractually bind or act on behalf of the other party.

Exhibit A to Software License/Warranty Addendum

Siemens Smart Infrastructure (“Siemens SI”) Product Specific Terms

The standard terms and conditions that govern the license of software furnished by Siemens, including Siemens SI software, to Licensee are set forth in a standalone license agreement or a license addendum to a sales agreement for products and services agreed to by the parties (referred to herein as the “Agreement”).

I. Siemens SI Software Specific Terms

The following product specific terms and conditions are specific to Siemens SI software that is deliverable under the Agreement (“Siemens SI Software Specific Terms”): Licensee agrees to take delivery of such Siemens SI software subject to (i) any applicable Siemens SI end-user license agreement (EULA) and third party license (including any OSS license) accompanying such Siemens SI software, or (ii) if no EULA or third party license accompanies such Siemens SI software, the EULA posted at www.usa.siemens.com/btcpseula (Siemens SI’s EULA web site) for such Siemens SI software. Notwithstanding the foregoing, in the event of any inconsistency between the terms of the Agreement and the EULA for such Siemens SI software, the terms of the Agreement shall govern over the EULA except for the use and metric restrictions set forth in the EULA for such Siemens SI software shall take precedence and supersede the terms of the Agreement. The Licensee may state an objection to any terms of an applicable EULA prior to issuance of a purchase order or execution of an applicable SOW for such Siemens SI software; however, for such objection to stand it shall be subject to Siemens’ written acceptance of the same.

II. Siemens SI BACnet Field Panel Web Server Solution Specific Terms

The product specific terms and conditions set for in this section are specific to Siemens SI’s BACnet Field Panel Web Server Solution Software and not to any other software offered by Siemens. These terms are additional to the terms in the Agreement and the Siemens SI Software Specific Terms. To the extent that these terms are in conflict with the terms of the Agreement or the Siemens SI Software Specific Terms, these terms will take precedence and supersede the terms of the Agreement and the Siemens SI Software Specific Terms with respect to Siemens SI’s Field Panel Web Server Solution Software.

Software as defined in the Agreement and with respect to this Section shall mean Siemens SI’s Field Panel Web Server Solution Software, which includes Siemens SI’s BACnet Field Panel Web Client Application (also referenced in related Documentation as “Field Panel Web UI”), Field Panel Web Server Software (also referenced in related Documentation as “BACnet Field Panel Web Server” and “Field Panel Web Server), Data Exchange Protocol and Data Exchange Software in any release of the foregoing.

The Software is provided as embedded software in a Siemens SI field panel controller (“Field Panel”) having a part number prefix PXC00-*, PXC100-*, PXC36-*, TC1000-* or TC36-* (where “*” denotes remaining part number variations)

The Software may only be accessed by Licensee via the BACnet Field Panel Web Client Application that may be uploaded to a single computer.

Terms and Conditions for Sale of Products (Including Software Licenses)

1. **Applicable Terms.** These terms govern the sale of products, equipment, components, parts, and materials provided by Siemens ("Products"). Products include licenses for software products owned or licensable by Siemens ("Software"). Whether these terms are included in an offer or an acceptance by Siemens Industry, Inc., Building Technology Division ("Siemens"), such offer or acceptance is conditioned on Buyer's assent to these terms. Any additional, different or conflicting terms contained in Buyer's request for proposal, specifications, purchase order or any other written or oral communication from Buyer shall not be binding in any way on Siemens. Siemens failure to object to any such additional, different or conflicting terms shall not operate as a waiver of these terms.
2. To the extent that Software is provided for use in an equipment Product deliverable to a Buyer or in a computer owned by Buyer, Buyer agrees to take delivery of any such Software subject to (i) any applicable Siemens or third party end-user license agreement (EULA) accompanying such Software, or (ii), if no EULA accompanies such Software, the EULA posted at www.usa.siemens.com/btcpseula (Siemens' EULA web site) for such Software used in or with the Equipment identified by product model or part number on the Siemens EULA web site. Such Software shall be warranted in accordance with its applicable EULA unless an exception is explicitly identified in this Agreement. Buyer may state an objection to any terms of an applicable EULA prior to issuance of a purchase order for such Software; however, for such objection to stand it shall be subject to Siemens written acceptance of the same.
3. **Pricing & Payment.** The prices are: (a.) as stated in Siemens' proposal or if none are stated, (b.) Siemens' standard price in effect at the time of release for shipment. In the event of a price increase or decrease, the price of Products on order shall be adjusted to reflect such increase or decrease. This does not apply to a shipment held by request of Buyers. Products already shipped are not subject to price increase or decrease. Prices herein are List Prices. Net pricing is determined by annual volume. Contact your local Siemens sales representative for your pricing. Cash discounts are not applicable to notes or trade acceptances, to prepaid transportation charges when added to Siemens' invoices or to discountable items if there are undisputed past due items on the account. Cash discounts shall only be allowed on that portion of the invoice paid within the normal discount period. Published prices do not include any additional services such as design layout, system drawings, installation drawings, jobsite labor, shop labor, air freight, or special delivery charges. All labor and expenses for such services shall be charged at the rates prevailing at the time and place of performance.
 - a) Payment – Unless otherwise stated, all payments are net 30 days from invoice date payable in US Dollars.
 - b) Credit Approval – All orders are subject to credit approval by Siemens. The amount of credit or terms of payment may be changed or credit withdrawn by Siemens at any time for any reason without advanced notice. Siemens may, in its discretion, withhold further manufacture or shipment; require immediate cash payments for past and future shipments; or require other security satisfactory to Siemens before further

- manufacture or shipment is made; and may, if shipment has been made, recover the Products from the carrier, pending receipt of such assurances.
- c) Installment Shipment – If these terms require or authorize delivery of Products in separate shipments to be separately accepted by Buyer, Buyer may only refuse such portion of such shipment that fails to comply with the requirements of these terms. Buyer may not refuse to receive any lot or portion of hereunder for failure of any other lot or portion of a lot to be delivered or to comply with the terms hereof. Payment shall be made for the Products without regard to whether Buyer has made or may make an inspection of the Products. Products held for Buyer are at Buyer's sole risk and expense.
 - d) Taxes, Shipping, Packing, Handling – Except to the extent expressly stated in these terms, Siemens' prices do not include any freight, storage, insurance, taxes, excises, fees, duties, or other government charges related to the Product, and Buyer shall pay such amounts or reimburse Siemens for any amounts Siemens pays. If Buyer claims a tax or other exemption or direct payment permit, it shall provide Siemens with a valid exemption certificate or permit and indemnify, defend and hold Siemens harmless from any taxes, costs and penalties arising out of same. Siemens' prices include the costs of its standard domestic packing only. Any deviation from this standard packing (domestic or export), including U.S. Government sealed packing, shall result in extra charges. To determine such extra charges, consult Siemens' sales offices. Any and all increases, changes, adjustments or surcharges (including, without limitation, fuel surcharges) which may be in connection with the freight charges, rates or classification included as part of these terms, shall be for the Buyer's account. Each order is subject to a minimum billing charge of US\$50 and orders less than \$400 are subject to a US\$25 handling fee.
 - e) Finance Charge – Buyer agrees to pay FINANCE CHARGES on the unpaid balance of all overdue invoices, less any applicable payments and credits, from the date each invoice is due and payable at an ANNUAL PERCENTAGE RATE of EIGHTEEN PERCENT (18%), or the highest applicable and lawful rate on such unpaid balance, whichever is lower.
 - f) Disputed Invoice – In the event Buyer disputes any portion or all of an invoice, it shall notify Siemens in writing of the amount in dispute and the reason for its disagreement within 21 days of receipt of the invoice. The undisputed portion shall be paid when due, and FINANCE CHARGE on any unpaid portion shall accrue, from the date due until the date of payment, to the extent that such amounts are finally determined to be payable to Siemens.
 - g) Collection – Upon Buyer's default of these terms, Siemens may, in addition to any other rights or remedies at contract or law, subject to any cure right of Buyer, declare the entire balance of Buyer's account immediately due and payable or foreclose any security interest in Products delivered. If any unpaid balance is referred for collection, Buyer agrees to pay Siemens, to the extent permitted by law, reasonable attorney fees in addition to all damages otherwise available, whether or not litigation is commenced or prosecuted to final judgment, plus any court costs or expenses

incurred by Siemens, and any FINANCE CHARGES accrued on any unpaid balance owed by Buyer.

4. **Delivery; Title; Risk of Loss.** Except as provided in this section, Product shall be delivered F.O.B. Siemens point of shipment with title to the Product and risk of loss or damage for the Product passing to Buyer at that point. Buyer shall be responsible for all transportation, insurance and related expenses including any associated taxes, duties or documentation. Siemens may make partial shipments. Shipping dates are approximate only and Siemens shall not be liable for any loss or expense (consequential or otherwise) incurred by Buyer or Buyer's customers if Siemens fails to meet the specified deliver schedule. A 5% handling charge shall be added to the price for all Product furnished from a local branch.
5. **Deferment and Cancellation.** Buyer shall have no deferment rights and Buyer shall be liable for cancellation charges, which shall include without limitation a) payment of the full product price for any finished Product or works in progress; b) payment for raw materials ordered pursuant to a firm purchase order; and c) such other direct costs incurred by Siemens as a result of such cancellation.
6. **Force Majeure / Delays.** If Siemens suffers delay in performance due to any cause beyond its reasonable control, including without limitation acts of God, strikes, labor shortage or disturbance, fire, accident, war or civil disturbance, delays of carriers, failure of normal sources of supply, or acts of government, the time performance shall be extended a period of time equal to the period of the delay and its consequences. Siemens will give to Buyer notice within a reasonable time after Siemens becomes aware of any such delay.
7. **Buyer's Requirements.** Timely performance by Siemens is contingent upon Buyer's supplying to Siemens all required technical information and data, including drawing approvals, and all required commercial documentation.
8. **Limited Warranty.** Except as stated herein, the Siemens Product Guard Warranty warrants that Product purchased from Siemens or its authorized reseller is free from defects in material and workmanship under normal use during the two-year period commencing on the date of purchase. The written proof of purchase is required for such warranty period to apply. In the event a written proof of purchase cannot be supplied to Siemens, the limited warranty period shall commence on the Product's date of manufacture. The date of manufacture is determined from the Product's date code marking. Siemens field devices designated as covered by the Siemens Product Guard Plus 3 Warranty include an additional three-year limited warranty extension, and shall not apply to damage to field devices caused by ordinary wear and tear, improper use, negligence, or other causes beyond Siemens' control. Siemens warrants as follows. The BT300 Siemens Variable Frequency Drives ("VFDs") purchased from it or its authorized reseller to be free from defects in material and workmanship under normal use during the 18-month period commencing on the date of purchase. Siemens warrants the BTE and BTC Bypass units ("Units") purchased from it or its authorized reseller to be free from defects in material and workmanship under normal use during the 18-month period commencing on the date of purchase. A written proof of purchase is required for such warranty period to apply. In the event a written proof of purchase of VFDs cannot be supplied to Siemens, the limited warranty period shall commence on the VFD's date of manufacture. The date of manufacture is determined from the VFD's date code marking. VFDs which have completed a validated Siemens Certified

start-up and have an associated validated Siemens Certified start-up form registered with the Siemens Building Technologies Division, of Siemens Industry, Inc. Control Products and Systems, shall be warranted to be free from defects in material and workmanship under normal use during the 36-month period commencing on date of purchase. A written proof of purchase is required for such warranty period to apply. In the event a written proof of purchase of VFDs cannot be supplied to Siemens, the limited warranty period shall commence on the VFD's date of manufacture. The date of manufacture is determined from the VFD's date code marking. Siemens' obligations with respect to software distributed by it under the Siemens name are set forth in the applicable end user license agreement. Siemens has no other obligation to repair or replace software under this Limited Warranty. Any hardware, equipment, software, firmware, or products not manufactured by Siemens or not bearing its nameplate ("Other Products") are provided on an "as is" basis. However, the Other Products may include warranties by other manufacturers, suppliers, or publishers, which Siemens shall assign or pass through to the Customer, without recourse to Siemens, to the extent allowable by the other manufacturers, suppliers, or publishers. During the warranty period, and at Siemens' sole option, Siemens will repair, replace defective parts of the Product, or issue a credit for the original purchase price of the Product. Repaired or replaced Product will be warranted hereunder for the greater of the remaining portion of the original Product warranty period or six (6) months commencing on the date Siemens ships the repaired or replaced Product. All returned Products replaced under the Limited Warranty will become the property of Siemens. Any claim under the Limited Warranty must be made in writing to Siemens within thirty (30) days after discovery of the claimed defect, unless discovered directly by Siemens. Any claim under this Limited Warranty must include a description of the problem encountered and any pertinent information that will assist Siemens in the replication or resolution of the problem. This Limited Warranty is transferable during its term to the initial end user of the Product. Any transfer shall not extend or alter the terms of this Limited Warranty. If the VFD should fail during its warranty period, please contact Technical Support at +1 800-877-7545 for information. This Limited Warranty extends only to Products purchased from Siemens or its authorized reseller and does not extend to any Product that has been damaged or rendered defective as a result of (a) modification, repair, alteration, improper installation, or handling by any person other than Siemens or its authorized representative; (b) unreasonable or improper use or storage, use beyond rated conditions, operation other than per Siemens' or the manufacturer's instructions, or being otherwise subjected to improper maintenance, negligence or accidents including acts of nature such as lightning (c) any use of the Product after Customer has, or should have, knowledge of any defect in the Product. **THE EXPRESS WARRANTIES PROVIDED ABOVE ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SIEMENS EXPRESSLY DISCLAIMS ALL WARRANTIES NOT STATED IN THIS LIMITED WARRANTY. ANY IMPLIED WARRANTIES THAT MAY BE IMPOSED BY LAW ARE LIMITED TO THE TERMS OF THIS LIMITED WARRANTY.** Siemens' warranty liability shall not exceed the original purchase price of the defective Product. Siemens is not liable for any damages caused by the Product or Other Products or the failure of the Product or Other

Products to perform, including any lost profits, lost savings, incidental or consequential damages. Siemens is not responsible for charges resulting from the removal and/or replacement of Product or Other Product. Siemens is not liable for any claims made by third parties or by the Customer for a third party. This limitation applies whether damages are sought, or a claim is made, under this Limited Warranty or as tort claim, product liability claim, contract claim, or any other claim. This limitation cannot be waived by any person. This limitation of liability will be effective even if Siemens or its authorized representative has been advised by the Customer of the possibility of such damages.

9. **LIMITATION OF LIABILITY.** NEITHER SIEMENS, NOR ITS SUPPLIERS, SHALL BE LIABLE, WHETHER IN CONTRACT, WARRANTY, FAILURE OF A REMEDY TO ACHIEVE ITS INTENDED OR ESSENTIAL PURPOSES, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL THEORY, FOR LOSS OF USE, REVENUE, SAVINGS OR PROFIT, OR FOR COSTS OF CAPITAL OR OF SUBSTITUTE USE OR PERFORMANCE, OR FOR INDIRECT, SPECIAL, LIQUIDATED, PUNITIVE, EXEMPLARY, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL, DAMAGES, OR FOR ANY OTHER LOSS OR COST OF A SIMILAR TYPE, OR FOR CLAIMS BY BUYER FOR DAMAGES OF BUYER'S CUSTOMERS. SIEMENS' MAXIMUM LIABILITY UNDER THIS CONTRACT SHALL BE THE ACTUAL PURCHASE PRICE RECEIVED BY SIEMENS FOR THE PRODUCT AT ISSUE OR ONE MILLION DOLLARS, WHICHEVER IS LESS. BUYER AGREES THAT THE EXCLUSIONS AND LIMITATIONS SET FORTH IN THIS ARTICLE ARE SEPARATE AND INDEPENDENT FROM ANY REMEDIES WHICH BUYER MAY HAVE HEREUNDER AND SHALL BE GIVEN FULL FORCE AND EFFECT WHETHER OR NOT ANY OR ALL SUCH REMEDIES SHALL BE DEEMED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THESE LIMITATIONS OF LIABILITY ARE EFFECTIVE EVEN IF SIEMENS HAS BEEN ADVISED BY THE BUYER OF THE POSSIBILITY OF SUCH DAMAGES.
10. **PATENT AND COPYRIGHT INFRINGEMENT** Siemens will, at its own expense, defend or at its option settle any suit or proceeding brought against Buyer in so far as it is based on an allegation that any Product (including parts thereof), or use thereof for its intended purpose, constitutes an infringement of any United States patent or copyright, if Siemens is promptly provided notice 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 Product, 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 its own expense, either: (a) procure for Buyer the right to continue using said Product; (b) replace it with substantially equivalent non-infringing Product; or (c) modify the Product so it becomes non-infringing. Siemens will have no duty or obligation to Buyer under this Article to the extent that the Product is (a) supplied according to Buyer's design or instructions wherein compliance therewith has caused Siemens to deviate from its normal course of performance, (b) modified by Buyer or its contractors after delivery, (c) 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 shall protect Siemens in the same manner and to the same extent that Siemens hereinabove agreed to protect Buyer. THIS ARTICLE IS AN EXCLUSIVE STATEMENT OF ALL THE DUTIES OF THE PARTIES RELATING TO PATENTS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY PATENT OR COPYRIGHT AND OF ALL THE REMEDIES OF BUYER RELATING TO ANY CLAIMS, SUITS, OR PROCEEDINGS INVOLVING PATENTS AND COPYRIGHTS.

11. **Compliance with Laws.** Buyer agrees to comply with all applicable laws and regulations relating to the purchase, resale, exportation, transfer, assignment, disposal or use of the Products.
12. **Changes in Work.** Siemens shall not implement any changes in the scope of work unless Buyer and Siemens agree in writing to the details of the change and any resulting price, schedule or other contractual modifications. Any change to any law, rule, regulation, order, code, standard or requirement which requires any change hereunder shall entitle Siemens to an equitable adjustment in the prices and any time of performance.
13. **Non-waiver of Default.** Each shipment made hereunder shall be considered a separate transaction. In the event of any default by Buyer, Siemens may decline to make further shipments. If Siemens elects to continue to make shipments, Siemens' actions shall not constitute a waiver of any default by Buyer or in any way affect Siemens' legal remedies for any such default. Any waiver of Siemens to require strict compliance shall not be deemed a waiver of Siemens' right to insist upon strict compliance thereafter.
14. **Final Written Agreement; Modification of Terms.** These terms, together with any quotation, purchase order or acknowledgement issued or signed by Siemens, comprise the complete and exclusive agreement between the parties (the "Agreement") and supersede any terms contained in Buyer's documents, unless separately signed by Siemens. These terms may only be modified by a written instrument signed by authorized representatives of both parties.
15. **Assignment.** Neither party may assign the Agreement, in whole or in part, nor any rights or obligations hereunder without the prior written consent of the other; provided however that Siemens may assign its rights and obligations under these terms to its affiliates and Siemens may grant a security interest in the Agreement and/or assign proceeds of the Agreement without Buyer's consent.
16. **Applicable Law and Jurisdiction.** These terms is governed and construed in accordance with the laws of the State of Kentucky, 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. BUYER WAIVES ALL RIGHTS TO A JURY TRIAL IN ANY ACTION OR PROCEEDING RELATED IN ANY WAY TO THESE TERMS.
17. **Severability.** If any provision of these terms is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.
18. **Export Compliance.** Buyer 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 Products provided under this Agreement, including any export

license requirements. Buyer agrees that such Products shall not at any time directly or indirectly be used, exported, sold, transferred, assigned or otherwise disposed of in a manner which will result in non-compliance with such applicable export laws and regulations. It is 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. BUYER AGREES TO INDEMNIFY AND HOLD SIEMENS HARMLESS FROM ANY AND ALL COSTS, LIABILITIES, PENALTIES, SANCTIONS AND FINES RELATED TO NONCOMPLIANCE WITH APPLICABLE EXPORT LAWS AND REGULATIONS.

19. **Returns.** All returns require written authorization that can be obtained by contacting the Siemens Customer Support. All returned goods that are unused must be in the original package, be the current revision of product, be in sellable condition as a new product, and be returned within 90 days from date of sales. A proper Return Material authorization (“RMA”) number must be acquired for all returned goods. Only goods returned with a completed RMA form and a copy of the original purchase order will be considered for credit. Unless stated otherwise in writing, all returned goods, except those due to shipping errors by Siemens, are subject to a 15% restocking charge. Returned goods must be sent freight pre-paid.
20. **Credits.** VFDs are built to order. All part numbers beginning with BT300 will be eligible for a credit under unused returns. Such returns will not be allowed for part numbers beginning with BTE or BTC, which are customized VFDs. To be eligible for credit as an unused return the following criteria must be met: (1) the Product must be in its original packaging; (2) the Product must be the current version of the Product; (3) the Product must be in saleable condition as new Product and never been installed; and (4) the request for the return must be received by Siemens no later than 50 days from date of original shipment by Siemens. Returns not meeting the stated criteria will not be accepted and will be returned to the sender at the sender’s expense. Unless otherwise agreed by Siemens in writing, VFD unused returns are subject to a 25% restocking charge and must be returned via freight pre-paid.

21. **Product Specific Terms for Desigo CC and Cerberus DMS Software**

The product specific terms and conditions set for in this section are specific to Siemens’ Desigo CC and Cerberus DMS Software and not to any other software offered by Siemens. These terms are additional to the terms in this Agreement and the EULA for Desigo CC and Cerberus DMS Software. To the extent that these product specific terms are in conflict with the terms of this Agreement or the EULA for Desigo CC and Cerberus DMS Software, these terms will take precedence with respect to Desigo CC and Cerberus DMS Software.

- a) Only Desigo CC and Cerberus DMS Software that has not been activated (i.e., when a user has or had someone else enter that software into the Siemens licensing system) by a corresponding license key can be returned.
- b) Return requests must be sent within 6 months of purchase.
- c) A credit to refund must be provided for the cost of the returned licenses.
- d) There is a deduction a \$350 restocking charge from the credit for each order returned.

- e) Credits for valid returns to our will be made within a reasonable amount of time from its receipt.

STANDARD TERMS AND CONDITIONS OF SALE FOR SERVICES

1. APPLICABLE TERMS. This Agreement governs the sale and performance of services provided by Siemens ("Services"). The Standard Terms Addenda, these terms, any other applicable addenda, Siemens' proposal, price quote, purchase order or acknowledgement issued by Siemens form the parties' final agreement ("Agreement"). In the event of any ambiguity or conflict between these documents, precedence shall apply in accordance with the order written in the previous sentence. Siemens' proposal, offer or acceptance is conditioned on Buyer's acceptance of this Agreement. Any additional or conflicting terms in Buyer's request for proposal, specifications, purchase order or any other written or oral communication are not binding on Siemens unless separately signed by Siemens. Siemens' failure to object to Buyer's additional or conflicting terms does not operate as a waiver of the terms contained in this Agreement.

2. PRICING & PAYMENT. Prices and payment terms are: (i) as stated in Siemens' proposal, or if none are stated; (ii) Siemens' standard rates in effect when Siemens receives Buyer's purchase order; or if neither (i) nor (ii) apply, then Siemens' standard rates in effect when the Services are performed.

(a) Payment - Unless stated in Siemens' proposal, all payments are due net thirty (30) days from the invoice date in United States Dollars.

(b) Credit Approval - All orders are subject to credit approval by Siemens. Siemens may modify, suspend or withdraw the credit amount or payment terms at any time. If there is doubt as to Buyer's financial condition, Siemens may withhold performance of Services, require cash payments or advance payments, or require other satisfactory financial security before performance of Services.

(c) Taxes - Unless stated in writing by Siemens, Siemens' rates exclude charges for taxes, excises, fees, duties, tariffs charged on the importation of goods into the United States, or other government charges related to the Services. Buyer will pay these amounts or reimburse Siemens. If Buyer claims a tax or other exemption or direct payment permit, Buyer will provide a valid exemption certificate or permit and indemnify, defend and hold Siemens harmless from any taxes, costs and penalties arising from same. Increases, changes (including in application), adjustments or surcharges which may be incurred are for Buyer's account.

(d) Late Payments— Late payments shall bear interest at an annual percentage rate of twelve percent (12%) or the highest rate allowed by law, whichever is lower.

(e) Disputed Invoice - If Buyer disputes all or any portion of an invoice, it must first deliver written notice to Siemens of the disputed amount and the basis for the dispute within twenty-one (21) days of receiving the invoice. Failure of Buyer to timely notify Siemens of any dispute constitutes a waiver of Buyer's claim. If Buyer only disputes a portion of the invoice Buyer must pay the undisputed portion in accordance with Article 2(a). Upon resolution of the dispute in favor of Siemens, Buyer must pay the invoice or the remainder of the invoice, plus any accrued interest on the late payment.

(f) Suspension/Termination Right - Siemens may suspend Services if an undisputed invoice is more than fifteen (15) days past due. Siemens may terminate this Agreement if an undisputed invoice is more than thirty (30) days past due. Unless otherwise prohibited by law, Siemens may also terminate this Agreement immediately in the event of a material adverse change in the Buyer's financial condition, including, but not limited to bankruptcy, insolvency, or liquidation.

3. RISK OF LOSS AND SCHEDULE. Services shall be performed at the location identified in the Agreement ("Site"). Risk of loss of or damage to Buyer's equipment, including "Equipment" (equipment, materials, components and items of any kind for which Siemens is to provide Services under the Agreement), shall remain with Buyer at all times during the performance of the Services hereunder. If Buyer procures or has procured property damage insurance applicable to occurrences at the Site, Buyer shall obtain a waiver by the insurers of all subrogation rights against Siemens.

Any performance or completion dates are estimated dates only. Siemens is not liable for any loss or expense incurred by Buyer or Buyer's customers if Siemens fails to meet any such dates.

4. CANCELLATION. These terms apply to Service Contracts, not Service Projects. Except for Siemens right to terminate in accordance with Article 2 and Article 4, this Agreement is non-cancellable during the Initial Term. Thereafter, either party may terminate this Agreement effective at the end of the Initial Term or at the end of a renewal period by giving the other party at least sixty (60) days prior written

notice of its intent to cancel the Agreement. Either party may terminate this Agreement for material breach of the other party, provided that the breaching party has not remedied the breach or commenced to cure the breach within a reasonable period, having due regard to the nature of the breach..

5. FORCE MAJEURE / DELAYS. If either party is unable to perform or suffers delay in performance, due to any cause beyond its reasonable control (regardless of whether the cause was foreseeable), including without limitation acts of God, inclement or unusually severe weather conditions, 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, the time of performance will be extended by a period equal to the length of time it takes to overcome the effect of the event. In addition, Siemens shall be entitled to be compensated by Buyer for reasonable and direct additional costs incurred during such event. Siemens will notify Buyer within a reasonable time after becoming aware of any such event. If there are force majeure delays exceeding 180 days in the aggregate, Siemens may terminate the Agreement. For the avoidance of doubt, failure to pay shall not constitute a force majeure delay.

6. BUYER'S REQUIREMENTS. Siemens' performance is contingent upon Buyer timely complying with and fulfilling all of its obligations under this Agreement. These obligations include the Buyer supplying all necessary access to Equipment, where applicable, and all required "Third Party Parts" (parts, components, equipment or materials provided by Buyer or that exist in the Equipment which were not manufactured or supplied by Siemens or which were originally supplied by Siemens and subsequently repaired, serviced or otherwise altered by any party not affiliated with Siemens), documents, permits and approvals needed for Siemens to perform including, but not limited to, accurate technical information and data, drawing and document approvals, and all necessary commercial documentation. Buyer shall provide access to the Site as reasonably required by Siemens for the performance of the Services. Siemens may request a change order for an equitable adjustment in prices and times for performance, as well as to adjust for any additional costs or any delay resulting from the failure of Buyer, Buyer's contractors, successors or assigns to meet these obligations or any other obligations in this Agreement.

Buyer shall also maintain the Site in a safe condition, notify Siemens promptly of any site conditions requiring special care, and provide Siemens with any available documents describing the quantity, nature, location and extent of such conditions, including any Material Safety Data Sheets (MSDS) related to all hazardous materials at the Site which may impact the Services.

7. INDEMNITY. To the extent permitted by Kentucky law, Siemens and Buyer (each as an "Indemnitor") shall indemnify, hold harmless and defend 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 or its subcontractor'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 negligence. No part of Buyer's Site or property of Buyer (or Site Owner) is considered third party property.

Indemnitee shall provide the Indemnitor with prompt written notice of any third party claims covered by this Article. 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. Indemnitee shall not make any admission(s) which might be prejudicial to Indemnitor and shall not enter into a settlement without the express permission of Indemnitor.

8. WARRANTY. (a) Siemens warrants that it will perform the Services in a professional and workmanlike manner. If the Services fail to meet the warranty standards set forth in this Article 8(a) within ninety (90) days from completion of the Services ("Warranty Period"), and Buyer promptly reports such non-conformance to Siemens during the above mentioned Warranty Period, Siemens shall at its own expense re-perform the relevant Services or, in Siemens' sole discretion, refund Buyer the pro rata portion of the fees paid to Siemens under this Agreement allocable to the nonconforming Services (the "Warranty").

(b) 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) or in the absence of such conditions, parameters or instructions or to the extent not applicable, in accordance with the generally accepted industry standards applicable in the

locale where the Services are being performed and having regard to the nature of the Services; (iv) Buyer discontinuing use of the Equipment after it has, or should have had knowledge of any defect in the Equipment; (v) Buyer providing Siemens with reasonable access to operating and maintenance data as requested by Siemens, (which may include secure broadband connection). Without expense to Siemens, Buyer shall provide to Siemens and Siemens' subcontractors and their respective employees and agents on a twenty four (24) hours a day, seven (7) days a week basis, access to the Site, and each unit, including rights of way and easements required for safe access of such persons and equipment, as well as, to the extent applicable, online access to the Site, including to an installed remote monitoring system and to all units, as necessary to permit Siemens to perform the Services.; (vi) Equipment not having been subjected to accident (including force majeure), alteration, abuse or misuse; and (vii) Buyer not being in default of any payment obligation. Buyer shall provide, without cost to Siemens, access to the nonconformity by disassembling, removing, replacing and reinstalling any Equipment, materials or structures to the extent necessary to permit Siemens to perform its warranty obligations.

(c) Exclusions from Warranty Coverage. The Warranties do not apply to any Third Party Parts or Equipment or to services not performed by Siemens pursuant to this Agreement. Siemens will have no liability to Buyer under any legal theory for such Third Party Parts, Equipment, services or any related assignment of warranties.

(d) Warranty Notice. Buyer must provide written notice of any claims for breach of Warranty within the applicable Warranty Period. Additionally, absent written notice within the Warranty Period, any use of the Equipment after expiration of the Warranty Period is conclusive evidence that the Warranties have been satisfied.

(e) Remedies. Buyer's sole and exclusive remedies for breach of the Warranties are limited, at Siemens' discretion, to re-performance of the non-conforming portion of the Services, within a reasonable time period, or refund of all or part of the purchase price. The warranty on re-performed Services 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) transportation to and from the Siemens factory or repair facility; and (ii) damage to Equipment components or parts resulting in whole or in part from non-compliance by the Buyer with Article 8(b) or from their deteriorated condition.

(f) THE WARRANTIES IN THIS ARTICLE 8 ARE SIEMENS' SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO THE LIMITS OF LIABILITY IN ARTICLE 9 BELOW. 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.

9. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, SIEMENS IS NOT LIABLE, 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, LOSS OF PRODUCTION, 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 BUYER'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 UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), UNDER WARRANTY, INDEMNITY OR OTHERWISE, SHALL NOT EXCEED THE TOTAL PRICE PAID TO SIEMENS UNDER THIS AGREEMENT.

BUYER AGREES THAT THE EXCLUSIONS AND LIMITATIONS IN THIS ARTICLE 9 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 SIEMENS HAS BEEN ADVISED BY BUYER OF THE POSSIBILITY OF SUCH DAMAGES. THE WAIVERS AND DISCLAIMERS OF LIABILITY, RELEASES FROM LIABILITY AND LIMITATIONS ON LIABILITY EXPRESSED IN THIS ARTICLE 9 EXTEND TO SIEMENS'

AFFILIATES, PARTNERS, PRINCIPALS, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, SUBCONTRACTORS, AGENTS AND SUCCESSORS AND ASSIGNS OF SIEMENS.

FOR THE AVOIDANCE OF DOUBT, IN THE EVENT THAT PHYSICAL LOSS OR DAMAGE TO THE BUYER'S PROPERTY RESULTS FROM THE FAILURE OF A PORTION OF THE SERVICES TO CONFORM TO ITS RESPECTIVE WARRANTY DURING THE APPLICABLE WARRANTY PERIOD SIEMENS' LIABILITY SHALL IN NO CASE EXCEED SIEMENS' OBLIGATION TO PERFORM THE REMEDIES SPECIFIED IN ARTICLE 8, AS APPLICABLE, WHICH SIEMENS WOULD HAVE HAD TO PERFORM IF SUCH REMEDY HAD BEEN CARRIED OUT IMMEDIATELY PRIOR TO THE OCCURRENCE OF THE PHYSICAL LOSS OR DAMAGE.

10. INTELLECTUAL PROPERTY.

Siemens will, at its own option and expense, defend or settle any suit or proceeding brought against Buyer based on an allegation that any processes performed by Siemens in connection with the Services constitutes an infringement of any Patent Cooperation Treaty ("PCT") country member's patent or misappropriation of a third party's trade secret or copyright in the country where the Buyer's Site is located. Buyer will promptly give Siemens written notice of the suit or proceeding and the authority, information, and assistance needed to defend the claims. Siemens shall have full and exclusive authority to defend and settle such claim and will pay the damages and costs awarded against Siemens 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' consent. If and to the extent any process performed by Siemens in connection with the Services 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 process; (ii) replace it with substantially equivalent non-infringing process; or (iii) modify the process so it's use is non-infringing.

Siemens will have no duty or obligation under this Article 10 if the process is: (i) performed 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 performance; 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 10.

THIS ARTICLE 10 IS AN EXCLUSIVE STATEMENT OF SIEMENS' DUTIES AND BUYER'S REMEDIES RELATING TO PATENTS, TRADE SECRETS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY INFRINGEMENT THEREOF.

11. CONFIDENTIALITY.

(a) Both during and after the term of this Agreement, the parties will treat as confidential all information obtained from the disclosing party and all information compiled or generated by the disclosing party under this Agreement for the receiving party, including but not limited to business information, the quotation, the Agreement, processes and procedures, know-how, methods and techniques employed by Siemens in connection with the Services, technical data, drawings, flow charts, program listings, software code, and other software, plans and projections. Neither party may disclose or refer to the Services to be performed under this Agreement in any manner that identifies the other party without advance written permission. Except for security surveillance, the observing or recording of the Services or any part thereof, whether by photographic, video or audio devices or in any other manner is prohibited. In the event any such prohibited observation or recording occurs, Siemens may (in addition to any other legal or equitable rights and remedies) stop the Services until Siemens has satisfied itself that the prohibited conduct has ceased, and in such event (a) the date of delivery or time for performance will be extended by a period of time which Siemens determines necessary and (b) Buyer will reimburse Siemens for Siemens' and its Suppliers' additional costs and expenses resulting from such delay, including but not limited to any for demobilization or remobilization. Unless required by appropriate governmental authorities, neither party shall, without the prior written consent of the other party, issue any public statement, press release, publicity hand-out or other material relating to the Services performed on Buyer's Site or Equipment. However, Siemens has the right to share confidential information with its affiliate and subcontractors provided those recipients are subject to the same confidentiality obligations set forth herein.

(b) 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; or (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.

(c) It is Siemens' policy not to unlawfully or improperly receive or use confidential information, including trade secrets, belonging to others. This policy precludes Siemens from obtaining, directly or indirectly from any employee, contractor, or other individual rendering services to Siemens confidential information of a prior employer, client or any other person which such employee, contractor, or individual is under an obligation not to disclose. Buyer agrees to abide by this policy.

(d) Siemens shall retain all intellectual property rights in the Services, works, Siemens' documents, processes, Siemens' confidential information, and any design information and/or documents made by (or on behalf of) Siemens. Upon receipt of all fees, expenses and taxes due in respect of the relevant Services, Siemens grants to the Buyer a non-transferable, non-exclusive, royalty-free license to copy, use and communicate Siemens' documents for the sole purpose of operation and maintenance of the facility upon which the Services have been performed.

12. COMPLIANCE WITH LAWS. The parties agree to comply with all applicable laws and regulations.

13. CHANGES IN SERVICES. No change will be made to the scope of Services unless Buyer and Siemens agree in writing to the change and any resulting price, schedule or other contractual modifications. If any change to any law, rule, regulation, order, code, standard or requirement impacts Siemens' obligations or performance under this Agreement, Siemens shall be entitled to a change order for an equitable adjustment in the price and time of performance.

14. 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.

15. MODIFICATION OF TERMS. These terms may only be modified by a written instrument signed by authorized representatives of both parties.

16. 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.

17. APPLICABLE LAW AND JURISDICTION. This Agreement is are governed by and construed in accordance with the laws of the State of Kentucky, 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 in which either Buyer or Siemens maintains its principal place of business. Each party submits to the personal jurisdiction of such courts for the purpose of litigating any claims or disputes.

18. 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.

19. 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 goods or information provided in the performance of the Services, including any export/import license requirements. Buyer agrees that such goods or information shall 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.

20. NUCLEAR. In the event the Services provided under the Agreement are to be performed at or in any manner in connection with a nuclear installation, the following conditions shall apply:

A. Buyer's Insurance

(1) If Buyer procures property damage insurance applicable to occurrences at the Site and third party non-nuclear liability insurance, or either of such types of insurance, such insurance will name Siemens and its subcontractors as additional insureds.

(2) Buyer shall have at its own cost, prior to the arrival of nuclear fuel at the Site, secured and shall thereafter maintain in force protection against liability arising out of or resulting from a Nuclear Incident (as defined in the Atomic Energy Act of 1954, as amended) as required by the Nuclear Regulatory Commission; provided, however, that if the nuclear liability protection system in effect on the date of the Agreement expires or is repealed, changed, or modified, Buyer will, without cost to Siemens, maintain liability protection through government indemnity, limitation of liability, and/or liability insurance which will not result in a material impairment of the protection afforded Siemens and its subcontractors by such nuclear liability protection system which is in effect as of the date of the Agreement, taking into account the availability of insurance, customary practice in the industry for plants of similar size and character, and other relevant factors in light of then existing conditions. In any event, the protection provided pursuant to this Article shall remain in effect until the decommissioning of the nuclear plant.

B. Waivers by Buyer: Neither Siemens, nor its subcontractors shall be liable for any loss of, damage to, or loss of use of property or equipment wherever located, arising out of or resulting from a "Nuclear Incident." Buyer waives and will require its insurers to waive all rights of recovery against Siemens and its subcontractors on account of any such loss, damage, or loss of use. All such waivers shall be full and unrestricted and in a form acceptable to Siemens.

In the event Buyer recovers damages from a third party based on losses at the Site resulting from the hazardous properties of source, special nuclear or byproduct material (as defined in the Atomic Energy Act of 1954, as amended), Buyer shall defend, indemnify and hold Siemens and its subcontractors harmless against claims by such third party which are based on Buyer's recovery of such damages. In addition, Buyer waives and will require its insurers to waive all rights of recovery against Siemens and its subcontractors, for any and all costs or expenses arising out of or in connection with the investigation and settlement of claims or the defense of suits for damage resulting from the nuclear energy hazard.

C. Third Party Property Protection: Buyer will indemnify and hold Siemens and its subcontractors harmless for any liability arising out of loss of or damage to property at the Site which arises out of a Nuclear Incident. In addition, Buyer shall obtain for the benefit of Siemens and its subcontractors, protection against liability for, arising out of, or resulting from damage to any property or equipment located at the Site which is used or intended for use by Buyer in connection with the operation of the nuclear power plant (including but not limited to fuel) and which is owned by parties other than Buyer.

D. Decontamination: Buyer shall, without cost to Siemens, perform any required decontamination and health physics necessary for, related to or resulting from Siemens performance of its contractual obligations. This includes but is not limited to decontamination of any Siemens equipment or tools used in the performance thereof. Buyer shall provide documentation demonstrating that components or parts being returned to Siemens after such decontamination meet the requirements designated for unrestricted release as set forth in the United States Code of Federal Regulations, Title 10 Part 20.

21. SURVIVAL. The Articles entitled "Intellectual Property," "Limitation of Liability," "Indemnity," "Confidentiality," "Risk of Loss and Schedule," "Export/Import Compliance," and "Nuclear" survive any termination, expiration or cancellation of this Agreement.

22. SITE SAFETY. Buyer shall comply with all federal, state, and local safety regulations and standards applicable to the Site and to the Equipment on which Siemens will perform the Services. Siemens shall not be obligated to commence or perform Services unless Buyer's Site complies with all applicable safety requirements. In the event Buyer's Site safety is non-compliant, Siemens may suspend the Services until such time as Buyer corrects the non-compliance. To the extent Siemens incurs additional time and expense as the result of Buyer's non-compliance, Siemens shall be entitled to an equitable adjustment in the schedule, price and other affected provisions of the Agreement.

23. ENVIRONMENTAL COMPLIANCE. To the extent that the performance of Services at the Site may involve the generation of hazardous waste as such term is defined in the Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq.), the laws of the state in which the Site is located and the rules or regulations issued thereunder as are now in effect or hereafter amended from time to time (such generated hazardous waste being herein referred to as "Hazardous Waste") shall apply.

Buyer shall at its expense and in accordance with all applicable federal, state and local laws, rules, regulations and ordinances (i) furnish Siemens with containers for Hazardous Waste, (ii) designate a storage area at the Site proximate to the Services where such containers are to be placed; and (iii) handle, store and dispose of Hazardous Waste. Buyer shall reimburse Siemens for additional costs, if any, incurred in complying with any such laws, regulations, rules and/or ordinances.

Siemens shall have no responsibility or liability with regard to any Hazardous Waste which it does not know or have reason to know will be generated or released in the performance of the Services, and Buyer shall indemnify and hold Siemens harmless for all damages, losses, costs, liabilities, fines and penalties, (including reasonable attorneys' fees) related to pollution and environmental impairment arising from the Buyer's property, the Equipment or the Services.

24. ASBESTOS

The terms "Asbestos" and "Presumed Asbestos Containing Material" shall have the meanings set forth in United States Code of Federal Regulations Chapter 29 Section CFR 1926.1101 et seq., and "ACM" shall mean Asbestos and Asbestos containing materials.

(1) The Buyer warrants and represents that, in any areas which may be accessed by Siemens or its Suppliers, any ACM which is or is contained in thermal insulation or sprayed-on surfacing material is conspicuously and specifically marked as ACM, and any other ACM is in a lawful condition.

(2) Prior to Siemens' commencement of Services at any Site:

(a) The Buyer shall, at Buyer's expense remove all thermal insulation, sprayed-on surfacing material, and/or Presumed Asbestos Containing Material (any or all of the foregoing hereinafter "PACM"), and ACM which may be disturbed during or removal of which is required for the performance of the Services; and,

(b) The Buyer shall ensure that any areas where any activities involving the abatement or removal of PACM or ACM shall be conspicuously identified, posted and isolated, all as required by applicable law.

BUYER EXPRESSLY ACKNOWLEDGES AND AGREES THAT, IN PERFORMING THE SERVICES AND DISPATCHING EMPLOYEES TO WORK AREAS, SIEMENS IS RELYING UPON THE AGREEMENTS, WARRANTIES, AND REPRESENTATIONS MADE BY BUYER IN THIS ARTICLE 24. Without limiting its other rights and remedies, Siemens (i) shall not be obligated to commence, and may stop any affected Services, unless and until it is fully satisfied that the Buyer is in compliance with this Article 24, and (ii) shall be entitled to an equitable adjustment in the schedule, price and other provisions of the Agreement resulting from Buyer's non-compliance.

(3) In no event shall Siemens be obligated to install, disturb, handle, or remove any PACM.

(4) Siemens makes no representation that it is licensed to abate ACM.

(5) Buyer shall defend, indemnify and hold Siemens harmless against any and all claims, demands, damages, losses, liabilities, fines, penalties, costs or expenses, including without limitation any clean up or remedial measures arising out of, connected with, or resulting from the Buyer's failure to comply with the provisions of this Article 24.

25. THIRD PARTY PARTS

Buyer warrants that any and all Third Party Parts which may be the subject of any Services shall (a) be fully compatible with the corresponding part, component, equipment or material of the Original Equipment Manufacturer ("OEM") in terms of form, fit, and function; (b) shall be timely provided to Siemens hereunder; and (c) shall be capable of installation in the same manner and within the same time as the corresponding OEM part, component, equipment, or material.

Alvey, Diana

From: Stanfield, Geoffrey S.
Sent: Friday, March 13, 2020 2:59 PM
To: Rutherford, Paul
Cc: Alvey, Diana
Subject: RE: Questions and edits T&C & riders - Siemens Industry Inc. Agreement _PARC

Follow Up Flag: Follow up
Flag Status: Flagged

All,

Risk has no objections.

Thanks. Have a good weekend and stay safe.

From: Rutherford, Paul
Sent: Wednesday, March 11, 2020 9:56 AM
To: RiskReview
Cc: Alvey, Diana
Subject: FW: Questions and edits T&C & riders - Siemens Industry Inc. Agreement _PARC

Please review (are 13 documents). Thanks.

Paul C. Rutherford
Assistant Jefferson County Attorney



OFFICE OF MIKE O'CONNELL
JEFFERSON COUNTY ATTORNEY

531 Fiscal Court Place, 9th Floor
Louisville, Kentucky 40202
502-574-6333 (main)
502-574-3068 (direct)
502-574-6039 (fax)

paul.rutherford@louisvilleky.gov



Please consider the environment before printing this e-mail

From: Rutherford, Paul <Paul.Rutherford@louisvilleky.gov>
Sent: Monday, February 24, 2020 2:44 PM
To: Alvey, Diana <Diana.Alvey@louisvilleky.gov>
Subject: FW: Questions and edits T&C & riders - Siemens Industry Inc. Agreement _PARC

They made no changes to the "Monitoring Rider" but the other documents look ok. On that Rider, Section 9.1 should have the "to the extent permitted by Kentucky law" disclaimer at the beginning of the paragraph and, since the other documents were changed, I'd imagine Kentucky law appearing in section 14.6 would be ok as well but, perhaps not?

Paul C. Rutherford
Assistant Jefferson County Attorney



OFFICE OF MIKE O'CONNELL
JEFFERSON COUNTY ATTORNEY
531 Fiscal Court Place, 9th Floor
Louisville, Kentucky 40202
502-574-6333 (main)
502-574-3068 (direct)
502-574-6039 (fax)
paul.rutherford@louisvilleky.gov



Please consider the environment before printing this e-mail

From: Alvey, Diana <Diana.Alvey@louisvilleky.gov>
Sent: Monday, February 24, 2020 2:30 PM
To: Rutherford, Paul <Paul.Rutherford@louisvilleky.gov>
Subject: FW: Questions and edits T&C & riders - Siemens Industry Inc. Agreement _PARC

Hi Paul, Attached are the edited T & Cs.

Diana

From: Joseph, Sherry <sherry.joseph@siemens.com>
Sent: Thursday, February 20, 2020 1:59 PM
To: Martin, Jamie <james.g.martin@siemens.com>; Alvey, Diana <Diana.Alvey@louisvilleky.gov>
Cc: Gary, Stacie L. <Stacie.Gary@louisvilleky.gov>; Cook, Renea <renea.cook@siemens.com>; Orton, Neisha <orton.neisha@siemens.com>
Subject: RE: Questions and edits T&C & riders - Siemens Industry Inc. Agreement _PARC

CAUTION: This email came from outside of Louisville Metro. Do not click links or open attachments unless you recognize the sender and know the content is safe

Jamie,

Here's the updates you requested to the PARC terms and conditions.

Kindest regards,

Sherry Joseph

Branch Admin

Siemens Industry, Inc.

Smart Infrastructure

2700 Stanley Gault Parkway, Suite 135

Louisville, KY 40223

(502) 267-1571 Main Line

(502) 883-5813 Direct Line

sherry.joseph@siemens.com



This message and any attachments are solely for the use of intended recipients. The information contained herein may include trade secrets, protected health or personal information, privileged or otherwise confidential information. Unauthorized review, forwarding, printing, copying, distributing, or using such information is strictly prohibited and may be unlawful. If you are not an intended recipient, you are hereby notified that you received this email in error, and that any review, dissemination, distribution or copying of this email and any attachment is strictly prohibited. If you have received this email in error, please contact the sender and delete the message and any attachment from your system. Thank you for your cooperation.

From: Martin, Jamie (SI RSS-AM Z5 LOU) <james.g.martin@siemens.com>
Sent: Tuesday, February 18, 2020 12:24 PM
To: Joseph, Sherry (SI RSS-AM Z5 LOU) <sherry.joseph@siemens.com>
Subject: FW: Questions and edits T&C & riders - Siemens Industry Inc. Agreement _PARC
Importance: High

Sherry,

Attached are the pdf documents I need revised.

Thanks,
Mr. Jamie Martin

Siemens Industry, Inc.
2700 Stanley Gault Parkway – Suite 135
Louisville, KY 40223
Tel.: +1 502 267-1571
Fax: +1 502 883-5830
Mobile: +1 502 297-7978
<mailto:james.g.martin@siemens.com>

Important notice: This e-mail and any attachment thereof contain corporate proprietary information. If you have received it by mistake, please notify us immediately by reply e-mail and delete this e-mail and its attachments from your system. Thank you.

From: Alvey, Diana <Diana.Alvey@louisvilleky.gov>
Sent: Tuesday, February 11, 2020 1:41 PM
To: Martin, Jamie (SI RSS-AM Z5 LOU) <james.g.martin@siemens.com>
Cc: Gary, Stacie L. <Stacie.Gary@louisvilleky.gov>; Cook, Renea (SI RSS-AM Z5 FIN CONT COL) <renea.cook@siemens.com>

Subject: FW: Questions and edits T&C & riders - Siemens Industry Inc. Agreement _PARC

Importance: High

Hi Jamie, The documents you attached still have the comments/notes our County Attorney made on them initially. Are there edited documents from Siemens Industry?

Thanks,

Diana Alvey
OMB, Purchasing
502-574-3751 ph.



Please consider the environment before printing this e-mail

Paul C. Rutherford
Assistant Jefferson County Attorney

From: Martin, Jamie <james.g.martin@siemens.com>

Sent: Thursday, February 6, 2020 9:55 AM

To: Alvey, Diana <Diana.Alvey@louisvilleky.gov>; Cunningham, Alan G. <Alan.Cunningham@louisvilleky.gov>

Cc: Gary, Stacie L. <Stacie.Gary@louisvilleky.gov>; Cook, Renea <renea.cook@siemens.com>

Subject: RE: Questions and edits T&C & riders - Siemens Industry Inc. Agreement _PARC

Importance: High

CAUTION: This email came from outside of Louisville Metro. Do not click links or open attachments unless you recognize the sender and know the content is safe

Diana,

Attached are the Siemens Corporate Legal reviewed, amended and approved Terms and Conditions for the four (4) PARC Service Project Contracts. These will stand as the accepted Terms and Conditions for the four service migration projects at the following parking garages in Louisville, Kentucky that were previously signed and accepted August 9, 2019 by Gerald Howell of PARC.

PARC Parking Garage Project Sites and Contracts:

838 W. Market Street – contract value \$7,560

324 W. Chestnut Street – contract value \$7,560

120 S. 8th Street – contract value \$8,941

115 W. Jefferson Street – contract value \$7,995

The only other outstanding item remaining is getting the HRC Prequalification Registration for Siemens Louisville. I have attempted to submit this HRC prequalification registration many times, but your system continues to reject my submission because Siemens Louisville is ALREADY accepted in this system. I was advised to request another user in my name for Siemens Louisville, but this must be done by an existing user, which none of the names listed are employed at Siemens Louisville. So at this point, I don't know what to do. I can't submit a new registration and I can't request an existing user to add me, because the users are no longer employed by Siemens. Please advise.

Best Regards,
Mr. Jamie Martin
Siemens Louisville
Sr. Service Account Executive
502-297-7978

From: Alvey, Diana <Diana.Alvey@louisvilleky.gov>
Sent: Friday, September 13, 2019 11:25 AM
To: Martin, Jamie (SI RSS-AM Z5 LOU) <james.g.martin@siemens.com>
Cc: Gary, Stacie L. <Stacie.Gary@louisvilleky.gov>
Subject: Questions and edits T&C & riders - Siemens Industry Inc. Agreement _PARC
Importance: High

Hi Jamie,

Please see the attached comments on the documents and requirements below from our County Attorney, Paul Rutherford.

These terms also need to be added (required by law as noted) to, I guess, the terms and conditions document.

- (a) **Records Audit.** Contractor shall maintain during the course of the work, and retain not less than five years from the date of final payment on the contract, complete and accurate records of all of Contractor's costs which are chargeable to Customer under this Agreement; and Customer shall have the right, at any reasonable time, to inspect and audit those records by authorized representatives of its own or of any public accounting firm selected by it. The records to be thus maintained and retained by Contractor shall include (without limitation): (a) payroll records accounting for total time distribution of Contractor's employees working full or part time on the work (to permit tracing to payrolls and related tax returns), as well as canceled payroll checks, or signed receipts for payroll payments in cash; (b) invoices for purchases receiving and issuing documents, and all the other unit inventory records for Contractor's stores stock or capital items; and (c) paid invoices and canceled checks for materials purchased and for subcontractors' and any other third parties' charges.

Language above is required in every contract by Metro OMB regulations and Metro Ordinance LMCO 20.20.

- (b) **2. Pursuant to KRS 45A.455:**
(1) It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his knowledge:
(a) He, or any member of his immediate family has a financial interest therein; or
(b) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or
(c) Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a party. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.
(2) It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.
(3) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
(4) The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation therefor.
(5) It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.
- (c) **3. Contractor shall reveal any final determination of a violation by Contractor or its subcontractor within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to Contractor or its subcontractor. Contractor shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to Contractor or its subcontractor for the duration of this Agreement.**

This language is required by KRS 45A.343(2) to appear in all Metro contracts.

Thanks,

Diana Alvey
OMB, Purchasing
502-574-3751 ph.



Please consider the environment before printing this e-mail

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

Alvey, Diana

From: Gary, Stacie L.
Sent: Thursday, February 27, 2020 4:50 PM
To: Martin, Jamie; Cook, Renea; Orton, Neisha
Cc: Alvey, Diana
Subject: FW: Questions and edits T&C & riders - Siemens Industry Inc. Agreement _PARC

Importance: High

Hello Siemens' Team:

I wanted to keep everyone in the loop that the contract will proceed based on the correspondence below. In addition, Metro purchasing is requesting a Resolution from the County Attorney and then the documents will be uploaded to begin processing through our Metro Council. Purchasing is also working with HRC on prequalification.

Thank you all for your assistance and diligence during this process.

Respectfully,

Stacie L. Gary

Stacie Gary, M.B.A.
Business Manager

Parking Authority of River City, Inc. | 222 S. First Street, Suite 400, Louisville, KY 40202

P: (502) 574-1476

F: (502) 589-5114



www.louisvilleky.gov/PARC

From: Alvey, Diana <Diana.Alvey@louisvilleky.gov>
Sent: Thursday, February 27, 2020 2:44 PM
To: Gary, Stacie L. <Stacie.Gary@louisvilleky.gov>
Subject: RE: Questions and edits T&C & riders - Siemens Industry Inc. Agreement _PARC
Importance: High

Hi Stacie, Our County Attorney thinks the best course is to proceed. You may want to do so but also say Metro will execute the contracts as changed but you'd like to let them know that you want them to be aware that "Section 9.1 of the Monitoring Rider (concerning indemnity) is quite likely not enforceable against the Metro Government". The County Attorney prefers Metro be on the record as being transparent about that since that may help defeat any claims of bad faith about the issue should it arise during litigation.

Please advise if PARC would like to proceed and I'll prepare the documents for Metro Council

Diana

From: Martin, Jamie <james.g.martin@siemens.com>
Sent: Tuesday, February 25, 2020 10:33 AM
To: Alvey, Diana <Diana.Alvey@louisvilleky.gov>; sherry.joseph@siemen.com
Cc: Gary, Stacie L. <Stacie.Gary@louisvilleky.gov>; Cook, Renea <renea.cook@siemens.com>; Orton, Neisha <orton.neisha@siemens.com>
Subject: RE: Questions and edits T&C & riders - Siemens Industry Inc. Agreement _PARC

CAUTION: This email came from outside of Louisville Metro. Do not click links or open attachments unless you recognize the sender and know the content is safe

Diana,

We were advised by Siemens Legal the Monitoring Rider cannot be changed. Their exact comment was, **“Modifications to monitoring terms are not permissible.”** I mentioned this in previous emails to you.

With Best Regards,
Mr. Jamie Martin

Siemens Industry, Inc.
2700 Stanley Gault Parkway – Suite 135
Louisville, KY 40223
Tel.: +1 502 267-1571
Fax: +1 502 883-5830
Mobile: +1 502 297-7978
<mailto:james.g.martin@siemens.com>

Important notice: This e-mail and any attachment thereof contain corporate proprietary information. If you have received it by mistake, please notify us immediately by reply e-mail and delete this e-mail and its attachments from your system. Thank you.

From: Alvey, Diana <Diana.Alvey@louisvilleky.gov>
Sent: Monday, February 24, 2020 3:48 PM
To: sherry.joseph@siemen.com
Cc: Martin, Jamie (SI RSS-AM Z5 LOU) <james.g.martin@siemens.com>; Gary, Stacie L. <Stacie.Gary@louisvilleky.gov>; Cook, Renea (SI RSS-AM Z5 FIN CONT COL) <renea.cook@siemens.com>; Orton, Neisha (SI RSS-AM Z5 SOL LOU) <orton.neisha@siemens.com>
Subject: FW: Questions and edits T&C & riders - Siemens Industry Inc. Agreement _PARC

Hi Sherry, We are so close to having all the requested edits done. Unfortunately, there were no changes to the “Monitoring Rider” but the other documents look ok. On that Rider, Section 9.1 should have the “to the extent permitted by Kentucky law” disclaimer at the beginning of the paragraph and, since the other documents were changed, I’d imagine Kentucky law appearing in section 14.6 would be ok as well. Please advise.

Thanks,

Diana Alvey
OMB, Purchasing
502-574-3751 ph.



Please consider the environment before printing this e-mail

From: Joseph, Sherry <sherry.joseph@siemens.com>
Sent: Thursday, February 20, 2020 1:59 PM
To: Martin, Jamie <james.g.martin@siemens.com>; Alvey, Diana <Diana.Alvey@louisvilleky.gov>
Cc: Gary, Stacie L. <Stacie.Gary@louisvilleky.gov>; Cook, Renea <renea.cook@siemens.com>; Orton, Neisha <orton.neisha@siemens.com>
Subject: RE: Questions and edits T&C & riders - Siemens Industry Inc. Agreement _PARC

CAUTION: This email came from outside of Louisville Metro. Do not click links or open attachments unless you recognize the sender and know the content is safe

Jamie,

Here's the updates you requested to the PARC terms and conditions.

Kindest regards,

Sherry Joseph

Branch Admin

Siemens Industry, Inc.

Smart Infrastructure

2700 Stanley Gault Parkway, Suite 135

Louisville, KY 40223

(502) 267-1571 Main Line

(502) 883-5813 Direct Line

sherry.joseph@siemens.com



This message and any attachments are solely for the use of intended recipients. The information contained herein may include trade secrets, protected health or personal information, privileged or otherwise confidential information. Unauthorized review, forwarding, printing, copying, distributing, or using such information is strictly prohibited and may be unlawful. If you are not an intended recipient, you are hereby notified that you received this email in error, and that any review, dissemination, distribution or copying of this email and any attachment is strictly prohibited. If you have received this email in error, please contact the sender and delete the message and any attachment from your system. Thank you for your cooperation.

From: Martin, Jamie (SI RSS-AM Z5 LOU) <james.g.martin@siemens.com>
Sent: Tuesday, February 18, 2020 12:24 PM
To: Joseph, Sherry (SI RSS-AM Z5 LOU) <sherry.joseph@siemens.com>
Subject: FW: Questions and edits T&C & riders - Siemens Industry Inc. Agreement _PARC
Importance: High

Sherry,

Attached are the pdf documents I need revised.

Thanks,
Mr. Jamie Martin

Siemens Industry, Inc.
2700 Stanley Gault Parkway – Suite 135
Louisville, KY 40223
Tel.: +1 502 267-1571
Fax: +1 502 883-5830
Mobile: +1 502 297-7978
<mailto:james.g.martin@siemens.com>

Important notice: This e-mail and any attachment thereof contain corporate proprietary information. If you have received it by mistake, please notify us immediately by reply e-mail and delete this e-mail and its attachments from your system. Thank you.

From: Alvey, Diana <Diana.Alvey@louisvilleky.gov>
Sent: Tuesday, February 11, 2020 1:41 PM
To: Martin, Jamie (SI RSS-AM Z5 LOU) <james.g.martin@siemens.com>
Cc: Gary, Stacie L. <Stacie.Gary@louisvilleky.gov>; Cook, Renea (SI RSS-AM Z5 FIN CONT COL) <renea.cook@siemens.com>
Subject: FW: Questions and edits T&C & riders - Siemens Industry Inc. Agreement _PARC
Importance: High

Hi Jamie, The documents you attached still have the comments/notes our County Attorney made on them initially. Are there edited documents from Siemens Industry?

Thanks,

Diana Alvey
OMB, Purchasing
502-574-3751 ph.



Paul C. Rutherford
Assistant Jefferson County Attorney

From: Martin, Jamie <james.g.martin@siemens.com>
Sent: Thursday, February 6, 2020 9:55 AM
To: Alvey, Diana <Diana.Alvey@louisvilleky.gov>; Cunningham, Alan G. <Alan.Cunningham@louisvilleky.gov>

Cc: Gary, Stacie L. <Stacie.Gary@louisvilleky.gov>; Cook, Renea <renea.cook@siemens.com>

Subject: RE: Questions and edits T&C & riders - Siemens Industry Inc. Agreement _PARC

Importance: High

CAUTION: This email came from outside of Louisville Metro. Do not click links or open attachments unless you recognize the sender and know the content is safe

Diana,

Attached are the Siemens Corporate Legal reviewed, amended and approved Terms and Conditions for the four (4) PARC Service Project Contracts. These will stand as the accepted Terms and Conditions for the four service migration projects at the following parking garages in Louisville, Kentucky that were previously signed and accepted August 9, 2019 by Gerald Howell of PARC.

PARC Parking Garage Project Sites and Contracts:

838 W. Market Street – contract value \$7,560

324 W. Chestnut Street – contract value \$7,560

120 S. 8th Street – contract value \$8,941

115 W. Jefferson Street – contract value \$7,995

The only other outstanding item remaining is getting the HRC Prequalification Registration for Siemens Louisville. I have attempted to submit this HRC prequalification registration many times, but your system continues to reject my submission because Siemens Louisville is ALREADY accepted in this system. I was advised to request another user in my name for Siemens Louisville, but this must be done by an existing user, which none of the names listed are employed at Siemens Louisville. So at this point, I don't know what to do. I can't submit a new registration and I can't request an existing user to add me, because the users are no longer employed by Siemens. Please advise.

Best Regards,

Mr. Jamie Martin

Siemens Louisville

Sr. Service Account Executive

502-297-7978

From: Alvey, Diana <Diana.Alvey@louisvilleky.gov>

Sent: Friday, September 13, 2019 11:25 AM

To: Martin, Jamie (SI RSS-AM Z5 LOU) <james.g.martin@siemens.com>

Cc: Gary, Stacie L. <Stacie.Gary@louisvilleky.gov>

Subject: Questions and edits T&C & riders - Siemens Industry Inc. Agreement _PARC

Importance: High

Hi Jamie,

Please see the attached comments on the documents and requirements below from our County Attorney, Paul Rutherford.

These terms also need to be added (required by law as noted) to, I guess, the terms and conditions document.

- (a) **Records Audit.** Contractor shall maintain during the course of the work, and retain not less than five years from the date of final payment on the contract, complete and accurate records of all of Contractor's costs which are chargeable to Customer under this Agreement; and Customer shall have the right, at any reasonable time, to inspect and audit those records by authorized representatives of its own or of any public accounting firm selected by it. The records to be thus maintained and retained by Contractor shall include (without limitation): (a) payroll records accounting for total time distribution of Contractor's employees working full or part time on the work (to permit tracing to payrolls and related tax returns), as well as canceled payroll checks, or signed receipts for payroll payments in cash; (b) invoices for purchases receiving and issuing documents, and all the other unit inventory records for Contractor's stores stock or capital items; and (c) paid invoices and canceled checks for materials purchased and for subcontractors' and any other third parties' charges.

Language above is required in every contract by Metro OMB regulations and Metro Ordinance LMCO 20.20.

- (b) 2. Pursuant to KRS 45A.455:
- (1) It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his knowledge:
- _____ (a) He, or any member of his immediate family has a financial interest therein; or
- _____ (b) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or
- _____ (c) Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a party. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.
- (2) It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.
- (3) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- (4) The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation therefor.
- (5) It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.
- (c) 3. Contractor shall reveal any final determination of a violation by Contractor or its subcontractor within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to Contractor or its subcontractor. Contractor shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to Contractor or its subcontractor for the duration of this Agreement.

This language is required by KRS 45A.343(2) to appear in all Metro contracts.

Thanks,

Diana Alvey
OMB, Purchasing
502-574-3751 ph.



Please consider the environment before printing this e-mail

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.