

Contract Abstract

Contract Information

Contract & Solicitation Title: Building automation system service and maintenance for the Downtown Detention Center

Contract Summary: CONTRACTOR agrees to provide service and maintenance for the building automation system for the Downtown Detention Center (DDC).

Contract Number: 6489764 Solicitation Number: N/A Requisition Number: SS2021052

Replaces Expiring Contract? (Enter "No" or Expiring Contract No.): N/A

Type of Contract/PO: Multi-Year Contract **Requires Council Legislation:** Yes

High Risk Contract (Per Finance Department Contract Risk Management Policy): No

Sexual Harassment Training Required (per BL2018-1281): Yes

Estimated Start Date: 04/24/2022 Estimated Expiration Date: 04/23/2027 Contract Term: 60 Months

Estimated Contract Life Value: \$293,292.00 Fund: * 10101 BU: * 30127100

(*Depending on contract terms, actual expenses may hit across various departmental BUs and Funds at PO Levels)

Payment Terms: Net 30 Selection Method: Sole Source

Procurement Staff: Terri Ray BAO Staff: Christopher Wood

Procuring Department: Sheriff Department(s) Served: Sheriff

Prime Contractor Information

Prime Contracting Firm: Siemens Industry, Inc ISN#: 3278

Address: 1410 Donelson Pike, Suite A-3 City: Nashville State: TN Zip: 37217

Prime Contractor is a Uncertified/Unapproved: SBE ☐ SDV ☐ MBE ☐ WBE ☐ LGBTBE ☐ (select/check if applicable)

Prime Company Contact: Wendell Miller Email Address: wendell.miller@siemens.com Phone #: 615-636-0662

Prime Contractor Signatory: Sean Wilson **Email Address:** Sean.Wilson@siemens.com

Disadvantaged Business Participation for Entire Contract

Small Business and Service Disabled Veteran Business Program: N/A

Amount: N/A Percent, if applicable: N/A

Equal Business Opportunity (EBO) Program: Program Not Applicable

MBE Amount: N/A MBE Percent, if applicable: N/A

WBE Amount: N/A WBE Percent, if applicable: N/A

Federal Disadvantaged Business Enterprise: No

Amount: N/A Percent, if applicable: N/A

Note: Amounts and/or percentages are not exclusive.

B2GNow (Contract Compliance Monitoring): No

Summary of Offer

Offeror Name	Disadv. Bus. (Check if applicable)	Score (RFQ Only)	Evaluated Cost	Result
<u>Siemens Industry, Inc</u>	☐	<u>N/A</u>	<u>N/A</u>	<u>Approved Sole Source Form</u>
<u></u>	☐	<u></u>	<u></u>	<u>Select from the Following:</u>

Terms and Conditions

1. GOODS AND SERVICES CONTRACT

1.1. Heading

This contract is initiated by and between **The Metropolitan Government of Nashville and Davidson County (METRO)** and **Siemens Industry, Inc (CONTRACTOR)** located at **1410 Donelson Pike, Suite A-3, Nashville, TN 37217** resulting from an approved sole source signed by Metro's Purchasing Agent (made a part of this contract by reference). This Contract consists of the following documents:

- *Any properly executed contract amendment (most recent with first priority),*
- *This document, including exhibits,*
 - *Exhibit A - Service Agreement and Pricing*
 - *Exhibit B - MISA Terms and Conditions*
 - *Exhibit C - Affidavits*
 - *Exhibit D - Siemens Sale of Services Terms*
 - *Exhibit E - Web Based Offering Terms*
 - *Exhibit F - Siemens Software Warranty*
- *Purchase Orders (and PO Changes),*

In the event of conflicting provisions, all documents shall be construed in the order listed above.

2. THE PARTIES HEREBY AGREE TO THE FOLLOWING TERMS AND CONDITIONS:

2.1. Duties and Responsibilities

CONTRACTOR agrees to provide service and maintenance for the building automation system for the Downtown Detention Center (DDC).

2.2. Delivery and/or Installation.

All deliveries (if provided by the performance of this Contract) are F.O.B. Destination, Prepaid by Supplier, Inside Delivery, as defined by METRO.

METRO assumes no liability for any goods delivered without a purchase order. All deliveries shall be made as defined in the solicitation or purchase order and by the date specified on the purchase order.

Installation, if required by the solicitation and/or purchase order shall be completed by the date specified on the purchase order.

3. CONTRACT TERM

3.1. Contract Term

The Contract Term will begin on the date this Contract is approved by all required parties and filed in the Metropolitan Clerk's Office. The Contract Term will end sixty (60) months from the date of filing with the Metropolitan Clerk's Office. In no event shall the term of this Contract exceed sixty (60) months from the date of filing with the Metropolitan Clerk's Office.

4. COMPENSATION

4.1. Contract Value

This Contract has an estimated value of \$293,292.00. The pricing details are included in Exhibit A and are made a part of this Contract by reference. CONTRACTOR shall be paid as work is completed and METRO is accordingly, invoiced.

4.2. Other Fees

There will be no other charges or fees for the performance of this Contract. METRO will make reasonable efforts to make payments within 30 days of receipt of invoice but in any event shall make payment within 60 days. METRO will make reasonable efforts to make payments to Small Businesses within 15 days of receipt of invoice but in any event shall make payment within 60 days.

4.3. Payment Methodology

Payment in accordance with the terms and conditions of this Contract shall constitute the entire compensation due CONTRACTOR for all goods and/or services provided under this Contract.

METRO will compensate CONTRACTOR in accordance with Exhibit A of this Contract. Subject to these payment terms and conditions, CONTRACTOR shall be paid for delivered/performed products and/or services properly authorized by METRO in accordance with this Contract. Compensation shall be contingent upon the satisfactory provision of the products and/or services as determined by METRO.

4.4. Escalation/De-escalation

This Contract is eligible for annual escalation/de-escalation adjustments for labor rates only. The request for adjustment must be in accordance with Exhibit A and submitted by CONTRACTOR to the Purchasing Agent no less than sixty (60) days prior to the annual anniversary of the filing of this Contract with the METRO Clerk's Office. Any such adjustment, if approved by the Purchasing Agent, shall become effective on the anniversary of the filing of this Contract with the METRO Clerk's Office.

4.5. Electronic Payment

All payments shall be effectuated by ACH (Automated Clearing House).

4.6. Invoicing Requirements

CONTRACTOR shall submit invoices for payment in a format acceptable to METRO and shall submit invoices no more frequently than monthly for satisfactorily and accurately performed services. CONTRACTOR shall be paid

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as work is completed and invoices are approved by METRO. Invoices shall detail this Contract Number accompanied by any necessary supporting documentation as required by METRO. CONTRACTOR shall submit all invoices no later than ninety (90) days after the services have been delivered/performed.

Payment of an invoice by METRO shall not waive METRO's rights of revocation of acceptance due to non-conformity or the difficulty of discovery of the non-conformance. Such revocation of acceptance shall occur within a reasonable time after METRO discovers or should have discovered the non-conforming product and/or service but prior to any substantial change in condition of the products and/or services caused by METRO.

4.7. Subcontractor/Subconsultant Payments

When payment is received from METRO, CONTRACTOR shall within fourteen (14) calendar days pay all subcontractors, subconsultants, laborers, and suppliers the amounts they are due for the work covered by such payment. In the event METRO becomes informed that CONTRACTOR has not paid a subcontractor, subconsultant, laborer, or supplier as provided herein, METRO shall have the right, but not the duty, to issue future checks and payments to CONTRACTOR of amounts otherwise due hereunder naming CONTRACTOR and any such subcontractor, subconsultant, laborer, or supplier as joint payees. Such joint check procedure, if employed by METRO, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit METRO to repeat the procedure in the future. If persistent, this may be determined to be a material breach of this Contract.

5. TERMINATION**5.1. Breach**

Should CONTRACTOR fail to fulfill in a timely and proper manner its obligations under this Contract or if it should violate any of the terms of this Contract, METRO shall identify the breach and CONTRACTOR shall cure the performance within thirty (30) days. If CONTRACTOR fails to satisfactorily provide cure, METRO shall have the right to immediately terminate this Contract. Such termination shall not relieve CONTRACTOR of any liability to METRO for damages sustained by virtue of any breach by CONTRACTOR.

5.2. Lack of Funding

Should funding for this Contract be discontinued, METRO shall have the right to terminate this Contract immediately upon written notice to CONTRACTOR.

5.3. Notice

METRO may terminate this Contract at any time upon thirty (30) days written notice to CONTRACTOR. Should METRO terminate this Contract, CONTRACTOR shall immediately cease work and deliver to METRO, within thirty (30) days, all completed or partially completed satisfactory work, and METRO shall determine and pay to CONTRACTOR the amount due for satisfactory work.

6. NONDISCRIMINATION

6.1. METRO's Nondiscrimination Policy

It is the policy of METRO not to discriminate on the basis of race, creed, color, national origin, age, sex, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities.

6.2. Nondiscrimination Requirement

No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in METRO's contracted programs or activities, on the grounds of race, creed, color, national origin, age, sex, disability, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with METRO or in the employment practices of METRO's CONTRACTORS. **CONTRACTOR certifies and warrants that it will comply with this nondiscrimination requirement.** Accordingly, all offerors entering into contracts with METRO shall, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

6.3. Equal Business Opportunity (EBO) Program Requirement

The Equal Business Opportunity (EBO) Program is not applicable to this Contract.

6.4. Covenant of Nondiscrimination

All offerors have committed to the Covenant of Nondiscrimination when registering with METRO to do business. To review this document, go to METRO's website.

6.5. Americans with Disabilities Act (ADA)

CONTRACTOR assures METRO that all services provided shall be completed in full compliance with the Americans with Disabilities Act ('ADA') 2010 ADA Standards for Accessible Design, enacted by law March 15, 2012, as has been adopted by METRO. CONTRACTOR will ensure that participants with disabilities will have communication access that is equally effective as that provided to people without disabilities. Information shall be made available in accessible formats, and auxiliary aids and services shall be provided upon the reasonable request of a qualified person with a disability.

7. INSURANCE

7.1. Proof of Insurance

During the term of this Contract, for any and all awards, CONTRACTOR shall, at its sole expense, obtain and maintain in full force and effect for the duration of this Contract, including any extension(s), the types and amounts of insurance identified below. Proof of insurance shall be required naming METRO as additional insured and identifying either the project name, RFQ, Purchase Order, or Contract number on the ACORD document.

7.2. Automobile Liability Insurance

In the amount of one million (\$1,000,000.00) dollars (if CONTRACTOR will be coming on Metro Property or making on-site deliveries)

7.3. General Liability Insurance

In the amount of one million (\$1,000,000.00) dollars.

7.4. Worker's Compensation Insurance (if applicable)

CONTRACTOR shall maintain workers' compensation insurance with statutory limits required by the State of Tennessee or other applicable laws and Employer's Liability Insurance with limits of no less than one hundred thousand (\$100,000.00) dollars, as required by the laws of Tennessee (Not required for companies with fewer than five (5) employees).

7.5. Technological Errors and Omissions Insurance

Technological Errors and Omissions Insurance in the amount of one million (\$1,000,000.00) dollars (for software and hardware manufacturers & website designers).

7.6. Such insurance shall:

Contain or be endorsed to contain a provision that includes METRO, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds.

For any claims related to this Contract, CONTRACTOR's insurance coverage shall be primary insurance with respects to METRO, its officers, officials, employees, and volunteers. Any insurance or self-insurance programs covering METRO, its officials, officers, employees, and volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.

Automotive Liability insurance shall include vehicles owned, hired, and/or non-owned. Said insurance shall include coverage for loading and unloading hazards. Insurance shall contain or be endorsed to contain a provision that includes METRO, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of CONTRACTOR.

CONTRACTOR shall maintain Workers' Compensation insurance (if applicable) with statutory limits as required by the State of Tennessee or other applicable laws and Employers' Liability insurance. CONTRACTOR shall require each of its subcontractors to provide Workers' Compensation for all of the latter's employees to be engaged in such work unless such employees are covered by CONTRACTOR's Workers' Compensation insurance coverage.

7.7. Other Insurance Requirements

Prior to commencement of services, CONTRACTOR shall furnish METRO with original certificates and amendatory endorsements effecting coverage required by this section and provide that such insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage except on 30 days' prior written notice to:

PROCUREMENTCOI@NASHVILLE.GOV (preferred method)
OR
DEPARTMENT OF FINANCE
PROCUREMENT DIVISION
730 2ND AVE SOUTH, STE 101
P.O. BOX 196300
NASHVILLE, TN 37219-6300

Provide certified copies of endorsements and policies if requested by METRO in lieu of or in addition to certificates of insurance.

Replace certificates, policies, and/or endorsements for any such insurance expiring prior to completion of services.

Maintain such insurance from the time services commence until services are completed. Failure to maintain or renew coverage and to provide evidence of renewal may be treated by METRO as a material breach of this Contract.

Said insurance shall be with an insurer licensed to do business in Tennessee and having A.M. Best Company ratings of no less than A-. Modification of this standard may be considered upon appeal to the METRO Director of Risk Management Services.

Require all subcontractors to maintain during the term of this Contract, Commercial General Liability insurance, Business Automobile Liability insurance, and Worker's Compensation/ Employers Liability insurance (unless subcontractor's employees are covered by CONTRACTOR's insurance) in the same manner as specified for CONTRACTOR. CONTRACTOR shall require subcontractor's to have all necessary insurance and maintain the subcontractor's certificates of insurance.

Any deductibles and/or self-insured retentions greater than \$10,000.00 must be disclosed to and approved by METRO **prior to the commencement of services.**

If CONTRACTOR has or obtains primary and excess policy(ies), there shall be no gap between the limits of the primary policy and the deductible features of the excess policies.

8. GENERAL TERMS AND CONDITONS

8.1. Taxes

METRO shall not be responsible for any taxes that are imposed on CONTRACTOR. Furthermore, CONTRACTOR understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to METRO.

8.2. Warranty

CONTRACTOR warrants that for a period of one year from date of delivery and/or installation, whichever is later, the goods provided, including software, shall be free of any defects that interfere with or prohibit the use of the goods for the purposes for which they were obtained.

During the warranty period, METRO may, at its option, request that CONTRACTOR repair or replace any defective goods, by written notice to CONTRACTOR. In that event, CONTRACTOR shall repair or replace the defective goods, as required by METRO, at CONTRACTOR's expense, within thirty (30) days of written notice.

Alternatively, METRO may return the defective goods, at CONTRACTOR's expense, for a full refund. Exercise of either option shall not relieve CONTRACTOR of any liability to METRO for damages sustained by virtue of CONTRACTOR's breach of warranty.

8.3. Software License

CONTRACTOR warrants and represents that it is the owner of or otherwise has the right to and does hereby grant METRO a license to use any software provided for the purposes for which the software was obtained or proprietary material set forth in METRO's solicitation and/or CONTRACTOR's response to the solicitation.

8.4. Confidentiality

Tennessee Code Annotated § 10-7-504(i) specifies that information which would allow a person to obtain unauthorized access to confidential information or to government property shall be maintained as confidential. "Government property" includes electronic information processing systems, telecommunication systems, or other communications systems of a governmental entity subject to this chapter. Such records include: (A) Plans, security codes, passwords, combinations, or computer programs used to protect electronic information and government property; (B) Information that would identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, the services provided by a governmental entity; and (C) Information that could be used to disrupt, interfere with, or gain unauthorized access to electronic information or government property.

The foregoing listing is not intended to be comprehensive, and any information which METRO marks or otherwise designates as anything other than "Public Information" will be deemed and treated as sensitive information, which is defined as any information not specifically labeled as "Public Information". Information which qualifies as "sensitive information" may be presented in oral, written, graphic, and/or machine-readable formats. Regardless of presentation format, such information will be deemed and treated as sensitive information.

CONTRACTOR, and its Agents, for METRO, may have access to sensitive information. CONTRACTOR, and its Agents, are required to maintain such information in a manner appropriate to its level of sensitivity. All sensitive information must be secured at all times including, but not limited to, the secured destruction of any written or electronic information no longer needed. The unauthorized access, modification, deletion, or disclosure of any METRO information may compromise the integrity and security of METRO, violate individual rights of privacy, and/or constitute a criminal act.

Upon the request of METRO, CONTRACTOR shall return all information in whatever form in a format chosen by METRO. In the event of any disclosure or threatened disclosure of METRO information, METRO is further authorized and entitled to immediately seek and obtain injunctive or other similar relief against CONTRACTOR, including but not limited to emergency and ex parte relief where available.

8.5. Information Ownership

All METRO information is and shall be the sole property of METRO. CONTRACTOR hereby waives any and all statutory and common law liens it may now or hereafter have with respect to METRO information. Nothing in this Contract or any other agreement between METRO and CONTRACTOR shall operate as an obstacle to such METRO's right to retrieve any and all METRO information from CONTRACTOR or its agents or to retrieve such information or place such information with a third party for provision of services to METRO, including without limitation, any outstanding payments, overdue payments and/or disputes, pending legal action, or arbitration. Upon METRO's request, CONTRACTOR shall supply METRO with an inventory of METRO information that CONTRACTOR stores and/or backs up.

Any information provided to the CONTRACTOR, including information provided by METRO customers or citizens, is only to be used to fulfill the contracted services. Any additional information that is inferred or determined based on primary information that is provided to the CONTRACTOR, i.e. "second-order data", is only to be used to fulfill the contracted services. This information is not to be used for marketing or commercial purposes and the CONTRACTOR asserts no rights to this information outside of fulfilling the contracted services. Storage of this information is not allowed outside United States' jurisdiction.

8.6. Information Security Breach Notification

In addition to the notification requirements in any Business Associate Agreement with METRO, when applicable, CONTRACTOR shall notify METRO of any data breach within 24 hours of CONTRACTOR's knowledge or reasonable belief (whichever is earlier) that such breach has occurred (Breach Notice) by contacting the METRO ITS Help Desk. The Breach Notice should describe the nature of the breach, the scope of the information compromised, the date the breach occurred, and the identities of the individuals affected or potentially affected by the breach as well as specific information about the data compromised so that METRO can properly notify those individuals whose information was compromised. CONTRACTOR shall periodically update the information contained in the Breach Notice to METRO and reasonably cooperate with METRO in connection with METRO's efforts to mitigate the damage or harm of such breach.

8.7. Virus Representation and Warranty

CONTRACTOR represents and warrants that Products and/or Services, or any media upon which the Products and/or Services are stored, do not have, nor shall CONTRACTOR or its Agents otherwise introduce into METRO's systems, network, or infrastructure, any type of software routines or element which is designed to or capable of unauthorized access to or intrusion upon, disabling, deactivating, deleting, or otherwise damaging or interfering with any system, equipment, software, data, or the METRO network. In the event of a breach of this representation and warranty, CONTRACTOR shall compensate METRO for any and all harm, injury, damages, costs, and expenses incurred by METRO resulting from the breach.

For CONTRACTOR managed systems, CONTRACTOR shall install and maintain ICSA Labs certified or AV-Test approved Antivirus Software and, to the extent possible, use real time protection features. CONTRACTOR shall maintain the Anti-virus Software in accordance with the Antivirus Software provider's recommended practices. In addition, CONTRACTOR shall ensure that:

- Anti-virus Software checks for new Anti-virus signatures no less than once per day, and;
- Anti-virus signatures are current and no less recent than two versions/releases behind the most current version/release of the Anti-virus signatures for the Anti-virus Software

8.8. Copyright, Trademark, Service Mark, or Patent Infringement

CONTRACTOR shall, at its own expense, be entitled to and shall have the duty to defend any suit that may be brought against METRO to the extent that it is based on a claim that the products or services furnished infringe a Copyright, Trademark, Service Mark, or Patent. CONTRACTOR shall further indemnify and hold harmless

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METRO against any award of damages and costs made against METRO by a final judgment of a court of last resort in any such suit. METRO shall provide CONTRACTOR immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority to enable CONTRACTOR to do so. No costs or expenses shall be incurred for the account of CONTRACTOR without its written consent. METRO reserves the right to participate in the defense of any such action. CONTRACTOR shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement or compromise shall be binding upon METRO unless approved by the METRO Department of Law Settlement Committee and, where required, the METRO Council.

If the products or services furnished under this Contract are likely to, or do become, the subject of such a claim of infringement, then without diminishing CONTRACTOR's obligation to satisfy the final award, CONTRACTOR may at its option and expense:

- Procure for METRO the right to continue using the products or services
- Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to METRO, so that they become non-infringing
- Remove the products or discontinue the services and cancel any future charges pertaining thereto

Provided; however, that CONTRACTOR will not exercise the Remove option above until CONTRACTOR and METRO have determined that the Procure and/or Replace options are impractical. CONTRACTOR shall have no liability to METRO; however, if any such infringement or claim thereof is based upon or arises out of:

- The use of the products or services in combination with apparatus or devices not supplied or else approved by CONTRACTOR;
- The use of the products or services in a manner for which the products or services were neither designated nor contemplated; or,
- The claimed infringement in which METRO has any direct or indirect interest by license or otherwise, separate from that granted herein.

8.9. Maintenance of Records

CONTRACTOR shall maintain documentation for all charges against METRO. The books, records, and documents of CONTRACTOR, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by METRO or its duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles. In the event of litigation, working papers and other documents shall be produced in accordance with applicable laws and/or rules of discovery. Breach of the provisions of this paragraph is a material breach of this Contract.

All documents and supporting materials related in any manner whatsoever to this Contract or any designated portion thereof, which are in the possession of CONTRACTOR or any subcontractor or subconsultant shall be made available to METRO for inspection and copying upon written request from METRO. Said documents shall also be made available for inspection and/or copying by any state, federal or other regulatory authority, upon request from METRO. Said records include, but are not limited to, all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the procurement and/or performance of this Contract. Said records expressly include those documents reflecting the cost, including all subcontractors' records and payroll records of CONTRACTOR and subcontractors.

8.10. Monitoring

CONTRACTOR's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by METRO, the Department of Finance, the Division of Internal Audit, or their duly appointed representatives.

METRO shall have the option of reviewing and performing a security assessment of the information security management practices of CONTRACTOR. METRO shall have the right, at its expense, during normal business hours and with reasonable advance notice, to evaluate, test, and review at CONTRACTOR's premises the Products and/or Services to ensure compliance with the terms and conditions of this Contract. METRO shall have the right to conduct such audits by use of its own employees and internal audit staff, or by use of outside consultants and auditors.

8.11. METRO Property

Any METRO property, including but not limited to books, records, and equipment that is in CONTRACTOR's possession shall be maintained by CONTRACTOR in good condition and repair, and shall be returned to METRO by CONTRACTOR upon termination of this Contract. All goods, documents, records, and other work product and property produced during the performance of this Contract are deemed to be METRO property. METRO property includes, but is not limited to, all documents which make up this Contract; all other documents furnished by METRO; all goods, records, reports, information, data, specifications, computer programs, technical reports, operating manuals and similar work or other documents, conceptual drawings, design documents, closeout documents, and other submittals by CONTRACTOR of any of its subcontractors; and, all other original works of authorship, whether created by METRO, CONTRACTOR or any of its subcontractors embodied in any tangible medium of expression, including, without limitation, pictorial, graphic, sculptural works, two (2) dimensional works, and three (3) dimensional works. Any of Contractor's or its subcontractors' works of authorship comprised within the Work Product (whether created alone or in concert with Metro or a third party) shall be deemed to be "works made for hire" and made in the course of services rendered and, whether pursuant to the provisions of Section 101 of the U.S. Copyright Act or other Applicable Law, such Work Product shall belong exclusively to Metro. Contractor and its subcontractors grant Metro a non-exclusive, perpetual, worldwide, fully paid up, royalty-free license, with rights to sublicense through multiple levels of sublicenses, to reproduce, make, have made, create derivative works of, distribute, publicly perform and publicly display by all means, now known or later developed, such rights.

Except as to Contracts involving sensitive information, CONTRACTOR may keep one (1) copy of the aforementioned documents upon completion of this Contract; provided, however, that in no event shall CONTRACTOR use, or permit to be used, any portion of the documents on other projects without METRO's prior written authorization. CONTRACTOR shall maintain sensitive information securely and if required by METRO, provide secured destruction of said information. Distribution and/or reproduction of METRO sensitive information outside of the intended and approved use are strictly prohibited unless permission in writing is first received from the METRO Chief Information Security Officer. The storage of METRO sensitive information to third-party hosted network storage areas, such as Microsoft Skydrive, Google Docs, Dropbox, or other cloud storage mechanisms, shall not be allowed without first receiving permission in writing from the METRO Chief Information Security Officer.

8.12. Modification of Contract

This Contract may be modified only by written amendment executed by all parties and their signatories hereto. All change orders, where required, shall be executed in conformance with section 4.24.020 of the Metropolitan Code of Laws.

8.13. Partnership/Joint Venture

This Contract shall not in any way be construed or intended to create a partnership or joint venture between the Parties or to create the relationship of principal and agent between or among any of the Parties. None of the Parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No Party shall become liable for any representation, act, or omission of any other Party contrary to the terms of this Contract.

8.14. Waiver

No waiver of any provision of this Contract shall affect the right of any Party to enforce such provision or to exercise any right or remedy available to it.

8.15. Employment

CONTRACTOR shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, or which is in violation of applicable laws concerning the employment of individuals with disabilities.

CONTRACTOR shall not knowingly employ, permit, dispatch, subcontract, or instruct any person who is an undocumented and/or unlawful worker to perform work in whole or part under the terms of this Contract.

Violation of either of these contract provisions may result in suspension or debarment if not resolved in a timely manner, not to exceed ninety (90) days, to the satisfaction of METRO.

8.16. Compliance with Laws

CONTRACTOR agrees to comply with all applicable federal, state and local laws and regulations.

8.17. Iran Divestment Act

In accordance with the Iran Divestment Act, Tennessee Code Annotated § 12-12-101 et seq., CONTRACTOR certifies that to the best of its knowledge and belief, neither CONTRACTOR nor any of its subcontractors are on the list created pursuant to Tennessee Code Annotated § 12-12-106. Misrepresentation may result in civil and criminal sanctions, including contract termination, debarment, or suspension from being a contractor or subcontractor under METRO contracts.

8.18. Taxes and Licensure

CONTRACTOR shall have all applicable licenses and be current on its payment of all applicable gross receipt taxes and personal property taxes.

8.19. Ethical Standards

It shall be a breach of the Ethics in Public Contracting standards in the Metropolitan Code of Laws for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit,

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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 program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefore. It shall be a breach of the Ethics in Public Contracting 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 a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this contract, a breach of ethical and legal standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under METRO contracts.

Pursuant to Metropolitan Code of Laws, Section 4.48.020, entities and persons doing business with, or proposing to do business with, the Metropolitan Government of Nashville & Davidson County must adhere to the ethical standards prescribed in Section 4.48 of the Code. By signing this contract, you agree that you have read the standards in Section 4.48 and understand that you are obligated to follow them. Violation of any of those standards is a breach of contract and a breach of legal standards that may result in sanctions, including those set out in Section 4.48

8.20. Indemnification and Hold Harmless

CONTRACTOR shall indemnify and hold harmless METRO, its officers, agents, and employees from:

- A. Any claims, damages, costs, and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of CONTRACTOR, its officers, employees, and/or agents, including its sub or independent contractors, in connection with the performance of the contract.
- B. Any claims, damages, penalties, costs, and attorney fees arising from any failure of CONTRACTOR, its officers, employees, and/or agents, including its sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
- C. In any and all claims against METRO, its officers, agents, or employees, by any employee of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any subcontractor under workers' compensation acts, disability acts, or other employee benefit acts.
- D. METRO will not indemnify, defend, or hold harmless in any fashion CONTRACTOR from any claims arising from any failure, regardless of any language in any attachment or other document that CONTRACTOR may provide.
- E. CONTRACTOR shall pay METRO any expenses incurred as a result of CONTRACTOR's failure to fulfill any obligation in a professional and timely manner under this Contract.

8.21. Attorney Fees

CONTRACTOR agrees that in the event either party takes legal action to enforce any provision of this Contract or to obtain a remedy for any breach of this Contract, and in the event METRO prevails in such action, CONTRACTOR shall pay all expenses of such action incurred at any and all stages of the litigation, including costs, and reasonable attorney fees for METRO.

8.22. Assignment--Consent Required

The provisions of this Contract shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to CONTRACTOR under this Contract, neither this Contract nor any of the rights and obligations of CONTRACTOR hereunder shall be assigned or transferred in whole or in part without the prior written consent of METRO. Any such assignment or transfer shall not release CONTRACTOR from its obligations hereunder.

NOTICE OF ASSIGNMENT OF ANY RIGHTS TO MONEY DUE TO CONTRACTOR UNDER THIS CONTRACT MUST BE SENT TO THE ATTENTION OF:

**PRG@NASHVILLE.GOV (preferred method)
OR
METRO PURCHASING AGENT
DEPARTMENT OF FINANCE
PROCUREMENT DIVISION
730 2ND AVENUE SOUTH
PO BOX 196300
NASHVILLE, TN 37219-6300**

Funds Assignment Requests should contain complete contact information (contact person, organization name, address, telephone number, and email) for METRO to use to request any follow up information needed to complete or investigate the requested funds assignment. To the extent permitted by law, METRO has the discretion to approve or deny a Funds Assignment Request.

8.23. Entire Contract

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.

8.24. Force Majeure

No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

8.25. Governing Law

The validity, construction, and effect of this Contract and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that CONTRACTOR may provide.

8.26. Venue

Any action between the Parties arising from this Contract shall be maintained in the courts of Davidson County, Tennessee.

8.27. Severability

Should any provision of this Contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this Contract.

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Notices and Designation of Agent for Service of Process

All notices to METRO shall be mailed or hand delivered to:

PURCHASING AGENT

PROCUREMENT DIVISION

DEPARTMENT OF FINANCE

PO BOX 196300

NASHVILLE, TN 37219-6300

Notices to CONTRACTOR shall be mailed or hand delivered to:

CONTRACTOR: Siemens Industry, Inc.

Attention: Sara Mould

Address: 1410 Donelson Pike Suite A-3, Nashville, TN 37217

Telephone: 859-967-4067

Fax: N/A

E-mail: sara.mould@siemens.com

CONTRACTOR designates the following as the CONTRACTOR's agent for service of process and will

waive any objection to service of process if process is served upon this agent:

Designated Agent: Siemens Industry, Inc.

Attention: Chad Black

Address: 1410 Donelson Pike Suite A-3, Nashville, TN 37217

Email: chad.black@siemens.com

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Contract Number 6489764

Effective Date

This contract shall not be binding upon the parties until it has been fully electronically approved by the supplier, the authorized representatives of the Metropolitan Government, and filed in the office of the Metropolitan Clerk.

**THE METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY**

APPROVED AS TO PROJECT SCOPE:

Daron Hall PL
Dept. / Agency / Comm. Head or Board Chair. Dept. Fin.

**APPROVED AS TO COMPLIANCE WITH
PROCUREMENT CODE:**

Michelle R. Hernandez Lane SEC
Purchasing Agent Purchasing

APPROVED AS TO AVAILABILITY OF FUNDS:

Kelly Flannery/TJE KH
Director of Finance BA

APPROVED AS TO FORM AND LEGALITY:

Macy Amos BL
Metropolitan Attorney Insurance

FILED BY THE METROPOLITAN CLERK:

Metropolitan Clerk Date

CONTRACTOR:

Siemens Industry, Inc
Company Name

Dan Mathewson
Signature of Company's Contracting Officer

Dan Mathewson
Officer's Name

Branch General Manager
Officer's Title



Executive Summary

Customer Needs

The Services proposed in this agreement are specifically designed for the Downtown Detention Center (DDC), and the services provided herein will help you in achieving your facility goals.

Our Services

Siemens will provide the following services.

- Room Pressurization Test
- Control Loop Tuning
- Network Maintenance
- Data Backup and Restore Services
- Verify proper operation of Automation devices
- Operator Coaching
- Software Subscription Service - Desigo CC
- Firmware Updates
- modem and annual service
- CloudOps Advanced Service & Reports
- Digital Services Project Management Setup
- Equipment Setup
- New Navigator Setup
- Annual Data Quality Review
- cRSP Setup
- MSIB setup



Building Services – Automation

Services that deliver the outcomes you want to achieve.

Services delivered by Siemens have been developed to ensure satisfaction and help you achieve the outcomes you expect. Services delivered use the Proven Outcomes Three D approach (Define, Deliver, Demonstrate) to ensure satisfaction.

1. 100% Room Pressurization Accuracy
2. Zero System Downtime
3. BAS Alarm resolution within 1 business day
4. Occupancy Comfort complaint resolution within 1 business day

Room Pressurization testing, Sensor Verification, Data Backup and Restore, Control Loop Tuning, Software Subscription, Firmware update services detailed below. Digital Services utilize data-driven analytics to test the operational performance of selected systems (details listed under CloudOps Advanced). Proposal includes 16 hours Operator Coaching both during Normal Business hours (M - F, 8 AM - 5 PM CDT, non-holiday).

Through the Siemens Building Automation Services we are pleased to offer the following services:

- Digital Services
- Manage System Operation & Compliance
- Protect Lifecycle Investment
- Optimize Performance & Productivity

Digital Services

CloudOps Advanced

This service utilizes data-driven analytics to test the operational performance of selected systems and ensure that critical faults are addressed by our remote services team whenever possible. This is achieved through the application of data analytics intended to identify issues and a prioritization of faults based upon their impact on your operations and equipment. Often issues are identified that might otherwise go unnoticed and often they can be resolved remotely.

Using fault detection and diagnostics (FDD) we will assess the overall performance of your systems while assisting in the troubleshooting of recurring intermittent issues. The result is quicker response time to correct faults effecting the overall performance of your systems.

Siemens will leverage our highly skilled remote service specialists to either resolve issues rapidly or to provide a branch technician with the results of their initial troubleshooting. This reduces the time it will take to make repairs when an on-site professional is required.



Some of the expected outcomes when implementing this service include:

- Operational Key performance indicators (KPI's) Reporting
- Data Visualization of system performance
- Mitigation of risk of business and facility interruptions
- Minimizing the need for equipment visits until data suggest there is a fault
- Reporting system uptime and mitigate risks of shortened equipment lifecycle
- Monitoring historical environmental conditions and identifying improvements or negative trends to be addressed
- Analytics that help to identify potential deviation from normal operation through rule-based algorithms on selected systems and identified equipment
- Leveraging the Siemens Digital Service Center to help to remotely resolve common issues and optimize equipment performance with your consent when the option to do so is available
- Remotely interrogating the system to help to reduce the likelihood of misdiagnosing controls issues versus mechanical or design issues before dispatching the clients or Siemens repair resources
- When issues are not resolved remotely, passing along troubleshooting efforts to help to reduce the time it takes to correct faults on site.
- Delivering reports, through Siemens, at the frequency identified in the Maintained Equipment Table

CloudOps Advanced engages our remote experts to supplement your operational staff and our traditional building automation system controls service for improved proactive and condition-based services. We will help to optimize and help to enable precise system control for improved operation of both the building automation system and its peripheral controlled devices.

Once systems, equipment, and spaces are included under this service offering, they are analyzed remotely and periodic reports are provided, helping to improve system reliability, enabling focused maintenance activities, and helping prioritize resolution of pending faults. Furthermore, any critical faults are routed to a remote service specialist for troubleshooting and resolution. Even if the facility staff has not noticed the critical fault, we will seek to identify the fault and get to work correcting the issue. This conditioned based maintenance approach not only supports a more advanced maintenance strategy but, ultimately, building owners can be more proactive and mitigate risks that manifest when systems, equipment, or spaces do not perform as designed. Our remote service team helps augment your staff with advanced skills that many facilities struggle to find in the labor market today.

Siemens will establish key performance indicators (KPIs) aligned with your equipment, spaces, and goals. This service provides the transparency that many executives expect in today's data driven world. Results are always documented and shared through Navigator™ and other customer reporting platforms at the frequency specified in the Maintained Equipment Table.

To take advantage of CloudOps Advanced you will need cRSP and Navigator™.



Manage System Operation & Compliance

Data Backup and Restore Services

Siemens will perform scheduled database backups of your workstation database and graphics and/or field panel databases and provide safe storage of this critical business information. Should a catastrophic event occur, we will respond onsite (or online if such service is included in this service agreement) to reload the databases and system files from our stored backup copy, to restore your operation as soon as possible. The equipment to be included as part of this service is itemized in the List of Maintained Equipment in this service agreement.

Network Maintenance

Network Maintenance: Using a combination of proprietary diagnostic technologies, digital meters, and network analysis software, Siemens will analyze, optimize and report on the performance of the customer's systems networks a specified number of times per year. Proper network performance ensures the proper speed of communication and accuracy of control, alarming, and reporting across the facility. Using network diagnostic tools, our proactive evaluation of the data network includes an analysis of bandwidth, disturbances, network traffic, communication over the network, and overall operation. The number of networks to be analyzed and the frequency of the service are documented in the List of Maintained Equipment.

Preventive Maintenance – Automation

We will provide preventive maintenance in accordance with a program of routines as determined by our experience, equipment application and location. The list of field panels and/or devices included under this service are identified in the List of Maintained Equipment in this service agreement.

Automation controls can drift out of calibration with changes in HVAC component performance characteristics, building use, and climatic conditions. This service will extend equipment life, reduce energy consumption, and reduce the risk of costly and disruptive breakdowns.

Room Pressurization Test

We will verify that air flows in the specified direction with respect to corridors. Results are documented for future reference and compliance. The differential pressure for rooms of high purity classifications is measured with a micro-manometer. Directional airflow at entry doorways and other passages for rooms of lower classification is analyzed by smoke generation. For Biosafety Labs, this service will include the verification of door alarms and status. The frequency of this service is itemized in the List of Maintained Equipment in this service agreement.



Protect Lifecycle Investment

Firmware Updates

We will provide you with firmware and documentation updates to your existing field panels upon development. Onsite training will familiarize you with the new features and their associated benefits. These updates deliver the benefits of Siemens commitment to compatibility by design; a commitment unique in our industry. Field panels included under this service are itemized in the List of Maintained Equipment. (Upgrades to Field Panel hardware, processors, memory boards, and related hardware are excluded unless specified elsewhere.)

Software Subscription Service - Desigo CC

Siemens will provide you with software upgrades to your existing Siemens Desigo CC software as they are released. These upgrades include both Service Releases and all New Version Releases of Software. Siemens will also provide corresponding support documentation outlining the features of the releases. Included is onsite training to help to familiarize you with the new features along with their associated benefits. These updates will act to deliver the benefits of Siemens' commitment to compatibility by design, a commitment unique in our industry. Workstations covered under this service are itemized in the List of Maintained Equipment. (Upgrades to PC's and related workstation hardware are excluded unless specified elsewhere.)

Optimize Performance & Productivity

Control Loop Tuning

Control loops drift out of calibration with changes in mechanical efficiency, building use, and climatic conditions. Through this service Siemens will ensure control loops for devices such as valves, dampers, actuators, etc., experience minimized overshooting and oscillatory behavior. The control loops to be included as part of this service are itemized in the List of Maintained Equipment in this service agreement.

Operator Coaching

Through our individual Operator Coaching, we will review and reinforce learned skills, leading to greater operator knowledge and productivity. Siemens will assist your operators in identifying, verifying and resolving problems found in executing tasks. During the coaching sessions, we can address log book issues, assist your operators in becoming more self-sufficient, and improve the skills of your operators to better meet the needs of your facility and their specific job responsibilities. This will promote better utilization of systems and applications implemented in your facility. Under this agreement we shall provide coaching, which will be conducted on normal business days and hours, during scheduled visits.



Emergency Response Times – Automation

Emergency Online/Phone Response

Billable Service

Online system and software troubleshooting and diagnostics and phone support will not be provided under the coverage of this agreement. Siemens will respond to your request for emergency on-line/phone support, 24 Hours per Day, excluding holidays, upon receiving notification of an emergency, as determined by your staff and Siemens, but all service performed will be provided as a billable service. If remote diagnostics determine a site visit is required to resolve the problem, a technician can be dispatched. Depending on your contract coverage, the on-site dispatch will be covered or will be a billable service call.

Emergency On-site Response

Billable Service

Emergency Onsite Response is not included within the coverage of this agreement. Siemens will respond to your request for emergency on-site service as soon as staff is available. An emergency is determined by your staff and Siemens. All service performed will be provided as a billable service. Siemens will respond to your request for emergency onsite support, 24 hours per day, excluding holidays, upon receiving notification of an emergency, as determined by your staff and Siemens, but all service performed will be provided as a billable service.

CloudFIMs / CloudOps Equipment Table

Fault Review Frequency: Every month for all Contract Periods (5 year agreement)

Reporting Frequency: Each Quart for all Contract Periods (5 year agreement)

Building	Equipment Name
Downtown Detention Center (DDC)	AHU 1 thru 12
Downtown Detention Center (DDC)	MAU 1
Downtown Detention Center (DDC)	RTU 1, 2, 3
Downtown Detention Center (DDC)	All VAV's
Downtown Detention Center (DDC)	All EF. FCU, CRCU



Connectivity and Communications

Siemens Remote Services for building technology (SRS)

A secure remote connection to your facility enables Siemens to respond quickly, and maintain a high level of system up-time and performance.

Siemens Remote Service (SRS) is the efficient and comprehensive infrastructure for the complete spectrum of equipment-related remote services. Services that formerly required on-site visits are now available via data transfer. This includes rapid error identification as well as immediate remote repair. But that's not all. By proactively monitoring your systems, we can detect parameter deviations before problems occur. Siemens accesses your systems via a secure cRSP connection.

Siemens Service Portal

The Service Portal complements the personalized services you will receive from your local Siemens office by providing greater visibility into equipment and services delivered by Siemens. This web-based portal allows you the ability to confirm schedules, track repairs, manage agreements, generate reports, and access critical information; then share it across your entire enterprise quickly and efficiently. The Service Portal is a user-friendly way to increase your productivity and the value of your service program.

Data security as a basic requirement

We value confidentiality and long-term partnerships. That is why we give the security of your data the highest priority. Before we implement an enhanced service package with remote support, we conduct an in-depth analysis of the situation, taking into account national and international regulations, technical infrastructures and industry specifics. Our service employees carefully evaluate your needs on an individual basis with a view toward information security.

Contract Pricing

Annual Service and Maintenance Pricing

Period	Period Range	Price	Billing Frequency
1	Year 1	\$69,852.00	Annually
2	Year 2	\$53,412.00	Annually
3	Year 3	\$55,008.00	Annually
4	Year 4	\$56,664.00	Annually
5	Year 5	\$58,356.00	Annually

Service Agreement Contract Characteristics and Pricing

Description	AUTOMATION
Hours of Coverage	24 x 7
Response Times (Phone/Online)	Billable
Response Times (Onsite/Emergency)	Billable
Remote Services	Yes
Third Party Systems	No
Monitoring	No
Additional Labor Discount	See Below
Additional Material Discount	10.0%

*Labor and material costs for troubleshooting problems and repairing or replacing components are handled separately. Labor Cost are billed per rates below. Parts and Material Cost can be at cost can be as quoted and invoiced with supporting documentation. These costs can be billable or included within your Repair and Replacement Coverage. See List of Maintained Equipment to view your current Repair and Replacement Coverage.

Labor Rates

Contract Customers:	<i>Regular hrs Mon-Fri</i>	<i>Overtime</i>	<i>Sun. and/or Holidays</i>
Automation Specialist	\$155.48	\$215.80	\$270.400
Fitter/Mechanic	\$119.00	\$178.50	\$238.00
Fire Specialist	\$132.48	\$176.80	\$230.40
Security Specialist	\$132.48	\$176.80	\$230.40

- A \$95 minimum vehicle trip charge will be added to all service calls.
- A consumables fee of \$31.75 will be charged on any service call with installed or replaced parts. (includes welding supplies, safety equipment, cleaning materials and other assorted items)
- A Digital Technology fee of \$25 will be charged on remote only service calls. This fee covers the costs associated with delivering this premium service so they have quicker response and resolution.
- Contract Customer Billing Rates: Remote service order resolved under 2-hour, minimum 2 hours, resolved in greater than 2 hours billed at actual time. Onsite service order resolved under 2-hour, minimum billing 2 hours, resolved in greater than 2 hours billed at actual time. Combined Remote and onsite (not resolved by remote and required on site visit to complete) combine remote AND onsite time, minimum billing of 2 hours or actual time if over 2 hours.
- Labor Rates Only are subject to Annual Escalation/De-escalation is capped at 5% using the Consumer Price Index (CPI) as the justification to support such request.



Service Details

Automation			
Service Description	Qty	Frequency	Year
Software Subscription Service - Desigo CC	1	1	1,2,3,4,5
Firmware Updates	18	1	1,2,3,4,5
Network Maintenance	1	12	1,2,3,4,5
Control Loop Tuning	18	12	1,2,3,4,5
Data Backup and Restore Services	1	12	1,2,3,4,5
Operator Coaching	1	4	1,2,3,4,5
CloudOps Advanced	1	1	1,2,3,4,5

Automation								
Equipment	Service Description	Qty	Frequency	Year	Service Location	Repair Coverage		
Makeup Air Unit								
	Room Pressurization Test	1	4	1,2,3,4,5	Onsite	N/A		
PXC Modular								
	Preventive Maintenance - Automation	16	1	1,2,3,4,5	Onsite	N/A		
PXC Compact APOGEE 36PT								
	Preventive Maintenance - Automation	1	1	1,2,3,4,5	Onsite	N/A		
PXC Compact APOGEE 16PT								
	Preventive Maintenance - Automation	1	1	1,2,3,4,5	Onsite	N/A		
Damper Actuator (Belimo)								
	Verify proper operation of Automation devices	123	1	1,2,3,4,5	Onsite	N/A		
Air Flow Switch								
	Verify proper operation of Automation devices	24	1	1,2,3,4,5	Onsite	N/A		
TEC - Electronic Outputs								
	Verify proper operation of Automation devices	159	1	1,2,3,4,5	Onsite	N/A		
VAV 1-2 doors / 1-2 diffusers								
	Verify proper operation of Automation devices	68	1	1,2,3,4,5	Onsite	N/A		
Damper								
	Verify proper operation of Automation devices	68	1	1,2,3,4,5	Onsite	N/A		
Variable Frequency Drive - SED2								



Automation						
Equipment	Service Description	Qty	Frequency	Year	Service Location	Repair Coverage
	Verify proper operation of Automation devices	40	1	1,2,3,4,5	Onsite	N/A
eCumulus Cell Modem						
	User Defined Equipment Dependent Service	1	1	1,2,3,4,5	Onsite	N/A
eCumulus VPN Solution 1GB plan (12 months ONLY)						
	User Defined Equipment Dependent Service	1	1	1,2,3,4,5	Onsite	N/A

Exhibit B – MISA Terms and Conditions

SECTION A-1**General Terms and Conditions**

- 1 **Safeguards.** In addition to the controls specified in the exhibits to this Agreement, Contractor agrees to implement administrative, physical, and technical safeguards to protect the availability, confidentiality and integrity of Metropolitan Government of Nashville and Davison County (Metro Government) Information, information technology assets and services. All such safeguards shall be in accordance with industry-wide best security practices and commensurate with the importance of the information being protected, but in no event less protective than those safeguards that Contractor uses to protect its own information or information of similar importance, or is required by applicable federal or state law.
- 2 **Inventory.** Contractor agrees to maintain at all times during the Term of this Agreement a Product and Service Inventory. Contractor shall upon request of Metro Government, which shall be no more frequently than semi-annually, provide the current Product and Service Inventory to Metro Government within thirty (30) days of the request.
- 3 **Connection of Systems or Devices to the Metro Government Network.** Contractor shall not place any systems or devices on the Metro Government Network without the prior written permission of the Director of ITS, designee, or the designated Metro Government contact for this Agreement.
- 4 **Access Removal.** If granted access to Metro Government Network or systems, Contractor and its Agents shall only access those systems, applications or information which they are expressly authorized by Metro Government to access, even if the technical controls in the system or application do not prevent Contractor or its Agent from accessing those information or functions outside of Metro Government's authorization. Contractor shall impose reasonable sanctions against any Agent who attempts to bypass security controls. Notwithstanding anything to the contrary in the Purchasing Agreement or other agreement between Metro Government and Contractor, Metro Government at its sole discretion, may refuse granting access right to Metro Government Network or Sensitive Information to any Agent of Contractor, and may at any time remove access rights (whether physical premise access or system access) from Contractor or any Agents, without prior notice or liability to Contractor, if Metro Government reasonably suspects a security violation by Contractor or such Agent or otherwise deems such action appropriate to protect Metro Government Infrastructure, Metro Government Network or Metro Government Information.
- 5 **Subcontracting/Outsourcing.**
 - 5.1 **Prior Approval.** Without Metro Government's prior written consent, Contractor may not subcontract with a third party to perform any of its obligations to Metro Government which involves access to Metro Government Information or connection to Metro Government Network. Nor shall Contractor outsource any Contractor infrastructure (physical or virtual) which Stores Sensitive Information without such consent. To obtain Metro Government's consent, Contractor shall contact the Metro Government ITS department. In addition, Metro Government may withdraw any prior consent if Metro Government reasonably suspect a violation by the subcontractor or outsource provider of this Agreement, or otherwise deems such withdraw necessary or appropriate to protect Metro Government Network, Metro Government Infrastructure or Metro Government Information.
 - 5.2 **Subcontractor Confidentiality.** Contractor Agents are bound by the same confidentiality obligations set forth in this Agreement. Contractor or its Agent may not transfer, provide access to or otherwise make available Metro Government Information to any individual or entity outside of the United States (even within its own organization) without the prior written consent of Metro Government. To obtain such consent, Contractor shall send Metro Government a notice detailing the type of information to be disclosed, the purpose of the disclosure, the recipient's identification and location, and other information required by Metro Government.
 - 5.3 **Contractor Responsibility.** Prior to subcontracting or outsourcing any Contractor's obligations to

Exhibit B – MISA Terms and Conditions

Metro Government, Contractor shall enter into a binding agreement with its subcontractor or outsource service provider ("Third Party Agreement") which (a) prohibits such third party to further subcontract any of its obligations, (b) contains provisions no less protective to Metro Government Network, Metro Government Infrastructure and/or Metro Government Information than those in this Agreement, and (c) expressly provides Metro Government the right to audit such subcontractor or outsource service provider to the same extent that Metro Government may audit Contractor under this Agreement. Contractor warrants that the Third Party Agreement will be enforceable by Metro Government in the U.S. against the subcontractor or outsource provider (e.g., as an intended third party beneficiary under the Third Party Agreement).

Without limiting any other rights of Metro Government in this Agreement, Contractor remains fully responsible and liable for the acts or omissions of its Agents. In the event of an unauthorized disclosure or use of Sensitive Information by its Agent, Contractor shall, at its own expense, provide assistance and cooperate fully with Metro Government to mitigate the damages to Metro Government and prevent further use or disclosure.

Exhibit B – MISA Terms and Conditions

SECTION A-2

Definitions

Capitalized terms used in the Agreement shall have the meanings set forth in this Exhibit A-2 or in the [Metropolitan Government Information Security Glossary](#), which can be found on the Metropolitan Government of Nashville website . Terms not defined in this Exhibit A-2 or otherwise in the Agreement shall have standard industry meanings.

1. “Affiliates” as applied to any particular entity, means those entities, businesses, and facilities that are controlled by, controlling, or under common control with a stated entity, as well as (with respect to Metro Government) any entity to which Metro Government and/or any of the foregoing provides information processing services.
2. “Agent” means any subcontractor, independent contractor, officer, director, employee, consultant or other representative of Contractor, whether under oral or written agreement, whether an individual or entity.
3. “Agreement” means this Information Security Agreement, including all applicable exhibits, addendums, and attachments.
4. “Information Breach” means any actual or suspected unauthorized disclosure or use of, or access to, Metro Government Information, or actual or suspected loss of Metro Government Information.
5. “Effective Date” means the date first set forth on page 1 of the Agreement.
6. “Metro Government Information” means an instance of an information type belonging to Metro Government. Any communication or representation of knowledge, such as facts, information, or opinions in any medium or form, including textual, numerical, graphic, cartographic, narrative or audiovisual, owned by or entrusted to Metro Government.
7. “Metro Government Infrastructure” means any information technology system, virtual or physical, which is owned, controlled, leased, or rented by Metro Government, either residing on or outside of the Metro Government Network. Metro Government Infrastructure includes infrastructure obtained from an IAAS provider or systems that are provided and located on the Metro Government Network as part of a Service.
8. “Metro Government Network” means any Wide Area Network (WAN) or Local Area Network (LAN) owned, operated, managed or controlled by Metro Government.
9. “Term” means the period during which this Agreement is in effect.

Exhibit B – MISA Terms and Conditions

SECTION BU

Information Backup, Contingency Planning and Risk Management

1 General.

- 1.1 Contractor agrees to backup Metro Government Information which Contractor maintains or Stores. Backup and restoration procedures and related infrastructure, including frequency of backup, offsite storage, media lifespan and media reliability, must be commensurate with the criticality and availability requirement of the Metro Government Information being backed up.
- 1.2 Upon Metro Government's request, Contractor shall supply Metro Government with an inventory of Metro Government Information that Contractor Stores and/or backed up.
- 1.3 Contractor shall periodically, no less often than annually, test backup tapes or media by restoring Metro Government Information to a system similar to the original system where the Metro Government Information are stored.
- 1.4 Upon Metro Government's request, Contractor shall supply copies of Metro Government Information in a format requested by Metro Government.
- 1.5 Contractor shall backup business critical information at a frequency determined by Metro Government business owner.

2 Storage of Backup Media. Contractor shall store archival and backup media in a secured offsite location. Upon request, Contractor will promptly notify Metro Government of the physical address of the offsite location. The backups of the information should be stored in a manner commiserate with the security around the information. The backup tapes should be encrypted if the sensitivity of the information requires that level of security.

3 Disaster Recovery Plan. Contractor will maintain a Disaster Recovery Plan for all applications or information stores which contain business critical information. This plan will outline the procedures necessary to restore business critical information on the application or systems in a timely fashion in the case of an emergency or disaster.

4 Emergency Mode Operation Plan. Contractor shall maintain an emergency mode operating plan which ensures that systems or applications using or accessing business critical information are operational during an emergency or natural disaster, or are made operational after a disaster in a prompt manner, commensurate with the criticality of the information on the system.

5 Testing and Revision Procedure. Contractor agrees to test, at least annually, Contractor Disaster Recovery Plan and emergency mode operations plan and maintain a documented procedure for such testing. Contractor shall document the results and findings from such testing and revise the plan accordingly.

6 Risk Management Requirements. Contractor shall implement internal risk management practices to ensure the confidentiality, integrity and availability of Metro Government Information. These practices will be no less secure than the ones used by Contractor to protect Contractor's own Sensitive Information or information of comparable sensitivity.

Exhibit B – MISA Terms and Conditions

SECTION IR Incident Response

- 1 Incident Reporting.** Contractor shall report any Information Security Incident of which it becomes aware, or failure of any technical or procedural controls, which has or had a potential to affect Metro Government Network, Metro Government Infrastructure or Metro Government Information to Metro Government and according to the following timeline and procedure:
 - 1.1** Contractor shall promptly report to Metro Government any successful Information Security Incident (with or without actual harm to system or information) within 24 hours of becoming aware of the incident. At a minimum, such report shall contain: (a) date and time when the Information Security Incident occurred; (b) the date and time when such incident was discovered by Contractor; (c) identification of the systems, programs, networks and/or Metro Government Information affected by such incident; (d) preliminary impact analysis; (e) description and the scope of the incident; and (f) any mitigation steps taken by Contractor. However, if Contractor is experiencing or has experienced a Information Breach or a successful Information Security Incident to systems that host or Store Sensitive Information or an Information Security Incident that is causing or has caused material disruption to the functionality or operation of Contractor systems or damage to Contractor hardware, software or information, including a successful attack by Malicious Software, Contractor shall report such security breach or incident to Metro Government both to the ITS Help Desk at (615) 862-HELP and to the Metro Government department within 24 hours from Contractor's reasonable awareness of such security breach or incident.
 - 1.2** Contractor shall document any attempted but unsuccessful Information Security Incident of which it becomes aware and report to Metro Government upon its request. The frequency, content, and format of such report will be mutually agreed upon by the parties.
- 2 Incident Response.**
 - 2.1** Contractor shall have a documented procedure for promptly responding to an Information Security Incidents and Information Breach that complies with applicable law and shall follow such procedure in case of an incident. Contractor shall have clear roles defined and communicated within its organization for effective internal incidence response.
 - 2.2** Contractor shall designate a contact person for Metro Government to contact in the event of an Information Security Incident. This contact person should possess the requisite authority and knowledge to: (i) act as a liaison to communicate between Contractor and Metro Government regarding the incident (including providing information requested by Metro Government); (ii) perform the reporting obligations of Contractor under this exhibit; and (iii) develop a mitigation strategy to remedy or mitigate any damage to Metro Government Network, Metro Government Infrastructure, Metro Government Information or the Product or Service provided to Metro Government that may result from the Information Security Incident.

Exhibit B – MISA Terms and Conditions

SECTION PES

Physical and Environmental Security

Contractor shall implement security measures at any Contractor facilities where Sensitive Information is stored. Such security measures must include, at a minimum:

- 1 **Contingency Operations.** A documented Disaster Recovery Plan for accessing the facility and the Sensitive Information, and restoring Sensitive Information if needed, in the case of an emergency or crisis.
- 2 **Environmental Safeguards.** Reasonable environmental safeguards to protect systems storing Sensitive Information from smoke, heat, water, fire, humidity, or power surge damage.
- 3 **Access Control.** Appropriate controls which ensure that only authorized personnel are allowed physical access to the facility. Examples of appropriate controls include, but are not limited to: signage; personnel badges and controlled badge access; visitor sign in, escort, and sign out; security guards; and video surveillance for information centers which store Sensitive Information.
- 4 **Maintenance Records.** Contractor shall conduct regular maintenance on systems which contain Sensitive Information and to facility's physical and environmental controls (e.g., temperature, physical access). Contractor shall maintain documentation of any repairs or maintenance performed on the systems or facility and shall provide Metro Government a copy of such records upon its reasonable request.
- 5 **Physical Safeguards.** Contractor shall use best efforts to prevent theft or damage to Contractor systems or storage media containing Sensitive Information. Such efforts shall include, but are not limited to:
 - 5.1 Protecting systems or devices that contain un-encrypted Sensitive Information with physical barriers such as locked cabinet, floor to ceiling room, or secured cage.
 - 5.2 Not storing Un-encrypted Sensitive Information in "multi-party" shared physical environments with other entities.
 - 5.3 Not transporting or shipping un-encrypted media which stores Sensitive Information unless the information is sanitized through full media overwrite (at least one complete pass), or media destruction through shredding, pulverizing, or drive-punching (e.g., breaking the hard drive platters).
 - 5.4 In the event Products generate, store, transmit or process Sensitive Information and the Product does not support encryption, Contractor shall be solely responsible for the provision of physical security measures for the applicable Products (e.g., cable locks on laptops).

Exhibit B – MISA Terms and Conditions**SECTION VMGT****Contractor Managed System Requirements****1 Vulnerability and Patch Management.**

- 1.1 For all Contractor Managed Systems that store Metro Government Information, Contractor will promptly address Vulnerabilities through Security Patches. Unless otherwise requested by Metro Government, Security Patches shall be applied within fourteen (14) days from its release for Critical Security Patches, thirty (30) days for Important Security Patches, and twelve (12) months for all other applicable Security Patches. Contractor may provide an effective technical mitigation in place of a Security Patch (if no Security Patch is available or if the Security Patch is incompatible) which doesn't materially impact Metro Government's use of the system nor require additional third party products.
- 1.2 If the application of Security Patches or other technical mitigations could impact the operation of Contractor Managed System, Contractor agrees to install patches only during Metro Government approved scheduled maintenance hours, or another time period agreed by Metro Government.
- 1.3 Contractor Managed Systems on the Metro Government Network or Metro Government Infrastructure, the Metro Government retains the right to delay patching for whatever reason it deems necessary.
- 1.4 Metro Government will monitor compliance and check for Vulnerabilities on all Products on the Metro Government Network or Metro Government Infrastructure. Contractor shall provide Metro Government administrative credentials upon request for the purpose of monitoring compliance of a given Product. Metro Government will not knowingly change configurations of the Contractor Managed Systems without prior approval from Contractor.
- 1.5 Government may monitor compliance of Contractor Managed Systems. Contractor agrees to allow Metro Government to check for Vulnerabilities during agreed upon times using mutually agreed upon audit methods.
- 1.6 Contractor shall use all reasonable methods to mitigate or remedy a known Vulnerability in the Contractor Managed System according to the level of criticality and shall cooperate fully with Metro Government in its effort to mitigate or remedy the same. Upon Metro Government's request, Contractor shall implement any reasonable measure recommended by Metro Government in connection with Contractor's mitigation effort.

2 System Hardening.

- 2.1 Contractor Managed Systems, Contractor shall ensure that either: (i) file shares are configured with access rights which prevent unauthorized access or (ii) Contractor shall remove or disable file shares that cannot be configured with access controls set forth in (i) hereof. Access rights to file shares that remain under (i) must use the Principle of Least Privilege for granting access.
- 2.2 In the event that Contractor is providing Products or systems that are to be directly accessible from the Internet, Contractor shall disable or allow disabling by Metro Government of all active or executed software components of the Product or system that are not required for proper functionality of the Product or system.
- 2.3 Contractor shall ensure that Contractor Managed Systems are synchronized with reliable time sources and have the proper time zone set or no time offset (e.g., GMT or UTC). In the case of systems residing on the Metro Government Network, Contractor shall ensure that all such systems are synchronized with an Metro Government corporate timeserver in their respective Regional Information Centers (RDC).
- 2.4 For Contractor Managed Systems, Contractor shall remove or disable any default or guest user accounts. Default accounts that cannot be removed or disabled must have their default password changed to a Strong Password that is unique to the respective site and Metro Government.
- 2.5 For Contractor Managed Systems, Contractor shall ensure that the system is configured to disable user accounts after a

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certain number of failed login attempts have occurred in a period of time less than thirty (30) minutes of the last login attempt or that system monitoring and notification is configured to alert system administrators to successive failed login attempts for the same user account.

3 Authentication.

- 3.1** Contractor shall assign a unique user ID to any Agent or end user who accesses Sensitive Information on Contractor Managed Systems. This unique ID shall be configured so that it enables tracking of each user's activity within the system.
- 3.2** Contractor agrees to require authentication for access to Sensitive Information on Contractor Managed System.
- 3.3** Contractor agrees to configure the system to support Strong Authentication for accessing Sensitive Information from any Open Network (e.g., Internet, open wireless). For avoidance of doubt, Metro Government Network is considered a trusted network.
- 3.4** Contractor shall configure the system to expire passwords at least every one-hundred and eighty (180) days and require a password change on the next successful login. For system that cannot support Strong Passwords, Contractor shall configure the system to expire passwords every ninety (90) days.
- 3.5** Unless otherwise agreed by Metro Government, Contractor shall ensure that Contractor Managed Systems will require Strong Password for user authentication.

4 Automatic Log off. Contractor shall configure systems which store Sensitive Information to automatically logoff user sessions at the most after 20 minutes of inactivity.

5 User Accountability. Contractor shall report to Metro Government, on request, all user accounts and their respective access rights within the system within five (5) business days or less of the request.

6 Information Segregation, Information Protection and Authorization. Contractor shall implement processes and/or controls to prevent the accidental disclosure of Metro Government Sensitive Information to other Contractor Metro Governments, including an Affiliates of Metro Government.

7 Account Termination. Contractor shall disable user accounts of Agents or Metro Government end users for the system within five (5) business days of becoming aware of the termination of such individual. In the cases of cause for termination, Contractor will disable such user accounts as soon as administratively possible.

8 System / Information Access.

- 8.1** Contractor and its Agents shall only access system, application or information which they are expressly authorized by Metro Government to access, even if the technical controls in the system or application do not prevent Contractor or its Agent from accessing those information or functions outside of Metro Government's authorization. Contractor shall impose reasonable sanctions against any Agent who attempts to bypass Metro Government security controls.
- 8.2** Contractor agrees to use the Principle of Least Privilege when granting access to Contractor Managed Systems or Metro Government Information.

9 System Maintenance.

- 9.1** Contractor shall maintain system(s) that generate, store, transmit or process Metro Government Sensitive Information according to manufacturer recommendations. Contractor shall ensure that only those personnel certified to repair such systems are allowed to provide maintenance services.
- 9.2** Contractor shall keep records of all preventative and corrective maintenance on systems that generate, store, transmit or process Metro Government Sensitive Information. Such records shall include the specific maintenance performed, date of

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maintenance, systems that the maintenance was performed on including identifiers (e.g., DNS name, IP address) and results of the maintenance. Upon request by Metro Government, Contractor shall supply such record within thirty (30) days.

Exhibit C - Affidavits

Compliance with Laws: After first being duly sworn according to law, the undersigned (Affiant) states that he/she and the contracting organization is presently in compliance with, and will continue to maintain compliance with, all applicable federal, state, and local laws.

Taxes and Licensure: Affiant states that Contractor has all applicable licenses, including business licenses. Affiant also states that Contractor is current on its payment of all applicable gross receipt taxes and personal property taxes. M.C.L. 4.20.065

Nondiscrimination: Affiant affirms that by its employment policy, standards and practices, it does not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age or sex, and are not in violation of, and will not violate, any applicable laws concerning the employment of individuals with disabilities. M.C.L. 4.28.020

Employment Requirement: Affiant affirms that Contactor's employment practices are in compliance with applicable United States immigrations laws. M.C.L. 4.40.060.

Covenant of Nondiscrimination: Affiant affirms that in consideration of the privilege to submit offers in response to this solicitation, we hereby consent, covenant, and agree as follows:

To adopt the policies of the Metropolitan Government relating to equal opportunity in contracting on projects and contracts funded, in whole or in part, with funds of the Metropolitan Government;

- To attempt certain good faith efforts to solicit Minority-owned and Woman-owned business participation on projects and contracts in addition to regular and customary solicitation efforts;
- Not to otherwise engage in discriminatory conduct;
- To provide a discrimination-free working environment;
- That this Covenant of Nondiscrimination shall be continuing in nature and shall remain in full force and effect without interruption;
- That the Covenant of Nondiscrimination shall be incorporated by reference into any contract or portion thereof which the Supplier may hereafter obtain; and
- That the failure of the Supplier to satisfactorily discharge any of the promises of nondiscrimination as made and set forth herein shall constitute a material breach of contract. M.C.L. 4.46.070

Contingent Fees: It is a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a Metro contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. After first being duly sworn according to law, the undersigned Affiant states that the Contractor has not retained anyone in violation of the foregoing. M.C.L. 4.48.080

Iran Divestment Act Affidavit: By submission of this offer and in response to the solicitation, Contractor(s) and each person signing on behalf of Contractor(s) affirm, under penalty of perjury, that to the best of their knowledge and belief, neither the Contractor(s), nor proposed subcontractors, subconsultants, partners and any joint venturers, are on the list created pursuant to the Tennessee Code Annotated § 12-12-106 (Iran Divestment Act). Referenced website:

[https://www.tn.gov/content/dam/tn/generalservices/documents/cpo/cpo-library/public-information-library/List of persons pursuant to Tenn. Code Ann. 12-12-106 Iran Divestment Act updated 7.7.17.pdf](https://www.tn.gov/content/dam/tn/generalservices/documents/cpo/cpo-library/public-information-library/List_of_persons_pursuant_to_Tenn._Code_Ann._12-12-106_Iran_Divestment_Act_updated_7.7.17.pdf).

Sexual Harassment: Affiant affirms that should it be awarded a contract with the Metropolitan Government for a period of more than twelve (12) months and/or valued at over five hundred thousand (\$500,000) dollars, affiant shall be required to provide sexual harassment awareness and prevention training to its employees if those employees:

1. Have direct interactions with employees of the Metropolitan Government through email, phone, or in-person contact on a regular basis;
2. Have contact with the public such that the public may believe the contractor is an employee of the Metropolitan Government, including but not limited to a contractor with a phone number or email address associated with Metropolitan government or contractors with uniforms or vehicles bearing insignia of the Metropolitan Government; or
3. Work on property owned by the metropolitan government.

Such training shall be provided no later than (90) days of the effective date of the contract or (90) days of the employee's start date of employment with affiant if said employment occurs after the effective date of the contract. M.C.L. 2.230.020

Affiant affirms that offeror is and will remain in compliance with the provisions of Chapter 4.12 of the Metro Procurement Code and the contents of its offer as submitted. Affiant further affirms that offeror understands that failure to remain in such compliance shall constitute a material breach of its agreement with the Metropolitan Government.

And Further Affiant Sayeth Not:

Organization Name: Siemens Industry, Inc

Organization Officer Signature: Dan Mathewson

Name of Organization Officer: Dan Mathewson

Title: Branch General Manager

Exhibit D – Siemens Sale of Services Terms**Contract 6489764****STANDARD TERMS AND CONDITIONS OF SALE FOR SERVICES**

1. APPLICABLE TERMS. This Agreement is an Exhibit to Metro's contract which governs the sale and performance of services provided by Siemens ("Services"). Metro's Contract, 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) 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.

(b) 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.

(c) 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.

(d) 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. 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

Exhibit D – Siemens Sale of Services Terms**Contract 6489764**

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.

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

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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.

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'

Exhibit D – Siemens Sale of Services Terms**Contract 6489764**

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, 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. 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.

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(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 Tennessee, 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. 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.

Exhibit D – Siemens Sale of Services Terms**Contract 6489764**

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.

Exhibit D – Siemens Sale of Services Terms**Contract 6489764**

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.

Exhibit D – Siemens Sale of Services Terms

Contract 6489764

(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.

Exhibit E – Web Based Offering Terms**Contract 6489764**

SIEMENS STANDARD TERMS AND CONDITIONS

Standard Terms Addendum: General Conditions for Licensing Access to Software as a Web Based Offering

General Conditions for Licensing Access to Software as a Web Based Offering

The terms and conditions of this Addendum *General Conditions for Licensing Access to Software as a Web Based Offering* ("Web Based Offering General Conditions") are applicable only to the Web Based Offering identified in the Proposal and supplements the Standard Terms and Conditions as follows:

BY CLICKING THE "ACCEPT" BUTTON OR OTHERWISE USING THE WEB BASED OFFERING, YOU ARE AGREEING THAT YOU HAVE READ, AND AGREE TO COMPLY WITH AND BE BOUND BY, THIS WEB BASED OFFERING GENERAL CONDITIONS IN ITS ENTIRETY WITHOUT LIMITATION OR QUALIFICATION AS WELL AS ALL APPLICABLE LAWS AND REGULATIONS. IF YOU DO NOT AGREE TO BE BOUND BY THIS WEB BASED OFFERING GENERAL CONDITIONS AND TO FOLLOW ALL APPLICABLE LAWS AND REGULATIONS, DO NOT CLICK THE "ACCEPT" BUTTON IF PRESENTED TO YOU OR ACCESS OR USE THE WEB BASED OFFERING.

1. General Provisions

This Web Based Offering General Conditions is a legal agreement between you, either individually or on behalf of your corporation, sole proprietor or other business entity ("you" or "your") and Siemens and each of its respective successors and assigns ("Siemens"), governing (i) your use of Siemens' online service application(s) hosted on a remote server system by Siemens or Siemens' service providers or suppliers and accessible via a web site portal address or IP address designated by Siemens, (ii) the Material contained therein as defined in Section 2.2.1., and (iii) any offline components provided by Siemens or its licensors for use in connection therewith, if any, (collectively, "Web Based Offering").

2. License Grant and Restrictions, Third Party License Terms, Place of Performance

2.1. Subject to the terms and conditions of this Web Based Offering General Conditions, as may be incorporated in a separate agreement between you and Siemens, Siemens grants you a limited, non-exclusive, non-transferable, non-sublicenseable, license to access and use the Web Based Offering solely for your own internal business purposes. All rights not expressly granted to you are reserved by Siemens and its licensors. The license granted herein is conditioned on your continued compliance with the terms and conditions of this Web Based Offering General Conditions.

2.2. Your use of the Web Based Offering is limited to the scope of the license granted in this Web Based Offering General Conditions, unless otherwise agreed by Siemens in writing. In particular you shall not, or permit other individuals or entities to,

2.2.1. copy, reproduce, translate, alter, display, modify, decompile, reverse engineer, disassemble, attempt to discover the source code or algorithms of, manipulate or create derivative work based on, the Web Based Offering, or any information, documents, software, products and services or any other material (including text, graphics, logos, button icons, images, audio clips, data, photographs, graphs, videos, typefaces, and sounds) contained or made available to you in the course of using the Web Based Offering, or any part thereof, ("Material") or use the Web Based offering to run or as part of a service bureau, outsourced or managed services arranged, or access the Web Based Offering, unless and to the extent permitted by mandatory law;

2.2.2. disable or circumvent any access control or related device, process or procedure established with respect to the Web Based Offering or any part thereof. Such prohibited conduct includes, without limitation, any efforts to gain unauthorized access to the Web Based Offering, other user accounts, computer systems or networks connected to the Web Based Offering, through hacking, password mining or any other means, log into an account with a password not assigned to the respective user, access identifiable information not intended for the respective user, test the security measures on the Web Based Offering and/or attempt to identify system vulnerabilities, or to attempt to disable the Web Based Offering; and

2.2.3. link, distribute, transfer, sell and resell, (sub-)license, rent, lease, lend, assign or otherwise transfer any rights to, or commercially exploit or otherwise make available the Web Based Offering in whole or in part to any third party in any way.

2.3. The Web Based Offering may contain third party content, including commercial and open source software. Such third party content may be subject to additional or differing terms and conditions that always prevail over this Web Based Offering General Conditions; you will find such additional or differing terms and conditions as a link at the bottom of the web site platform where the Web Based Offering is hosted, or any other place as designated by Siemens, and you accept those terms and conditions by using the Web Based Offering.

2.4. Siemens provides access to and use of the Web Based Offering at the Wide Area Network (WAN) exit which may be located outside your country. Siemens will not assume any obligation or responsibility to effect any data connection to such WAN exit. Such data connection and the use of and access to the Web Based Offering requires an Internet connection and suitable soft- and hardware as may be described in a separate agreement, including the ordering, proper installation, operation and

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Exhibit D – Web Based Offering Terms**Contract 6489764**

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maintenance of suitable hardware and/or software for the Internet connection and transfer of data by you or by Users, as defined in Section 5.1.

3. Remuneration

For consideration of the license to access and use the Web Based Offering, you agree to pay the agreed fees and charges. Fees do not include any taxes, excises, duties, permits or other government charges (collectively, "Taxes"). You are responsible for the payment of such Taxes or reimburse Siemens for any Taxes Siemens pays. If you claim a tax exemption or direct payment permit, you shall provide Siemens with a valid exemption certificate or permit.

4. Customer Communication, Disclosure, Data Storage

From time-to-time Siemens may ask whether or not you wish to receive marketing and other non-critical Web Based Offering-related communications. You may elect not to receive such communications at that time or opt-out of receiving such communications at any subsequent time by notifying Siemens. Because the Web Based Offering is a hosted, online application, Siemens may need to notify you and/or your Users, as defined in Section 5.1 (whether or not they have opted out as described above), about important announcements regarding the operation of the Web Based Offering. Siemens reserves the right to disclose that you are a User of the Web Based Offering. You also grant Siemens the right to copy and maintain Your Data (as defined in Article 6) during the term of your agreement with Siemens. You agree that all data and information required for the business relationships or resulting from said relationships, especially contractual documents and papers as well as data and information necessary for the performance of the Web Based Offering of and about you and your auxiliary persons, if any, may also be stored outside your country. Furthermore, all such data and information may be disclosed to other Siemens companies for corresponding processing, especially for providing services, fulfillment of legal requirements or for Siemens-internal audit and/or supervisory requirements; this always in compliance with respectively applicable data protection laws.

5. Account Access; Your Obligations; Cyber Security

5.1. Where use of the Web Based Offering is contingent on accessing an account and/or inserting a "user-identification" and/or "password", you agree that you will be solely responsible for all activity occurring when the Web Based Offering is accessed through the use of your user-identification and/or password including any actions that occur without your authorization. You and your Users shall keep any correspondence you receive relating to or through the use of the Web Based Offering (including, but not limited to, your user-identification, passwords, and other registration or sign-in information) confidential and in a safe place and not disclose it to any third party. "User" or "Users" means any individual(s) accessing the Web Based Offering on your behalf or otherwise using the Web Based Offering under your account. It is your responsibility to take appropriate actions immediately if any password has been stolen, leaked, compromised or otherwise used without proper consent. You shall: (i) notify Siemens immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Siemens immediately and use reasonable efforts to stop immediately any copying or distribution of content that is known or suspected by you; (iii) notify Siemens when you no longer require access to the Web Based Offering; and (v) keep all of your profile information current.

5.2. Siemens provides a portfolio with industrial security functions that support the secure operation of plants, systems, machines and networks. In order to protect plants, systems, machines and networks against cyber threats, it is necessary to implement – and continuously maintain – a holistic, state-of-the-art security concept. Siemens' portfolio only forms one element of such a concept. You are responsible for preventing unauthorized access to your plants, systems, machines and networks which should only be connected to an enterprise network or the internet if and to the extent such a connection is necessary and only when appropriate security measures (e.g. firewalls and/or network segmentation) are in place. Additionally, Siemens' guidance on appropriate security measures should be taken into account. For additional information, please contact your Siemens sales representative or visit <http://www.siemens.com/industrialsecurity>.

Siemens' portfolio undergoes continuous development to make it more secure. Siemens strongly recommends that updates are applied as soon as they are available and that the latest versions are used. Use of versions that are no longer supported, and failure to apply the latest updates may increase your exposure to cyber threats. Siemens strongly recommends to comply with security advisories on the latest security threats, patches and other related measures, published, among others, under <http://www.siemens.com/cert/en/cert-security-advisories.htm>.

6. Use of Data

In connection with the use of the Web Based Offering, Siemens (or Siemens' service providers or suppliers) may obtain, receive or collect data or information, including system-specific data or information or other content, from you or other parties using or having used the Web Based Offering ("Your Data").

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Except for files uploaded and stored manually by you, you hereby grant Siemens (and Siemens' service providers or suppliers when acting on Siemens' behalf) a non-exclusive, transferable, sublicenseable, worldwide, royalty-free, perpetual, non-revocable license under applicable copyrights and other intellectual property rights, if any, in all Your Data to provide the Web Based Offering to you and to create derivative works and aggregated data derived from Your Data, Siemens customers and other sources, including without limitation, comparative data sets, statistical analyses, reports and related services (collectively, "Siemens Data"). Siemens utilizes Siemens Data as it sees fit for any purpose.

The Parties shall ensure that they and/or their Users adhere to the then current terms of use, data protection notification, privacy policy, and cookie policy as linked at the bottom of the website platform where the Web Based Offering is hosted, or any other place as designated by Siemens.

You represent and warrant that you have obtained all rights, permissions and consents necessary to the aforesaid use of Your Data as part of the Web Based Offering, and permit Siemens to exercise all of its rights under this Web Based Offering General Conditions. You, not Siemens nor Siemens' service providers or suppliers, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness, of all of Your Data. Neither Siemens nor Siemens's service providers or suppliers shall be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any of Your Data.

In the event this Web Based Offering General Conditions is terminated (other than by reason of your breach), Siemens will make available to you a file containing Your Data within 30 days of termination if you so request in writing at the time of termination. Siemens reserves the right to withhold, remove and/or discard Your Data and Siemens Data, to the extent legally feasible, without notice for any breach, including, without limitation, non-payment. Upon termination for cause, your right to access or use Siemens Data immediately ceases, and Siemens shall have no obligation to maintain or forward any Siemens Data to you.

7. Intellectual Property Ownership

All right, title and interest in the Web Based Offering, including technology and trade secrets embodied therein and any custom developments created or provided in connection with or related to this Web Based Offering General Conditions, including all copyrights, patents, trade secrets, trade dress, and other proprietary rights, and any derivative works thereof, shall belong solely and exclusively to Siemens and/or its licensors, service providers and suppliers, and you shall have no rights whatsoever in any of the foregoing. You acknowledge that the Web Based Offering constitutes a valuable trade secret and/or is the confidential information of Siemens or its licensors, service providers and suppliers. Nothing in this Web Based Offering General Conditions or otherwise will be deemed to grant to you an ownership interest in the Web Based Offering, in whole or in part. All Material is the property of Siemens or its licensors, suppliers and service providers and is protected by applicable law and all rights thereunder are valid and protected in all forms, media and technologies existing now or hereinafter developed. You shall not (and shall ensure that third parties do not) perform any activities as set forth in Section 2.2, and any use other than as contemplated herein is strictly prohibited.

8. Trademarks

Siemens' name, logo, other related names, design marks, product names, feature names and related logos are trademarks of Siemens and may not be used, copied or imitated, in whole or in part, without the express prior written permission of Siemens. In addition, the look and feel of the Web Based Offering (including all page headers, custom graphics, button icons, and scripts) constitutes the service mark, trademark and/or trade dress of Siemens or its licensors, and may not be copied imitated or used, in whole or in part, without the express prior written permission of Siemens.

9. Term; Termination; Suspension of the Web Based Offering**9.1.**

9.2. Each party shall be entitled to give written notice of termination of this Web Based Offering General Conditions for cause, which shall apply in particular for: (i) unauthorized use of the Web Based Offering; (ii) a material breach of this Web Based Offering General Conditions by the other party which is not remedied within a reasonable period of time despite written notice specifying any such breach (iii) the other party becoming insolvent, bankrupt or insolvency or probate proceedings being applied for or initiated against it or being rejected due to a lack of funds; (vi) serious damage to the remote server system and/or the internet connection or its unusability as a result of any acts or omissions beyond Siemens' responsibility.

9.3. In each of the aforesaid cases or as otherwise stated in this Web Based Offering General Conditions, Siemens, in its sole discretion, may suspend or terminate your password, account or use of the Web Based Offering and may delete any Data without an obligation for a recovery. You agree and acknowledge that Siemens has no obligation to retain Your Data, and may delete such Data, if you have materially breached this Web Based Offering General Conditions, including but not limited to failure to pay any payments due to Siemens under any agreement, and such breach has not been cured within 15 days of notice of such breach.

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10. Warranty; Disclaimer

- 10.1. Each party warrants that it has the legal power and authority to enter into this Web Based Offering General Conditions. You warrant and covenant that you do not and have not falsely identified yourself nor will provide or have provided any false information to gain access to the Web Based Offering. If you are entering into this Web Based Offering General Conditions on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to these terms and conditions. If you do not have such authority, you must immediately stop using the Web Based Offering.
- 10.2. Unless Siemens agrees in a separate writing to provide an exception to this warranty disclaimer with respect to the Web Based Offering, Siemens shall be only liable for defects and any violation of property rights as set forth in Articles 12 and 13 and as follows:
- 10.2.1. Siemens shall render the Web Based Offering consistent with degree of care and skill ordinarily exercised by reputable companies performing same or substantially similar services under similar conditions and circumstances. The Web Based Offering substantially meets and complies with the functional specifications agreed with you separately in writing.
- 10.2.2. SIEMENS INCLUDING SIEMENS' SERVICE PROVIDERS AND SUPPLIERS DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY LAW ALL FURTHER OR OTHER WARRANTIES AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, REGARDING THE WEB BASED OFFERING, OR OTHERWISE RELATING TO THIS WEB BASED OFFERING GENERAL CONDITIONS, SUCH AS OBTAINED, GENERATED OR OTHERWISE RECEIVED INFORMATION, REPORTS, RESULTS OR OTHER DATA, INCLUDING WARRANTIES AND CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, MERCHANTABLE QUALITY, NON-INFRINGEMENT AND ACCURACY AND NON-INTERFERENCE. SIEMENS SPECIFICALLY DOES NOT WARRANT THAT THE WEB BASED OFFERING IS OR WILL BE SECURE, ACCURATE, RELIABLE, COMPLETE, UNINTERRUPTED, WITHOUT ERROR, OR FREE OF VIRUSES, WORMS, OTHER HARMFUL COMPONENTS, OR OTHER PROGRAM LIMITATIONS, AND THAT THE WEB BASED OFFERING WILL MEET YOUR REQUIREMENTS.
- 10.2.3. The exclusive remedy of you and Siemens' sole obligation in the event of a reproducible defect of Web Based Offering shall be for Siemens to resolve such defect within a reasonable time.
- 10.3. Any other rights or remedies because of defects in the Web Based Offering, including without limitation those for damages, are excluded to the extent permitted by law.

11.**12. Infringement of third party's intellectual property rights**

Unless otherwise agreed, e. g. as set forth in Section 2.3, Siemens shall provide the Web Based Offering free from third parties' intellectual property rights only with respect to the country where such rights are registered or, if not registered, created. . If a third party asserts a justified claim against you based on an infringement of an intellectual property right by the Web Based Offering rendered by Siemens and used by you in conformity with the Web Based Offering General Conditions, Siemens shall be liable to you within the period for liability as follows: (a) Siemens shall choose whether to acquire, at its own expense, the right to use the intellectual property rights with respect to Web Based Offering concerned or whether to replace or modify the Web Based Offering in a way that it no longer infringes. If this is not reasonably possible then Siemens may terminate the Web Based Offering General Conditions; (b) Siemens' liability to pay damages is governed by Article 13, (c) aforesaid obligations of Siemens shall apply only if you (i) immediately notify Siemens of any such claim asserted by the third party in writing, (ii) do not acknowledge an infringement of intellectual property rights and (iii) leave any protective measures and settlement negotiations to Siemens' discretion. If you stop using the Web Based Offering in order to mitigate damages or for other good reason, you shall inform the third party explicitly that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued. Your claims shall be excluded if you are responsible for the infringement of an intellectual property right. Your claims are also excluded if the intellectual property right infringement is caused by Your Data, specifications or instructions made by you, by a use not foreseeable by Siemens or contractually prohibited, or by the Web Based Offering being modified by you or being used together with products/services not provided by Siemens.

13. Liability

- 13.1. UNLESS OTHERWISE AGREED IN A SEPARATE WRITING BETWEEN THE PARTIES, IN NO EVENT SHALL SIEMENS BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF USE OR OF DATA, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, INTERRUPTION OF BUSINESS, OR FOR INDIRECT, SPECIAL, INCIDENTAL,

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SIEMENS STANDARD TERMS AND CONDITIONS

Standard Terms Addendum: General Conditions for Licensing Access to Software as a Web Based Offering

EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND WHETHER UNDER THIS WEB BASED OFFERING GENERAL CONDITIONS OR OTHERWISE, EVEN IF SIEMENS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM AGAINST YOU BY ANY OTHER PARTY. IN NO CASE WILL SIEMENS AND/OR ANY OF THE SIEMENS PARTIES BE LIABLE FOR ANY REPRESENTATION OR WARRANTY MADE TO YOU BY ANY THIRD PARTY. EXCEPT FOR CLAIMS THAT THE WEB BASED OFFERING CAUSED BODILY INJURY (INCLUDING DEATH) DUE TO SIEMENS' NEGLIGENCE OR WILLFUL MISCONDUCT,

13.2 SIEMENS CUMULATIVE LIABILITY TO YOU FOR ALL CLAIMS OF DAMAGES ARISING OUT OF OR RELATED TO THIS WEB BASED OFFERING GENERAL CONDITIONS AND REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT, STRICT LIABILITY, NEGLIGENCE OR TORT, SHALL NOT EXCEED (2) TIMES THE VALUE OF THE CONTRACT PAYMENTS MADE TO SIEMENS FOR THE WEB BASED OFFERING GIVING RISE TO SUCH CLAIM IN THE SIX (6) MONTHS PRIOR TO SUCH CLAIM.

13.3 YOU ACKNOWLEDGE (a) THAT THESE LIMITATIONS APPLY EVEN IF THE REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE; AND, (b) THAT, WITHOUT THESE LIMITATIONS, YOU WOULD NOT HAVE USE OF THE WEB BASED OFFERING PROVIDED HEREUNDER.

13.4 Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of damages, so the exclusions set forth above may not apply to you.

14. Interruption of the Web Based Offering

14.1 You agree that the operation and availability of the systems used for accessing and interacting with the Web Based Offering, including, the public telephone, computer networks and the internet or to transmit information, whether or not supplied by you or Siemens, can be unpredictable and may, from time to time, interfere with or prevent the access to and/or the use or operation of the Web Based Offering. Neither Siemens nor any company of the Siemens Group shall be liable for any interference with or prevention of your access to and/or use of the Web Based Offering.

14.2 It may be necessary for Siemens and/or its suppliers, service providers and licensors to perform scheduled or unscheduled repairs, maintenance, or upgrades, and such activities may temporarily degrade the quality of the Web Based Offering or result in a partial or complete outage of the Web Based Offering. Siemens provides no assurance that you will receive advance notification of such activities or that the Web Based Offering will be uninterrupted or error-free. Any degradation or interruption in the Web Based Offering shall not give rise to a refund or credit of any fees paid by you.

15. Export Control; Local Law

You acknowledge that the Web Based Offering, which may include technology and software, are subject to the customs and export control laws and regulations of Switzerland, the Federal Republic of Germany, the European Union and the United States of America and may also be subject to the customs and export laws and regulations of the country in which the Web Based Offering is rendered and/or received. From any location where data is being accessed by you, you are solely responsible for establishing all prerequisites for lawful access to Web Based Offering, including any data and information stored, up to the WAN exit point at the data center used by Siemens. You agree to abide by those laws and regulations. You are solely responsible for obtaining any specific licenses relating to the export of software if a license is needed. Siemens' agreement to provide the Web Based Offering is contingent upon any impediments arising out of national and international foreign trade and customs requirements or any embargos or other sanctions. Siemens is not liable for delays or failure to deliver Web Based Offering or a product resulting from your failure to obtain such license or to provide such certification.

16. Notices

Siemens may give notice by means of a general notice on the Web Based Offering, electronic mail to your e-mail address on record in Siemens account information, or by written communication to your address, e. g. by pre-paid first class mail, on record in Siemens account information.

17. Modification of this Web Based Offering General Conditions

Siemens reserves the right to modify the terms and conditions of this Web Based Offering General Conditions or its policies relating to the Web Based Offering at any time, effective upon posting of an updated version of this Web Based Offering General Conditions on the Web Based Offering. You are responsible for regularly reviewing this Web Based Offering General Conditions. Continued use of the Web Based Offering after any such changes shall constitute your consent to such changes. In case you disagree to the modifications you shall notify Siemens about your objection. In such cases, Siemens reserves the right to terminate the Web Based Offering General Conditions effective within a 30 days period after receipt of any such notification.

18. License Usage Audit

You shall allow Siemens to conduct audits of the contractual use on Siemens' written request. This shall include in particular access to all relevant systems and documentation. Siemens may carry out the audit itself or by way of any third party auditor acceptable to you and subject to a duty of confidentiality. Siemens shall give you at least ten (10) working days prior written notice of such an audit. Such an audit may take place at your premises during the regular hours of business. If, as a result of an audit, any use not in conformity with this Web Based Offering General Conditions is detected, you shall pay to Siemens, as liquidated

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Exhibit D – Web Based Offering Terms**Contract 6489764**

SIEMENS STANDARD TERMS AND CONDITIONS

Standard Terms Addendum: General Conditions for Licensing Access to Software as a Web Based Offering

damages and not as a penalty, the amount of the license fee set out in the current price list applicable to the item for which non-conforming use is detected. In addition, you shall bear the reasonable costs of the audit. Siemens reserves the right to claim further damages and to be able to implement any other remedy available to Siemens identified herein.

19. Assignment; Change of Control

Subject to any terms to the contrary existing in the Standard Terms and Conditions, this Web Based Offering General Conditions and the License granted hereunder may not be assigned by you without the prior written approval of Siemens but may be assigned or transferred without your consent by Siemens to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this Article shall be void. Any actual or proposed change in control of you that results or would result in a Competitor of Siemens directly or indirectly owning or controlling 50% or more of you shall entitle Siemens to terminate this Web Based Offering General Conditions and the License granted hereunder for cause immediately upon written notice. A "Competitor" of Siemens means an individual or entity that is involved in the sale or service of (i) building automation systems or equipment; (ii) fire safety systems or equipment; (iii) energy management and control systems, (iv) remote monitoring of energy management systems, (v) demand response services, (vi) equipment monitoring services, (vii) energy information services, or (viii) design or manufacture of software or hardware for any of the foregoing.

20. Miscellaneous; Applicable law

- 20.1. No joint venture, partnership, employment, or agency relationship exists between you and Siemens as a result of this Web Based Offering General Conditions or use of the Web Based Offering. The failure of Siemens to enforce any right or provision in this Web Based Offering General Conditions shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Siemens in writing.
- 20.2. If any provision of this Web Based Offering General Conditions is held by a court of competent jurisdiction to be invalid or unenforceable, then such provisions shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provisions, with all other provisions remaining in full force and effect.
- 20.3. Subject to Article 17, no modification, amendment or waiver of any provision of this Web Based Offering General Conditions shall be binding, unless made in writing and duly signed by the parties; for avoidance of doubt, electronic communication shall not qualify as written notice or document. Any waiver of this requirement for the written form shall likewise be in writing.
- 20.4. Any cause of action you may have with respect to your use of the Web Based Offering must be commenced within one (1) year after the claim or cause of action arises
- 20.5. This Web Based Offering General Conditions is governed by and construed in accordance with the laws of the State of Tennessee, 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. Each party agrees that claims and disputes arising out of this Web Based Offering General Conditions must be decided exclusively in a federal or state court of competent jurisdiction located in a state in which either you 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.

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Exhibit F - Siemens Software Warranty

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. The parties acknowledge that this document is an Exhibit to the Master Agreement between Siemens and Licensee.

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)

Exhibit E - Siemens Software Warranty

“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.

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- (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.
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- (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.
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Exhibit E - Siemens Software Warranty

- (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.
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- (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.
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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.

Exhibit E - Siemens Software Warranty

Exhibit E - Siemens Software Warranty

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.
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- (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

Exhibit E - Siemens Software Warranty

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.
- (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.

Exhibit E - Siemens Software Warranty

- 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 E - Siemens Software Warranty

Version 1.4 (2019)

Department: Legal

Page 7 of 8

Exhibit E - Siemens Software Warranty

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.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
03/30/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MARSH USA, INC. 445 SOUTH STREET MORRISTOWN, NJ 07960-6454	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS:														
CN102147003-RAM-PROF-21/22 4433 MANCI NOC60	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td>INSURER A: HDI Global Insurance Company</td> <td style="text-align: center;">41343</td> </tr> <tr> <td>INSURER B: Travelers Property Casualty Co. of America</td> <td style="text-align: center;">25674</td> </tr> <tr> <td>INSURER C: The Travelers Indemnity Company</td> <td style="text-align: center;">25658</td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: HDI Global Insurance Company	41343	INSURER B: Travelers Property Casualty Co. of America	25674	INSURER C: The Travelers Indemnity Company	25658	INSURER D:		INSURER E:		INSURER F:	
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INSURER E:															
INSURER F:															
INSURED SIEMENS INDUSTRY, INC. 1000 DEERFIELD PARKWAY BUFFALO GROVE, IL 60089-4513															

COVERAGES

CERTIFICATE NUMBER:

NYC-011297063-03

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS														
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☐ GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC ☐ OTHER:			GLD11101-13	10/01/2021	10/01/2022	<table style="width: 100%;"> <tr><td>EACH OCCURRENCE</td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>DAMAGE TO RENTED PREMISES (Ea occurrence)</td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>MED EXP (Any one person)</td><td style="text-align: right;">\$ 100,000</td></tr> <tr><td>PERSONAL & ADV INJURY</td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>GENERAL AGGREGATE</td><td style="text-align: right;">\$ 10,000,000</td></tr> <tr><td>PRODUCTS - COMP/OP AGG</td><td style="text-align: right;">\$ INCL</td></tr> <tr><td></td><td style="text-align: right;">\$</td></tr> </table>	EACH OCCURRENCE	\$ 1,000,000	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000	MED EXP (Any one person)	\$ 100,000	PERSONAL & ADV INJURY	\$ 1,000,000	GENERAL AGGREGATE	\$ 10,000,000	PRODUCTS - COMP/OP AGG	\$ INCL		\$
EACH OCCURRENCE	\$ 1,000,000																				
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GENERAL AGGREGATE	\$ 10,000,000																				
PRODUCTS - COMP/OP AGG	\$ INCL																				
	\$																				
B	AUTOMOBILE LIABILITY ☒ ANY AUTO ☒ OWNED AUTOS ONLY ☒ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS ONLY			TC2J-CAP-7440L34A-TIL-21	10/01/2021	10/01/2022	<table style="width: 100%;"> <tr><td>COMBINED SINGLE LIMIT (Ea accident)</td><td style="text-align: right;">\$ 2,000,000</td></tr> <tr><td>BODILY INJURY (Per person)</td><td style="text-align: right;">\$ N/A</td></tr> <tr><td>BODILY INJURY (Per accident)</td><td style="text-align: right;">\$ N/A</td></tr> <tr><td>PROPERTY DAMAGE (Per accident)</td><td style="text-align: right;">\$ N/A</td></tr> <tr><td></td><td style="text-align: right;">\$</td></tr> </table>	COMBINED SINGLE LIMIT (Ea accident)	\$ 2,000,000	BODILY INJURY (Per person)	\$ N/A	BODILY INJURY (Per accident)	\$ N/A	PROPERTY DAMAGE (Per accident)	\$ N/A		\$				
COMBINED SINGLE LIMIT (Ea accident)	\$ 2,000,000																				
BODILY INJURY (Per person)	\$ N/A																				
BODILY INJURY (Per accident)	\$ N/A																				
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C	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$						<table style="width: 100%;"> <tr><td>EACH OCCURRENCE</td><td style="text-align: right;">\$</td></tr> <tr><td>AGGREGATE</td><td style="text-align: right;">\$</td></tr> <tr><td></td><td style="text-align: right;">\$</td></tr> </table>	EACH OCCURRENCE	\$	AGGREGATE	\$		\$								
EACH OCCURRENCE	\$																				
AGGREGATE	\$																				
	\$																				
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☒ N	N/A	UB-8P83929A-21-51-K(AOS) UB-8P79233A-21-51-R (AZ,MA,WI) TWXJUB-7440L338-TIL-21(OH) *****\$500K LIMIT / \$500K SIR*****	10/01/2021	10/01/2022	<table style="width: 100%;"> <tr> <td> ☒ PER STATUTE ☐ OTH-ER </td> <td></td> </tr> <tr><td>E.L. EACH ACCIDENT</td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>E.L. DISEASE - EA EMPLOYEE</td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>E.L. DISEASE - POLICY LIMIT</td><td style="text-align: right;">\$ 1,000,000</td></tr> </table>	☒ PER STATUTE ☐ OTH-ER		E.L. EACH ACCIDENT	\$ 1,000,000	E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000	E.L. DISEASE - POLICY LIMIT	\$ 1,000,000						
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E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000																				
E.L. DISEASE - POLICY LIMIT	\$ 1,000,000																				
E	PROFESSIONAL LIABILITY			EOD5618802 'Deductible: \$1,000,000'	10/01/2021	10/01/2022	5,000,000														

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: CONTRACT: 6489764

SEE ATTACHED

CERTIFICATE HOLDER

 PURCHASING AGENT
 METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON
 COUNTY, METRO COURTHOUSE
 NASHVILLE, TN 37201

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

 AUTHORIZED REPRESENTATIVE
 of Mars ☐ SA Inc

© 1988-2016 ACORD CORPORATION. All rights reserved.

AGENCY CUSOMER ID CN1021700

LOC Morristown



ADDITIONAL REMARKS SCHEDULE

AGENCY MARSH USA, INC.		NAMED INSURED SIEMENS INDUSTRY, INC. 1000 DEERFIELD PARKWAY BUFFALO GROVE, IL 60089-4513
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM
FORM NUMBER 2 FORM LE Certificate of Liability Insurance

RE: CONTRACT: 6489764

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, ITS OFFICIALS, OFFICERS, EMPLOYEES, AND VOLUNTEERS ARE HEREBY ADDITIONAL INSURED AS OBLIGATED UNDER CONTRACT UNDER THE REFERENCED GENERAL LIABILITY AND AUTOMOBILE LIABILITY INSURANCE POLICIES.

PROFESSIONAL LIABILITY IS ERRORS AND OMISSIONS.

IF THESE POLICIES ARE CANCELLED FOR ANY REASON OTHER THAN NON-PAYMENT OF PREMIUM, THE INSURER WILL DELIVER NOTICE OF CANCELLATION TO THE CERTIFICATE HOLDER UP TO 60 DAYS PRIOR TO THE CANCELLATION OR AS REQUIRED BY WRITTEN CONTRACT, WHICHEVER IS LESS.

HDI GLOBAL INSURANCE COMPANY**MANUSCRIPT ENDORSEMENT # 32****Policy Number**
GLD11101-13**Named Insured**
SIEMENSCORPORATION

Policy Period:	Inception (M-D-Y)	Expiration (M-D-Y)	Effective Date and Time of Endorsement
	10-01-2021	10-01-2022	10-01-2021 12:01 a.m. Standard Time at Address of the Insured.

This Endorsement Changes The Policy. Please Read It Carefully.

BLANKET ADDITIONAL INSURED

This endorsement modifies insurance provided under the following:

Commercial General Liability Coverage Form

Who is an insured is amended to include as an additional insured any person whom you are required to add as an additional insured on this policy under a written agreement, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by: **1.** Your acts or omissions; or **2.** The acts or omissions of those acting on your behalf. The insurance coverage provided to such additional insured applies only to the extent required within the written agreement.

The insurance coverage provided to the additional insured person shall not provide any broader coverage than you are required to provide to the additional insured person in the written agreement and shall not provide limits of insurance that exceed the lower of the Limits of Insurance provided to you in this policy, or the limits of insurance you are required to provide in the written agreement.

The insurance provided to the additional insured by this endorsement is excess over any valid and collectible other insurance, whether primary, excess, contingent, or on any other basis, that is available to the additional insured for a loss we cover under this endorsement. However, if the written agreement specifically requires that this insurance apply on a primary basis, this insurance is primary. If the written agreement specifically requires this insurance apply on a primary and non-contributory basis this insurance is primary to other insurance available to the additional insured and we will not share with that other insurance.

This endorsement shall prevail over additional insured endorsements that may apply under this policy unless required otherwise in the written agreement.


Authorized Representative

All terms and conditions of the policy remain unchanged.

THIS ENDORSEMENT MUST BE ATTACHED TO A CHANGE ENDORSEMENT WHEN ISSUED AFTER THE POLICY IS WRITTEN.



Contract Standards Deviations

Contract Purchase Agreement 6489764,0: Contract Standards Deviations - 14-Mar-2022

Supplier Buyer	Siemens Industry Inc. Ray, Terri Lynn	Supplier Site Amount	NASHVILLE 293,292.00
Contract Template	Master Goods and Services Contract		

Deviation Summary

Clause Deviations

Category	Non-Standard clauses	
Deviation	Section	Clause Title
Standard clause modified	1. GOODS AND SERVICES CONTRACT	1.1. 37:Heading
Standard clause modified	2. THE PARTIES HEREBY AGREE TO THE FOLLOWING TERMS AND CONDITIONS:	2.1. 35:Duties and Responsibilities
Standard clause modified	3. CONTRACT TERM	3.1. 36:Contract Term
Standard clause modified	4. COMPENSATION	4.1. 38:Contract Value
Standard clause modified	4. COMPENSATION	4.4. 27:Escalation/De-escalation
Standard clause modified	6. NONDISCRIMINATION	6.3. 230:Equal Business Opportunity (EBO) Program Requirement
Standard clause modified	8. GENERAL TERMS AND CONDITONS	8.17. 227:Iran Divestment Act
Category	Standard clauses missing	
Deviation	Section	Clause Title
Optional clause removed	7. INSURANCE	7.2. 50:Products Liability Insurance
Optional clause removed	7. INSURANCE	7.3. 188:Professional Liability Insurance
Optional clause removed	7. INSURANCE	7.7. 253:Abuse and Molestation Insurance
Optional clause removed	7. INSURANCE	7.8. 251:Cyber Liability Insurance

Policy Deviations

Deviation	Description	Line	Item	Item Description
The contract has no Policy Deviations				



Contract Standards Deviations

Deviation Category	Non-Standard clauses
Clause Title	1.1. 37:Heading
Section	1. GOODS AND SERVICES CONTRACT
Deviation	Standard clause modified

Clause Text

This contract is initiated by and between **The Metropolitan Government of Nashville and Davidson County (METRO)** and **Siemens Industry, Inc (CONTRACTOR)** located at **1410 Donelson Pike, Suite A-3, Nashville, TN 37217** resulting from an approved sole source signed by Metro's Purchasing Agent (made a part of this contract by reference). This Contract consists of the following documents:

- **Any properly executed contract amendment (most recent with first priority),**
- **This document, including exhibits,**
 - **Exhibit A - Service Agreement and Pricing**
 - **Exhibit B - MISA Terms and Conditions**
 - **Exhibit C - Affidavits**
 - **Exhibit D - Siemens Sale of Services Terms**
 - **Exhibit E - Web Based Offering Terms**
 - **Exhibit F - Siemens Software Warranty**
- **Purchase Orders (and PO Changes),**

In the event of conflicting provisions, all documents shall be construed in the order listed above.

Comparison to Standard

This contract is initiated by and between The Metropolitan Government of Nashville and Davidson County (METRO) ~~and~~ Enter Legal Name (CONTRACTOR) and Siemens Industry, Inc (CONTRACTOR) located ~~at Enter Address, City, ST ZIP.~~ at 1410 Donelson Pike, Suite A-3, Nashville, TN 37217 resulting from an approved sole source signed by Metro's Purchasing Agent (made a part of this contract by reference). This Contract consists of the following documents:

- ~~Any~~ properly executed contract amendment (most recent with first priority),
- This document, including exhibits,
- Exhibit A - ~~{Enter Description (i.e. Hourly Rates)}~~ Service Agreement and Pricing
- Exhibit B - ~~{Enter Description (i.e. Task Details)}~~ MISA Terms and Conditions



Contract Standards Deviations

- ~~• Exhibit C~~
- ~~• Exhibit C - ~~[Enter Description (i.e. ISA Terms and Conditions)]~~~~
~~Affidavits~~
- ~~• The solicitation documentation for RFQ# [Enter Number] and affidavit(s) (all made a part~~
- ~~• Exhibit D - Siemens Sale of ~~this contract by reference~~;~~
~~Services Terms~~
- ~~• Purchase~~
- ~~• Exhibit E - Web Based Offering Terms~~
- ~~• Exhibit F - Siemens Software Warranty~~
- ~~• Purchase Orders (and PO Changes), -~~
- ~~• CONTRACTOR's response to the solicitation;~~
- ~~• Equal Business Opportunity (EBO) Program forms (incorporated by reference).~~



Contract Standards Deviations

Deviation Category	Non-Standard clauses
Clause Title	2.1. 35:Duties and Responsibilities
Section	2. THE PARTIES HEREBY AGREE TO THE FOLLOWING TERMS AND CONDITIONS:
Deviation	Standard clause modified

Clause Text

CONTRACTOR agrees to provide service and maintenance for the building automation system for the Downtown Detention Center (DDC).

Comparison to Standard

CONTRACTOR agrees to provide ~~the goods and/or services as briefly described below~~
service and ~~more fully defined in~~
maintenance for the ~~solicitation~~
building automation system for the Downtown Detention Center (DDC).



Contract Standards Deviations

Deviation Category	Non-Standard clauses
Clause Title	3.1. 36:Contract Term
Section	3. CONTRACT TERM
Deviation	Standard clause modified

Clause Text

The Contract Term will begin on the date this Contract is approved by all required parties and filed in the Metropolitan Clerk's Office. The Contract Term will end sixty (60) months from the date of filing with the Metropolitan Clerk's Office. In no event shall the term of this Contract exceed sixty (60) months from the date of filing with the Metropolitan Clerk's Office.

Comparison to Standard

The Contract ~~Term will~~
Term will begin on the date this Contract is approved by all required parties and filed in ~~the Metropolitan~~
the Metropolitan Clerk's ~~Office. The Contract~~
Office. The Contract Term will end sixty (60) months from the date of filing with the Metropolitan Clerk's Office. -

~~—This Contract may be extended by Contract Amendment. The option to extend may be exercised by and at the discretion of the Purchasing Agent. However, in~~
In no event shall the term of this Contract exceed sixty (60) months from the date of filing with the Metropolitan Clerk's Office.



Contract Standards Deviations

Deviation Category	Non-Standard clauses
Clause Title	4.1. 38:Contract Value
Section	4. COMPENSATION
Deviation	Standard clause modified

Clause Text

This Contract has an estimated value of \$293,292.00. The pricing details are included in Exhibit A and are made a part of this Contract by reference. CONTRACTOR shall be paid as work is completed and METRO is accordingly, invoiced.

Comparison to Standard

This Contract has an estimated value of ~~-\${Agreement Amount}.~~
\$293,292.00. The pricing ~~details are~~
details are included ~~in Exhibit~~
in Exhibit A and are made a part of this Contract by reference. ~~CONTRACTOR~~
CONTRACTOR shall be paid as work is completed and METRO is accordingly, invoiced.



Contract Standards Deviations

Deviation Category	Non-Standard clauses
Clause Title	4.4. 27:Escalation/De-escalation
Section	4. COMPENSATION
Deviation	Standard clause modified

Clause Text

This Contract is eligible for annual escalation/de-escalation adjustments for labor rates only. The request for adjustment must be in accordance with Exhibit A and submitted by CONTRACTOR to the Purchasing Agent no less than sixty (60) days prior to the annual anniversary of the filing of this Contract with the METRO Clerk's Office. Any such adjustment, if approved by the Purchasing Agent, shall become effective on the anniversary of the filing of this Contract with the METRO Clerk's Office.

Comparison to Standard

This Contract is eligible for annual escalation/de-escalation ~~adjustments.~~ adjustments for labor rates only. The request for adjustment must be in accordance with Exhibit A and submitted by CONTRACTOR to the Purchasing Agent no less than sixty (60) days prior to the annual anniversary of the filing of this Contract with the METRO Clerk's Office. Any such adjustment, if approved by the Purchasing Agent, shall become effective on the anniversary of the filing of this Contract with the METRO Clerk's ~~Office.~~

Office.



Contract Standards Deviations

Deviation Category	Non-Standard clauses
Clause Title	6.3. 230:Equal Business Opportunity (EBO) Program Requirement
Section	6. NONDISCRIMINATION
Deviation	Standard clause modified

Clause Text

The Equal Business Opportunity (EBO) Program is not applicable to this Contract.

Comparison to Standard

~~-The consideration and contact of minority owned and/or woman owned business enterprises is required for a responsive offer to most solicitations. The provision of the~~ Equal Business Opportunity (EBO) Program ~~documents shall be part of each solicitation response and incorporated herein by reference. CONTRACTOR agrees to comply with the~~ is not applicable ~~-solicitation response and incorporated herein by reference. CONTRACTOR agrees to comply with the~~ Equal Business Opportunity (EBO) Program, if applicable, in the execution of this Contract.



Contract Standards Deviations

Deviation Category	Non-Standard clauses
Clause Title	8.17. 227:Iran Divestment Act
Section	8. GENERAL TERMS AND CONDITONS
Deviation	Standard clause modified

Clause Text

In accordance with the Iran Divestment Act, Tennessee Code Annotated § 12-12-101 et seq., CONTRACTOR certifies that to the best of its knowledge and belief, neither CONTRACTOR nor any of its subcontractors are on the list created pursuant to Tennessee Code Annotated § 12-12-106. Misrepresentation may result in civil and criminal sanctions, including contract termination, debarment, or suspension from being a contractor or subcontractor under METRO contracts.

Comparison to Standard

In accordance with the Iran Divestment Act, Tennessee Code ~~Annotated § 12-12-101~~
Annotated § 12-12-101 et seq., CONTRACTOR certifies that to the best of its knowledge and belief, ~~neither~~
~~CONTRACTOR~~
neither CONTRACTOR nor any of its ~~subcontractors~~
subcontractors are on the list created pursuant to Tennessee Code Annotated ~~'12-12-106.~~
§ 12-12-106. Misrepresentation may result in civil and criminal sanctions, including contract termination, debarment, or suspension from being a contractor or subcontractor under METRO contracts.



Contract Standards Deviations

Deviation Category	Standard clauses missing
Clause Title	7.2. 50:Products Liability Insurance
Section	7. INSURANCE
Deviation	Optional clause removed

Clause Text

In the amount of one million (\$1,000,000.00) dollars (If the CONTRACTOR is manufacturing or producing the goods purchased by METRO)



Contract Standards Deviations

Deviation Category	Standard clauses missing
Clause Title	7.3. 188:Professional Liability Insurance
Section	7. INSURANCE
Deviation	Optional clause removed

Clause Text

In the amount of one million (\$1,000,000.00) dollars



Contract Standards Deviations

Deviation Category	Standard clauses missing
Clause Title	7.7. 253:Abuse and Molestation Insurance
Section	7. INSURANCE
Deviation	Optional clause removed

Clause Text

Abuse and molestation Insurance in the amount of one million (\$1,000,000.00) dollars.



Contract Standards Deviations

Deviation Category	Standard clauses missing
Clause Title	7.8. 251: Cyber Liability Insurance
Section	7. INSURANCE
Deviation	Optional clause removed

Clause Text

Cyber Liability Insurance in the amount of five million (\$5,000,000.00) dollars(for companies that have access to personal information (SSN's Addresses of employees, customers or students)).

**METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY
DEPARTMENT OF FINANCE – PROCUREMENT
SOLE SOURCE JUSTIFICATION FORM**



Rec. Feb.19, 2021

Send an email to PRG@nashville.gov and attach completed sole source form and supporting documentation.
Purchasing Agent approval MUST be received prior to entering a requisition in iProcurement to minimize the potential for delay.

Proposed supplier MUST be Registered in iProcurement

Date: 02/18/21 Requesting Department/Agency/Commission: Sheriff's officeRequesting Official: Pete Lutz Telephone #: 615-862-8588This request is for a multi-year contract.Product/Service Description: Software Automation System**Total Purchase (Enter the value for the entire contract life) Price: \$293,292.00**BU Number: 30127100 Fund #: 10101 Object Account: 502233 Any Other Accounting Info: _____Proposed Supplier: Siemens Industry, Inc.Proposed Supplier Contact: Wendell MillerSupplier Address: 1410 Donelson Pike Suite A-3City: NashvilleST: TNZip: 37127Supplier Telephone #: 615-399-6300Supplier Email: wendell.miller@siemens.com**Metro Code: 4.12.060 Sole Source Procurement.**

A contract may be awarded for a supply, service or construction item without competition when, under regulations promulgated by the standards board, the purchasing agent determines in writing that there is only one source for the required supply, service or construction item. The standards board may, by regulation, establish specific categories of supplies, services, or construction items as sole source items. (Ord. 92-210 § 1 (3-205), 1992)

Other JustificationIf Other, Explain Request: See the attached Sole Source Justification/Proposal

Requesting Department Director's or Approved Designee's Signature of Approval

Date

To be completed by the Procurement Division☐ **Sole Source is Approved for a** ☐ **Purchase Order** ☐ _____ **Year(s) Contract**☐ **Sole Source is Denied; Reason for Denial** _____**SENIOR PROCUREMENT OFFICER:** _____ **DATE:** _____**PURCHASING AGENT:** _____**DATE:** _____



Siemens Industry, Inc.

1410 Donelson Pike, Suite A-3
Nashville, TN 37217
February 17, 2021

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY
Downtown Detention Center (DDC)
200 James Robertson Parkway
Nashville, TN 37201
Re: Sole Source Letter

To Whom It May Concern:

The Building Automation System at the Downtown Detention Center (DDC) is a Siemens Apogee Desigo software platform. The BAS system has been designed, installed, and exclusively serviced by the Nashville office of Siemens Industry, Inc. Building Technologies Division, since the installation in 2019. Siemens technicians are the only factory trained and certified service providers for the Siemens Apogee Insight and Desigo CC System. The Siemens Industry Inc. Nashville office is the only company able to provide the necessary support for service and maintenance of the Apogee Insight and Desigo CC energy management platform. Likewise, Siemens Nashville Office is the only local office with the necessary proprietary software and passwords for correct and efficient troubleshooting of the Siemens software and the Siemens hardware in use at the Downtown Detention Center (DDC) Facility.

The State of Tennessee, including the Downtown Detention Center (DDC) Facility, is a protected service area; and no other company can provide equipment and no other company is qualified to properly service the Siemens product line at this facility.

The Nashville office of Siemens Industry Inc. is your sole source provider for these services. Should you have any questions please don't hesitate to call me at 615-636-0662.

Sincerely,

Wendell C. Miller

Wendell C. Miller
Sr. Service Account Executive



PROPOSAL

Metro Nashville DDC (1)

PREPARED BY

Siemens Industry, Inc.

PREPARED FOR

Metropolitan Government of Nashville and Davidson County

DELIVERED ON

February 17, 2021



Smarter buildings drive smarter, and more efficient, building operations.

Creating perfect places to live. That's ingenuity for life.



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 Appendix A: Siemens Service Portfolio 21



Contact Information

Proposal #:	5642601
Date:	February 17, 2021

Sales Executive:	Wendell Miller
Branch Address:	1410 Donelson Pike Suite A-3 Nashville, TN, 37127
Telephone:	
Email Address:	wendell.miller@siemens.com

Customer Contact:	Pete Lutz
Customer:	Metropolitan Government of Nashville and Davidson County
Address:	506 Second Ave. N.
	Nashville TN 37201
Services shall be provided at:	Downtown Detention Center (DDC)
	Nashville TN 37201



Executive Summary

Customer Needs

The Services proposed in this agreement are specifically designed for the Downtown Detention Center (DDC), and the services provided herein will help you in achieving your facility goals.

Our Services

Siemens will provide the following services.

- Room Pressurization Test
- Control Loop Tuning
- Network Maintenance
- Data Backup and Restore Services
- Verify proper operation of Automation devices
- Operator Coaching
- Software Subscription Service - Desigo CC
- Firmware Updates
- modem and annual service
- CloudOps Advanced Service & Reports
- Digital Services Project Management Setup
- Equipment Setup
- New Navigator Setup
- Annual Data Quality Review
- cRSP Setup
- MSIB setup



Siemens Capabilities & Customer Commitment

Siemens Industry, Inc. is a leading single-source provider of cost-effective facility performance solutions for the comfort, life safety, security, energy efficiency and operation of some of the most technically advanced buildings in the world. For more than 150 years, Siemens has built a culture of long-term commitment to customers through innovation and technology. Siemens is a financially strong global organization with a Branch network that delivers personalized service and support to customers in multiple industries and locations.

References are available upon request.



Building Services – Automation

Services that deliver the outcomes you want to achieve.

Services delivered by Siemens have been developed to ensure satisfaction and help you achieve the outcomes you expect. Services delivered use the Proven Outcomes Three D approach (Define, Deliver, Demonstrate) to ensure satisfaction.

1. 100% Room Pressurization Accuracy
2. Zero System Downtime
3. BAS Alarm resolution within 1 business day
4. Occupancy Comfort complaint resolution within 1 business day

Room Pressurization testing, Sensor Verification, Data Backup and Restore, Control Loop Tuning, Software Subscription, Firmware update services detailed below. Digital Services utilize data-driven analytics to test the operational performance of selected systems (details listed under CloudOps Advanced). Proposal includes 16 hours Operator Coaching both during Normal Business hours (M - F, 8 AM - 5 PM CDT, non-holiday).

Through the Siemens Building Automation Services we are pleased to offer the following services:

- Digital Services
- Manage System Operation & Compliance
- Protect Lifecycle Investment
- Optimize Performance & Productivity

Digital Services

CloudOps Advanced

This service utilizes data-driven analytics to test the operational performance of selected systems and ensure that critical faults are addressed by our remote services team whenever possible. This is achieved through the application of data analytics intended to identify issues and a prioritization of faults based upon their impact on your operations and equipment. Often issues are identified that might otherwise go unnoticed and often they can be resolved remotely.

Using fault detection and diagnostics (FDD) we will assess the overall performance of your systems while assisting in the troubleshooting of recurring intermittent issues. The result is quicker response time to correct faults effecting the overall performance of your systems.

Siemens will leverage our highly skilled remote service specialists to either resolve issues rapidly or to provide a branch technician with the results of their initial troubleshooting. This reduces the time it will take to make repairs when an on-site professional is required.



Some of the expected outcomes when implementing this service include:

- Operational Key performance indicators (KPI's) Reporting
- Data Visualization of system performance
- Mitigation of risk of business and facility interruptions
- Minimizing the need for equipment visits until data suggest there is a fault
- Reporting system uptime and mitigate risks of shortened equipment lifecycle
- Monitoring historical environmental conditions and identifying improvements or negative trends to be addressed
- Analytics that help to identify potential deviation from normal operation through rule-based algorithms on selected systems and identified equipment
- Leveraging the Siemens Digital Service Center to help to remotely resolve common issues and optimize equipment performance with your consent when the option to do so is available
- Remotely interrogating the system to help to reduce the likelihood of misdiagnosing controls issues versus mechanical or design issues before dispatching the clients or Siemens repair resources
- When issues are not resolved remotely, passing along troubleshooting efforts to help to reduce the time it takes to correct faults on site.
- Delivering reports, through Siemens, at the frequency identified in the Maintained Equipment Table

CloudOps Advanced engages our remote experts to supplement your operational staff and our traditional building automation system controls service for improved proactive and condition-based services. We will help to optimize and help to enable precise system control for improved operation of both the building automation system and its peripheral controlled devices.

Once systems, equipment, and spaces are included under this service offering, they are analyzed remotely and periodic reports are provided, helping to improve system reliability, enabling focused maintenance activities, and helping prioritize resolution of pending faults. Furthermore, any critical faults are routed to a remote service specialist for troubleshooting and resolution. Even if the facility staff has not noticed the critical fault, we will seek to identify the fault and get to work correcting the issue. This conditioned based maintenance approach not only supports a more advanced maintenance strategy but, ultimately, building owners can be more proactive and mitigate risks that manifest when systems, equipment, or spaces do not perform as designed. Our remote service team helps augment your staff with advanced skills that many facilities struggle to find in the labor market today.

Siemens will establish key performance indicators (KPIs) aligned with your equipment, spaces, and goals. This service provides the transparency that many executives expect in today's data driven world. Results are always documented and shared through NavigatorTM and other customer reporting platforms at the frequency specified in the Maintained Equipment Table.

To take advantage of CloudOps Advanced you will need cRSP and NavigatorTM.



Manage System Operation & Compliance

Data Backup and Restore Services

Siemens will perform scheduled database backups of your workstation database and graphics and/or field panel databases and provide safe storage of this critical business information. Should a catastrophic event occur, we will respond onsite (or online if such service is included in this service agreement) to reload the databases and system files from our stored backup copy, to restore your operation as soon as possible. The equipment to be included as part of this service is itemized in the List of Maintained Equipment in this service agreement.

Network Maintenance

Network Maintenance: Using a combination of proprietary diagnostic technologies, digital meters, and network analysis software, Siemens will analyze, optimize and report on the performance of the customer's systems networks a specified number of times per year. Proper network performance ensures the proper speed of communication and accuracy of control, alarming, and reporting across the facility. Using network diagnostic tools, our proactive evaluation of the data network includes an analysis of bandwidth, disturbances, network traffic, communication over the network, and overall operation. The number of networks to be analyzed and the frequency of the service are documented in the List of Maintained Equipment.

Preventive Maintenance – Automation

We will provide preventive maintenance in accordance with a program of routines as determined by our experience, equipment application and location. The list of field panels and/or devices included under this service are identified in the List of Maintained Equipment in this service agreement.

Automation controls can drift out of calibration with changes in HVAC component performance characteristics, building use, and climatic conditions. This service will extend equipment life, reduce energy consumption, and reduce the risk of costly and disruptive breakdowns.

Room Pressurization Test

We will verify that air flows in the specified direction with respect to corridors. Results are documented for future reference and compliance. The differential pressure for rooms of high purity classifications is measured with a micro-manometer. Directional airflow at entry doorways and other passages for rooms of lower classification is analyzed by smoke generation. For Biosafety Labs, this service will include the verification of door alarms and status. The frequency of this service is itemized in the List of Maintained Equipment in this service agreement.



Protect Lifecycle Investment

Firmware Updates

We will provide you with firmware and documentation updates to your existing field panels upon development. Onsite training will familiarize you with the new features and their associated benefits. These updates deliver the benefits of Siemens commitment to compatibility by design; a commitment unique in our industry. Field panels included under this service are itemized in the List of Maintained Equipment. (Upgrades to Field Panel hardware, processors, memory boards, and related hardware are excluded unless specified elsewhere.)

Software Subscription Service - Desigo CC

Siemens will provide you with software upgrades to your existing Siemens Desigo CC software as they are released. These upgrades include both Service Releases and all New Version Releases of Software. Siemens will also provide corresponding support documentation outlining the features of the releases. Included is onsite training to help to familiarize you with the new features along with their associated benefits. These updates will act to deliver the benefits of Siemens' commitment to compatibility by design, a commitment unique in our industry. Workstations covered under this service are itemized in the List of Maintained Equipment. (Upgrades to PC's and related workstation hardware are excluded unless specified elsewhere.)

Optimize Performance & Productivity

Control Loop Tuning

Control loops drift out of calibration with changes in mechanical efficiency, building use, and climatic conditions. Through this service Siemens will ensure control loops for devices such as valves, dampers, actuators, etc., experience minimized overshooting and oscillatory behavior. The control loops to be included as part of this service are itemized in the List of Maintained Equipment in this service agreement.

Operator Coaching

Through our individual Operator Coaching, we will review and reinforce learned skills, leading to greater operator knowledge and productivity. Siemens will assist your operators in identifying, verifying and resolving problems found in executing tasks. During the coaching sessions, we can address log book issues, assist your operators in becoming more self-sufficient, and improve the skills of your operators to better meet the needs of your facility and their specific job responsibilities. This will promote better utilization of systems and applications implemented in your facility. Under this agreement we shall provide coaching, which will be conducted on normal business days and hours, during scheduled visits.



Emergency Response Times – Automation

Emergency Online/Phone Response

Billable Service

Online system and software troubleshooting and diagnostics and phone support will not be provided under the coverage of this agreement. Siemens will respond to your request for emergency on-line/phone support, 24 Hours per Day, excluding holidays, upon receiving notification of an emergency, as determined by your staff and Siemens, but all service performed will be provided as a billable service. If remote diagnostics determine a site visit is required to resolve the problem, a technician can be dispatched. Depending on your contract coverage, the on-site dispatch will be covered or will be a billable service call.

Emergency On-site Response

Billable Service

Emergency Onsite Response is not included within the coverage of this agreement. Siemens will respond to your request for emergency on-site service as soon as staff is available. An emergency is determined by your staff and Siemens. All service performed will be provided as a billable service. Siemens will respond to your request for emergency onsite support, 24 hours per day, excluding holidays, upon receiving notification of an emergency, as determined by your staff and Siemens, but all service performed will be provided as a billable service.

CloudFIMs / CloudOps Equipment Table

Fault Review Frequency: Every month for all Contract Periods (5 year agreement)

Reporting Frequency: Each Quart for all Contract Periods (5 year agreement)

Building	Equipment Name
Downtown Detention Center (DDC)	AHU 1 thru 12
Downtown Detention Center (DDC)	MAU 1
Downtown Detention Center (DDC)	RTU 1, 2, 3
Downtown Detention Center (DDC)	All VAV's
Downtown Detention Center (DDC)	All EF. FCU, CRCU



Connectivity and Communications

Siemens Remote Services for building technology (SRS)

A secure remote connection to your facility enables Siemens to respond quickly, and maintain a high level of system up-time and performance.

Siemens Remote Service (SRS) is the efficient and comprehensive infrastructure for the complete spectrum of equipment-related remote services. Services that formerly required on-site visits are now available via data transfer. This includes rapid error identification as well as immediate remote repair. But that's not all. By proactively monitoring your systems, we can detect parameter deviations before problems occur. Siemens accesses your systems via a secure cRSP connection.

Siemens Service Portal

The Service Portal complements the personalized services you will receive from your local Siemens office by providing greater visibility into equipment and services delivered by Siemens. This web-based portal allows you the ability to confirm schedules, track repairs, manage agreements, generate reports, and access critical information; then share it across your entire enterprise quickly and efficiently. The Service Portal is a user-friendly way to increase your productivity and the value of your service program.

Data security as a basic requirement

We value confidentiality and long-term partnerships. That is why we give the security of your data the highest priority. Before we implement an enhanced service package with remote support, we conduct an in-depth analysis of the situation, taking into account national and international regulations, technical infrastructures and industry specifics. Our service employees carefully evaluate your needs on an individual basis with a view toward information security.



Service Agreement Contract Characteristics

Description	AUTOMATION
Hours of Coverage	24 x 7
Response Times (Phone/Online)	Billable
Response Times (Onsite/Emergency)	Billable
Remote Services	Yes
Third Party Systems	No
Monitoring	No
Additional Labor Discount	10.0%
Additional Material Discount	10.0%

*Labor and material costs for troubleshooting problems and repairing or replacing components are handled separately. These costs can be billable or included within your Repair and Replacement Coverage. See List of Maintained Equipment to view your current Repair and Replacement Coverage.



Service Details

Automation

Service Description	Qty	Frequency	Year
Software Subscription Service - Desigo CC	1	1	1,2,3,4,5
Firmware Updates	18	1	1,2,3,4,5
Network Maintenance	1	12	1,2,3,4,5
Control Loop Tuning	18	12	1,2,3,4,5
Data Backup and Restore Services	1	12	1,2,3,4,5
Operator Coaching	1	4	1,2,3,4,5
CloudOps Advanced	1	1	1,2,3,4,5



Maintained Equipment Table

Automation

Equipment	Service Description	Qty	Frequency	Year	Service Location	Repair Coverage
Makeup Air Unit						
	Room Pressurization Test	1	4	1,2,3,4,5	Onsite	N/A
PXC Modular						
	Preventive Maintenance - Automation	16	1	1,2,3,4,5	Onsite	N/A
PXC Compact APOGEE 36PT						
	Preventive Maintenance - Automation	1	1	1,2,3,4,5	Onsite	N/A
PXC Compact APOGEE 16PT						
	Preventive Maintenance - Automation	1	1	1,2,3,4,5	Onsite	N/A
Damper Actuator (Belimo)						
	Verify proper operation of Automation devices	123	1	1,2,3,4,5	Onsite	N/A
Air Flow Switch						
	Verify proper operation of Automation devices	24	1	1,2,3,4,5	Onsite	N/A
TEC - Electronic Outputs						
	Verify proper operation of Automation devices	159	1	1,2,3,4,5	Onsite	N/A
VAV 1-2 doors / 1-2 diffusers						
	Verify proper operation of Automation devices	68	1	1,2,3,4,5	Onsite	N/A
Damper						
	Verify proper operation of Automation devices	68	1	1,2,3,4,5	Onsite	N/A
Variable Frequency Drive - SED2						



Automation

Equipment	Service Description	Qty	Frequency	Year	Service Location	Repair Coverage
	Verify proper operation of Automation devices	40	1	1,2,3,4,5	Onsite	N/A
eCumulus Cell Modem						
	User Defined Equipment Dependent Service	1	1	1,2,3,4,5	Onsite	N/A
eCumulus VPN Solution 1GB plan (12 months ONLY)						
	User Defined Equipment Dependent Service	1	1	1,2,3,4,5	Onsite	N/A



Service Team

An important benefit of your Service Agreement derives from having the trained building service personnel of Siemens Industry, Inc. familiar with your building systems. Our implementation team of local experts provides thorough, reliable service and scheduling for the support of your system.

Added to the team is a team of building experts at our Digital Service Center. The benefits you receive are less disruption to your employees at the site, less intrusive on the system at peak hours, fewer emissions for trucks rolled, and real time analytics with digital workspace hours.

The following list outlines the service team that will be assigned to the service agreement for your facility

Your Assigned Team of Service Professionals will include:

Sales Executive, Wendell Miller, manages the overall strategic service plan based upon your current and future service requirements.

Remote Services Specialist, Dan Hummel, is responsible for remote services including report generation and backups.

Client Services Manager, Shane Smith, is responsible for ensuring that our contractual obligations are delivered, your expectations are being met and you are satisfied with the delivery of our services.

Service Operations Manager, David England, is responsible for managing the delivery of your entire support program and service requirements.

Primary Service Specialist, Wiley Vaughan, is responsible for performing the ongoing service of your system.

Service Coordinator, Drue Fortune, is responsible for scheduling your planned maintenance visits, and handling your emergency situations by taking the appropriate action.

Secondary Service Specialist, Spencer Peterson, who will be familiarized with your building systems to provide in-depth backup coverage.

Service Administrator, Tyler Williams, is responsible for all service invoicing including both service agreement and service projects.



Terms and Conditions

Terms and Conditions (Click to download)

[Terms & Conditions](#)

(<https://www.siemens.com/download?A6V11628573>)

As a result of the global Covid-19 Virus outbreak, temporary delays in delivery, labor or services from Siemens and its sub-suppliers or subcontractors may occur. Among other factors, Siemens' delivery is subject to the correct and punctual supply from sub-suppliers or subcontractors, and Siemens reserves the right to make partial deliveries or modify its labor or services. While Siemens shall make every commercially reasonable effort to meet the delivery or service or completion date mentioned above, such date is subject to change.

Attachment A

Riders (Click on rider below to download)

[SI Software License Warranty](#)

(<http://www.siemens.com/download?A6V10946180>)

[SI Web Based Offering](#)

(<http://www.siemens.com/download?A6V11274011>)

[SI Exclusions and Clarifications](#)

(<http://go.siemens.net/49539933>)



Agreement Terms for Investments

Services shall be provided at:

Downtown Detention Center (DDC)
200 James Robertson Parkway
Nashville, TN37201.

Siemens Industry, Inc. shall provide the services as identified in this Proposal and pursuant to the associated terms and conditions contained within.

Duration (Initial Term and Renewal): This Agreement shall remain in effect for an Initial Term of 5 Periods beginning 2021-04-01. After the expiration of the Initial Term, this Agreement shall automatically renew for successive one year periods. The Investments for each year after the Initial Term of the Agreement and each year of each renewal of this Agreement shall be determined as the immediate prior year's Investment plus an escalator of 3%. In addition, each renewal term pricing shall be adjusted for any additions or deletions to services selected for the renewal term.

Initial Term Investments:

Billing Frequency	Period Range	Period	Sell Price
Annually	Apr 1,2021 - Mar 31,2022	1	\$69,852.00
Annually	Apr 1,2022 - Mar 31,2023	2	\$53,412.00
Annually	Apr 1,2023 - Mar 31,2024	3	\$55,008.00
Annually	Apr 1,2024 - Mar 31,2025	4	\$56,664.00
Annually	Apr 1,2025 - Mar 31,2026	5	\$58,356.00

Multi-Period Investment Total	\$293,292.00
-------------------------------	--------------

*Amount Due In Advance Based On Billing Frequency

Applicable sales taxes, if included in the investment amount, are estimated only and will be calculated based on local requirements at the time of invoicing. The pricing quoted in this Proposal are firm for 30 days.



Signature Page

The Buyer acknowledges that when accepted by the Buyer as proposed Siemens Industry, Inc., this Proposal and the Standard Terms and Conditions of Sale for Services, (together with any other documents incorporated into the forgoing) shall constitute the entire agreement of the parties with respect to its subject matter.

BY EXECUTION HEREOF, THE SIGNER CERTIFIES THAT (S)HE HAS READ ALL OF THE TERMS AND CONDITIONS AND DOCUMENTS, THAT SIEMENS INDUSTRY, INC. 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 BUYER.

Initial Term Investments

Period	Period Range	Price	Billing Frequency
1	Apr 1,2021 - Mar 31,2022	\$69,852.00	Annually
2	Apr 1,2022 - Mar 31,2023	\$53,412.00	Annually
3	Apr 1,2023 - Mar 31,2024	\$55,008.00	Annually
4	Apr 1,2024 - Mar 31,2025	\$56,664.00	Annually
5	Apr 1,2025 - Mar 31,2026	\$58,356.00	Annually

Proposed by:

Siemens Industry, Inc.

Company

Wendell Miller

Name

5642601

Proposal #

\$293,292.00

Proposal Amount

February 17, 2021

Date

Accepted by:

Metropolitan Government of Nashville and Davidson County

Company

Name (Printed)

Signature

Title

Date



Purchase Order # ☐ PO for billing only ☐ PO not required



Appendix A: Siemens Service Portfolio

Advisory and Performance Services



Manage System Operation & Compliance Services that keep systems performing at their best, as designed and intended to operate, help you achieve: - Optimized comfort, safety, and security - Fulfilled regulatory requirements - Greater transparency into critical systems - Reduced operating risk Facility Assessment & Planning In-depth building system assessment and recommendations, definition of relevant KPIs, and development of your service program Test & Inspection Regular check-ups to measure system performance compared to your defined facility and regulation requirements and risks Preventive Services Services performed on a regular schedule or based on data analytics to verify and improve system state Documentation Management Management of critical building system and compliance information, with organization and access determined by your needs Corrective Services Immediate response to system failures or faults to restore functionality and integrity to desired state	Optimize Performance & Productivity Enhance building performance with improvement measures that increase productivity and efficiency; common outcomes include: - Enhanced system performance - Streamlined operational processes - Improved decision-making through data analytics Optimization Planning Planning and prioritization of improvement measures to increase building and/or process performance and efficiencies Predictive Services Systems are audited and monitored to detect abnormalities or faults, with recommendations provided and/or corrective actions taken System Improvements & Integration Enhancements or additions to your current system to increase staff productivity, system performance, and operational energy efficiencies Training & Operational Support Training, coaching, and on-site support to increase staff productivity and knowledge Managed Services On-site and/or remote resources monitor system events and alarms, and take appropriate action	Protect Lifecycle Investment Leverage past investments and address future requirements with advanced and proven technology, to achieve outcomes such as: - Extended system life - Maximized return on investment - Realized benefits of new technology Technology Planning Consulting services identify technology improvement opportunities that help achieve performance goals while leveraging past investments System Updates / Upgrades Software upgrades and firmware updates are provided, delivering the most current technology and functionality System Migration / Modernization Enhancements to your systems by elevating them to the most current hardware and software platforms, resulting in increased functionality and performance levels Retrofits & Extensions Modifications are made to existing systems to accommodate changes to your facility usage and footprint New Installation Services Startup, commissioning, and other installation services are completed to ensure new equipment operates at maximum performance	Enhance Energy Management & Sustainability Increase the value and competitiveness of buildings and infrastructure by delivering solutions that: - Conserve energy - Maximize efficiency - Minimize operating costs - Reduce environmental impact Energy & Sustainability Master Planning Strategy and planning services provide a detailed master plan to provide budget transparency, enable improved performance and sustainability, reduce energy consumption, and minimize operational costs Energy Conservation Implementing energy conservation strategies reduces total carbon emissions through efficiency measures and minimizes energy spend by optimizing consumption Energy Production & Storage Using innovative design and simulation tools, energy production and storage solutions improve energy efficiency, energy availability, security of supply, and carbon reduction Energy Procurement With advanced procurement technologies and beneficial contract terms, these tailored procurement and supply services reduce costs, reduce risks, and create certainty
Digital Services			

Sole Source Review

Sent for Review:	02/19/2021	Reviewed	02/22/2021	Returned	02/22/2021
Reviewed By:	Z.A.K.				
Recommendation:	Approve			Department:	Sheriff's Department
Supplier:	Siemens Industry, INC			Pricing:	\$293,292.00
Description:	Software automation system			Method:	Multi-year contract.

Procurement Code: MC 4.12.060

Procurement Regulations: R4.12.060.05(B) Items Pre-Approved for Sole Source - maintenance of photocopiers, high technology equipment and systems, and software¹.

Department Justification: Department did not provide it's own justification, opting instead to attach a letter from the proposed supplier.

Review: Under section [4.12.060](#) of the procurement regulations, a contract may be awarded without competition when the purchasing agent determines there is only one source for the good or service. Section 4.12.060.02 further pre-approves the maintenance of photocopiers, high technology equipment and systems, and software for sole source.

This is a request for to upgrade the building automation system (BAS) used by the Davidson County Sheriff's Office (DCSO). Specifically, the request is the sole source the design, install, staff training, maintenance, monitoring, and ongoing support of the BAS.

A building automation system is loosely understood to mean the centralized control of HVAC, electrical, lighting, shading, access, security systems, and related services across one or more physical plants. This is accomplished, necessarily, through the combination of hardware, software, and other high technology equipment.

Merriam-Webster defines high technology as, "scientific technology involving the production or use of advanced or sophisticated devices especially in the fields of electronics and computers."

The description of services, provided by the supplier and detailed above, meets the definition of high technology equipment set in R4.12.060.02. A sole source is recommended.

Note: Metro is already under contract with the proposed supplier for energy management services and related capital improvements (L-99-7195) through March 31, 2029. This contract resulted in the BAS system currently place at DCSO, which resulted in the sole source request under review. It is conceivable, therefore, that an amendment, rather than a new contract, may be appropriate. An amendment that ran for the life of the contract could minimize cost (by reducing duplicative services) and give DCSO a longer term (through 2029, rather than 2026) for this requested addition.

¹ This justification is not cited by the department or the supplier, but is appropriate based on the nature of the service as described therein. Generally, departments should review the regulations and submit their own, aligned, appropriate justification to avoid delay and/or denial of requests.

099-1802
L-99-7195

Number: 13438

Date: ~~May 10, 1999~~ 8-3-99

CONTRACT BETWEEN
METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY
AND SIEMENS BUILDING TECHNOLOGIES, INC.

FOR PURCHASE OF SERVICES

This contract is entered into on this 3rd day of August, 1999, by and between **THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY**, a municipal corporation of the State of Tennessee ("Metro") and **SIEMENS BUILDING TECHNOLOGIES, INC.**, Suite 125, 5010 Linbar Drive, Nashville, TN 37211 ("Contractor"). This contract consists of the following documents:

- Request For Proposals Number 97-74,
- Amendment Number 1 to RFP # 97-74 dated February 25, 1998,
- Amendment Number 2 to RFP # 97-74 dated March 6, 1998,
- Amendment Number 3 to RFP # 97-74 dated March 11, 1998,
- Amendment Number 4 to RFP # 97-74 dated April 10, 1998,
- Contractor's Proposal dated April 10, 1998
- Contractor's Preliminary Comprehensive Energy Conservation and Cost Reduction Plan,
- Contractor's Response To Questions dated December 9, 1998 and
- Contractor's Response To Questions dated January 12 1999.

In the event of conflicting provisions, all documents shall be construed according to the following priorities:

- any property executed amendment or change order to this contract (most recent with first priority),
- this contract,
- Amendment Number 4 to RFP # 97-74 dated April 10, 1998,
- Amendment Number 3 to RFP # 97-74 dated March 11, 1998 Amendment Number 2 to RFP # 97-74 dated March 6, 1998, Amendment Number 1 to RFP # 97-74 dated February 25, 1998, Request For Proposals Number 97-74
- Contractor's Response To Questions dated January 12 1999, Contractor's Response To Questions dated December 9, 1998 Contractor's Preliminary Comprehensive Energy Conservation and Cost Reduction Plan, and
- Contractor's Proposal dated April 10, 1998.

1. **Duties and Responsibilities of Contractor.** Contractor agrees to provide and Metro agrees to purchase comprehensive energy management services and energy-related capital improvements for selected buildings and facilities owned or managed by Metro.
2. **Term.** The term of the contract shall be from April 1, 1999 (beginning date) to March 31, 2029 (ending date). The contract shall be effective on the date it is signed by all required parties, approved by the Metropolitan Council and filed in the office of the Metropolitan Clerk. All purchase orders initiating new projects under this contract shall be issued prior to March 31, 2014. 
3. **Compensation.** Contractor shall be paid according to the terms of the financing plan that shall be an integral component of each comprehensive energy conservation and cost reduction plan authorized under this contract. There will be no other charges or fees for the performance of this contract. All payments by Metro shall be made within thirty (30) days of receipt of invoice.
4. **Services To Be Provided by Contractor.**
 - a) Develop and implement a methodology to survey all Metro facilities identified as possible candidates for comprehensive energy management services and energy-related capital improvements. The survey shall be the management tool for Metro and the contractor to select, prioritize and schedule facilities for comprehensive analysis. The contractor shall obtain from Metro and utility company records, from on-site inspection and from any other available source all data necessary to prepare the survey.
 - b) Conduct a comprehensive energy conservation and reduction audit of all buildings identified by Metro as possible candidates for comprehensive energy management services and energy-related capital improvements. Identify technical solutions that maximize energy and cost savings and provide a definitive estimate of all costs and savings resulting from the proposed energy conservation and reduction measures. The Contractor shall consult with Metro's maintenance and other

staff as to any conditions which might influence the conclusions of the audit. The Contractor shall obtain data from utility companies to conduct analyses of existing systems and utility costs. The Contractor shall also field-verify existing conditions to design and locate the installation of new equipment, retrofits or expansion of existing systems.

c) For each building or group of buildings that is the subject of a comprehensive energy conservation and reduction audit, prepare and submit to the responsible Metro department a proposed comprehensive energy conservation and cost reduction plan. This plan shall have the same format as the preliminary comprehensive energy conservation and cost reduction plan submitted as part of the selection process. Included in this plan shall be a detailed technical, financial and measurement and verification plan to implement the recommended energy saving and cost reduction measures and a guaranteed amount of energy and cost savings to be realized when the measures are implemented. If, in the course of either preparing or implementing any comprehensive energy conservation and cost reduction plan under this contract, any hazardous substances are discovered, the cost and any other effects of testing for, abating, encapsulating, cleaning up, removing and disposing of them shall, if requested by Metro, be included in the plan. Hazardous substances include but are not necessarily limited to asbestos, asbestos containing material, formaldehyde, refrigerant fluid, mercury, PCB's or other toxic or hazardous substances. For purposes of this contract, lighting tubes and ballasts are not considered to be hazardous substances. Inclusion of hazardous substances in a comprehensive energy conservation and cost reduction plan is to assure a complete implementation and coordination of all aspects of the plan by the Contractor although Metro shall use a separate contractor for all the services identified above relating to hazardous substances and shall pay the separate contractor directly.

d) Prepare the technical plan using the same format as that submitted with the preliminary comprehensive energy conservation and cost reduction plan. The technical plan shall identify the proposed energy conservation and cost reduction measures, provide a detailed engineering assessment of the energy and other cost savings expected from each measure, compute the cost of implementing them, describe any necessary structural alterations to the building required to install each measure and present a projected installation schedule. The plan shall describe all operations, maintenance and service procedures that will be necessary to assure optimal performance of each measure and define which are to be the continuing responsibility of the contractor and which are to be the continuing responsibility of Metro. The plan shall also describe the training to be provided to Metro personnel by the contractor to prepare them for their operations, maintenance and service responsibilities.

e) Prepare the financing plan using the same format as that submitted with the preliminary comprehensive energy conservation and cost reduction plan. The financing plan shall cover 100% of the costs of developing and implementing the recommended energy saving and cost reduction measures. All costs shall be computed by applying the unit costs used in the preliminary comprehensive energy conservation and cost reduction plan. On an annual basis at the anniversary date of this contract unit costs shall be subject to escalation/de-escalation based on reasonable publicly available indices. The contractor shall recover all costs over the life of the financing plan. Payments by Metro shall, in most cases, be solely or at least primarily, from the savings guaranteed and, in most cases, shall not be greater than the actual savings generated. The responsible Metro department may apply budgeted funds to supplement the funds generated by the savings guarantee. Terms for an early buyout option shall also be included in each financing plan.

f) Prepare the measurement and verification plan for each project installed under an approved comprehensive energy conservation and cost reduction plan. The plan shall include then methodologies to be used in measuring and verifying both the measurable and the stipulated energy and operational savings guaranteed by the contractor.

g) Review the comprehensive energy conservation and cost reduction plan for each building or group of buildings with the responsible Metro department and negotiate any necessary changes to meet the departments needs. Modify the plan as needed.

h) After final approval from the department and the issuance of a purchase order that shall constitute a notice to proceed, implement the comprehensive energy conservation and cost reduction plan while maintaining a level of functionality and comfort acceptable to Metro.

i) Provide all necessary construction management services to furnish and install all equipment and systems included in the approved comprehensive energy conservation and cost reduction plan for each building or group of buildings.

j) Provide all necessary equipment maintenance services included in the approved comprehensive energy conservation and cost reduction plan for each building or group of buildings. Emergency on-site service and component replacement shall be provided on a 24-hour per day basis when requested by the responsible Metro department.

k) Provide all necessary support services included in the approved comprehensive energy conservation and cost reduction plan for each building or group of buildings for the duration of the plan. The support services may include but not necessarily be limited to

- i) Monthly utility bill analysis and audit reports which compare the current year with the base year energy consumption and costs.
 - ii) Periodic on-site analysis to determine whether all building systems, installed as part of a comprehensive energy conservation and cost reduction plan, are operating at optimal efficiency and to assess the occupancy and operational schedules of the buildings.
 - iii) Re-evaluation of any software as newer versions become available and upgrade software as appropriate. Provide operator training as needed.
 - iv) Complete on-site training and education of Metro maintenance and operating personnel in the functions, operations and maintenance of all equipment installed as a part of an approved comprehensive energy conservation and cost reduction plan for each building or group of buildings. Provide manuals, charts, diagrams, equipment hardware, software, step-by-step instructions, as appropriate.
- l) Implement the measurement and verification plan for each building or group of buildings that is part of an approved comprehensive energy conservation and cost reduction plan.
- m) Prepare an annual reconciliation statement within sixty (60) calendar days of the last day of each year covered by this contract to determine whether guaranteed savings for that year were achieved. This will be calculated on an annual basis by comparing the annual portion of the contractors guaranteed savings with the actual savings that were recorded for the year. The actual savings shall be computed using the methodologies contained in the measurement and verification plan for each building or group of buildings that is part of an approved comprehensive energy conservation and cost reduction plan. If the actual savings for any year exceed the guaranteed amount for that year, the excess may be applied against any shortfall pending from an earlier year or used as a credit against any subsequent shortfall. If the actual savings for any year are less than the guaranteed amount for that year, the shortfall may be offset by credits earned in earlier years, may be extinguished by increasing the guaranteed savings for the next year by an amount equal to the shortfall, or may be extinguished by a payment by the contractor to Metro in an amount equal to the shortfall. All savings achieved during construction and before formal acceptance of completion of each project installed under an approved comprehensive energy conservation and cost reduction plan may be used as a credit against any subsequent guaranteed savings.
- n) Contractor's guarantee of savings, that is included in each approved comprehensive energy conservation and cost reduction plan as required in Subsection 4. c) above, is contingent upon Metro's continued acceptance of the Contractor's support services provided as required by Subsections 4. k) i and ii above for the duration of each comprehensive energy conservation and cost reduction plan. 

5. Metro's Responsibilities.

- a) Identify buildings as possible candidates for comprehensive energy management services and energy-related capital improvements.
- b) Assist contractor in obtaining energy cost and utilization data.
- c) Provide contractor, if possible, "as built" drawings for all buildings and all relevant system specifications.
- d) Review, negotiate necessary changes with the contractor and, approve all acceptable comprehensive energy conservation and cost reduction plans for each building or group of buildings under the contract. Such approval and notice to proceed shall be documented in a purchase order issued to the contractor referencing the approved comprehensive energy conservation and cost reduction plan. 
- e) Provide access to all involved buildings and to selected staff familiar with the day-to-day operation of building energy systems and related controls.

f) **INSURANCE.** Maintain at its expense for the term of this Agreement, fire and extended coverage property insurance, on all equipment and systems installed to implement each comprehensive energy conservation and cost reduction plan approved as required by Section 4. h) above. The limits of this insurance shall at all times be at least equal to the balance yet to be paid on all financing plans that are part of each approved comprehensive energy conservation and cost reduction plan. The insurer shall be no less than a "B+VI" in the latest Best Insurance Guide. Each insurance policy shall name Metro as an insured and Contractor or its Assignee(s) as an additional insured and loss payee, as appropriate, and shall contain a clause requiring the insurer to give Contractor or its Assignee thirty (30) calendar days prior written notice of any alteration in the terms of such policy or the cancellation thereof. The proceeds of any such policies shall be payable to Metro and Contractor or its Assignee(s), as their interest may appear. In the event of any loss, damage, injury or accident involving any equipment and systems installed to implement any comprehensive energy conservation and cost reduction plan approved as required by Section 4. h) above, Metro shall promptly provide Contractor with written notice thereof and make available to Contractor all information and documentation relating thereto. Contractor shall notify Metro's Risk Manager each time any equipment and systems are installed to implement an approved comprehensive energy conservation and cost reduction plan.

g.) Be responsible, at its expense, for all testing for, abating, encapsulating cleaning up removing and disposing of any hazardous substance, as defined in Section 4. c) above, that is discovered during any project under this contract. If the hazardous substance is discovered after a notice to proceed is issued by purchase order, the Contractor shall have the right to cease work until takes all necessary action to restore a safe working environment. Metro and the Contractor may then amend the comprehensive energy conservation and cost reduction plan to address the presence of the hazardous substance. Any hazardous substance discovered on Metro property, as a result of tasks undertaken under this contract, remains the property and liability of Metro.

6. **Taxes.** Metro shall not be responsible for any taxes that are imposed on Contractor. Furthermore, Contractor understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to Metro.

7. **Year 2000 Warranty and Responsibilities.**

a) Contractor warrants that any hardware, software and firmware products that it manufactures, individually and in combination, provided by Contractor pursuant to this contract shall successfully transition into the year 2000 with the correct system date, without human intervention, including leap year combinations, and shall also provide correct results when moving forward or backward in time through and beyond January 1, 2000, provided other products and software, including the computer workstation, with which the product interacts, properly exchange date and time data with the product. Successful transition and correct results includes recording, processing, storing, presenting and responding to calendar dates of January 1, 2000, and later in the same manner and with the same functionality as such products do for calendar dates of December 31, 1999, and earlier. Any product or combination of products that does not meet the requirements of this subsection shall be deemed defective. Remedies available to Metro for breach of the requirements of this subsection shall include repair or replacement of any defective product(s). Nothing in this subsection shall be construed to limit any other rights or remedies, including warranties that Metro may have under this contract.

b) Any failure of Contractor to provide goods or services, or otherwise perform pursuant to this contract including, without limitation, interruption or delay, that is due to failure of any hardware, software or firmware products, individually or in combination, to successfully transition and/or to provide correct results as set forth in subsection (a), above, shall not be force majeure, and shall be a breach of this contract. This subsection (b), includes and applies to any failure of Contractor to perform that results from failures of Contractor's suppliers and/or subcontractors that are due to failure of any hardware, software or firmware products, individually or in combination, of Contractor's suppliers and/or subcontractors to successfully transition and/or to provide correct results.

c) Any equipment or software supplied by but not manufactured or developed by SIEMENS BUILDING TECHNOLOGIES carries only such warranty as given by the manufacturer or developer thereof and which is hereby assigned to Customer, without recourse to SIEMENS BUILDING TECHNOLOGIES; provided that SIEMENS BUILDING TECHNOLOGIES shall remain responsible for any defects in the service provided by SIEMENS BUILDING TECHNOLOGIES for the installation of such equipment or software pursuant to the terms of this Agreement.

d) THE EXPRESS WARRANTY PROVIDED ABOVE IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED. THE EXPRESS WARRANTIES AND REPRESENTATIONS SET FORTH IN THIS AGREEMENT MAY ONLY BE MODIFIED OR SUPPLEMENTED IN A WRITING SIGNED BY A DULY AUTHORIZED CORPORATE OFFICER OF SIEMENS BUILDING TECHNOLOGIES AND NOT BY ANY SALES REPRESENTATIVE. SIEMENS BUILDING TECHNOLOGIES' sole obligation and Customer's exclusive remedy, in contract, tort or otherwise, is SIEMENS BUILDING TECHNOLOGIES, at its option, repairing or replacing defective goods, or refunding the purchase price for the defective goods to the extent previously paid. It is expressly agreed and understood that this clause is intended to allocate the risk of damages arising from defective products and that SIEMENS BUILDING TECHNOLOGIES' liability shall in no event exceed the purchase price paid for defective goods. SIEMENS BUILDING TECHNOLOGIES SHALL IN NO EVENT BE RESPONSIBLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGE, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF DATA, AND LOST PROFITS, CAUSED BY DEFECTS IN THE GOODS SOLD HEREUNDER OR FOR LATE DELIVERY OR NON-DELIVERY OF SUCH GOODS, WHETHER SUCH DAMAGE OCCURS OR IS DISCOVERED BEFORE OR AFTER REPAIR OR REPLACEMENT, AND WHETHER OR NOT SUCH DAMAGE IS CAUSED BY SIEMENS BUILDING TECHNOLOGIES' NEGLIGENCE.

8. Copyright, Trademark, Service Mark or Patent Infringement.

a) Contractor shall, at its own expense, be entitled to and shall have the duty to defend any suit which may be brought against Metro to the extent that it is based on a claim that the products or services furnished by Contractor infringe a copyright, Trademark, Service Mark, or patent. Contractor shall further indemnify and hold harmless Metro against any award of damages and costs made against Metro by a final judgment of a court of last resort in any such suit. Metro shall provide Contractor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority to enable Contractor to do so. No costs or expenses shall be incurred for the account of Contractor without its written consent Metro reserves the right to participate in the defense of any such action. Contractor shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement or compromise shall be binding upon Metro unless approved by the Metro Department of Law Settlement Committee and, where required, the Metro Council.

b) If the products or services furnished under this contract are likely to, or do become, the subject of such a claim of infringement, then without diminishing Contractor's obligation to satisfy the final award, Contractor may at its option and expense:

i) Procure for Metro the right to continue using the products or services.

ii) Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to Metro, so that they become non-infringing.

iii) Remove the products or discontinue the services and cancel any future charges pertaining thereto.

iv) Provided, however, that Contractor will not exercise option b.iii. until Contractor and Metro have determined that options b.i. and b.ii. are impractical.

c) Contractor shall have no liability to Metro, however, if any such infringement or claim thereof is based upon or arises out of.

i) The use of the products or services in combination with apparatus or devices not supplied or else approved by Contractor.

ii) The use of the products or services in a manner for which the products or services were neither designated nor contemplated.

lii) The claimed infringement in which Metro has any direct or indirect interest by license or otherwise, separate from that granted herein.

9. Termination-Breach.

a). Should Contractor fail to fulfill in a timely and proper manner its obligations under this contract or if it should violate any of the terms of this contract Metro shall have the right to immediately terminate the contract. Such termination shall not relieve Contractor of any liability to Metro for damages sustained by virtue of any breach by Contractor.

b). By Customer. The term "Event of Default", as used in this Agreement, means the occurrence of any one or more of the following events: (i) Customer fails to make any Contract Payment (or any other payment) as it becomes due in accordance with the terms of this Agreement, and any such failure continues for five (5) business days after the due date thereof; (ii) Customer fails to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder and such failure is not cured within ten (10) business days after written notice thereof by Contractor; (iii) the discovery by Contractor that any statement, representation or warranty made by Customer, legal, financial or otherwise, in this Agreement or in any document ever delivered by Customer pursuant hereto or in connection herewith is false, misleading or erroneous in any material respect; or (iv) Customer becomes insolvent, is unable to pay its debts as they become due, makes an assignment for the benefit of creditors, applies or consents to the appointment of a receiver, trustee, conservator or liquidator of Customer or of all or a substantial part of its assets, petition for relief is filed by Customer under federal bankruptcy, insolvency or similar laws, or a petition in a proceeding under any bankruptcy, insolvency or similar law is filed against Customer and is not dismissed within thirty (30) calendar days thereafter.

10. Termination-Funding. Should funding for this contract be discontinued, Metro shall have the right to terminate the contract immediately upon written notice to Contractor.

11. Termination-Notice. Metro may terminate this contract at any time upon thirty (30) days written notice to Contractor.

12. Compliance with Laws. Contractor agrees to comply with any applicable federal, state and local laws and regulations.

13. Notices.

a) Notice of assignment of any rights to money due to Contractor under this contract must be mailed or hand delivered to the attention of Metro's Chief Accountant, Division of Accounts, Department of Finance, 222 Third Avenue North, Suite 750, Nashville, Tennessee 37201, with a copy to the recipient for Metro notices listed below. All other notices to Metro shall be mailed or hand delivered to:

*Bob Watkins
Purchasing Division
222 Third Avenue North
Nashville, TN 37201*

b) Notices to Contractor shall be mailed or hand delivered to:

*District Manager
Siemens Building Technologies, Inc.
Suite 125
5010 Linbar Drive
Nashville, TN 37211*

14. Maintenance of Records. Contractor shall maintain documentation for all charges against Metro. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the contract shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by Metro or its duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles.

15. Metro Property. Any Metro property, including but not limited to books, records and equipment that are the work product from this contract that is in Contractor's possession shall be maintained by Contractor in good condition and repair, and shall be returned to Metro by Contractor upon termination of the contract. All goods, documents, records, and other work product of this contract, excluding software which shall remain the property of Contractor, and property produced during the performance of this contract are deemed to be Metro property.

16. Modification of Contract. This contract may be modified only by written amendment executed by all parties and their signatories hereto. All change orders, where required, shall be executed in conformance with section 4.24.020 of the Metropolitan Code of Laws.

17. Partnership/Joint Venture. Nothing herein shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this paragraph.

18. Waiver. No waiver of any provision of this contract shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.

19. Employment. Contractor shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, or which is in violation of applicable laws concerning the employment of individuals with disabilities.

20. Insurance. During the term of this Contract, Contractor shall maintain comprehensive general liability insurance with limits of not less than one million dollars, as well as, automotive and workman's compensation insurance policies. In the event that architectural, engineering or other professional services are required for the performance of any of the services required under this Contract, Contractor shall require that any professional services subcontractor engaged by Contractor to perform such professional services shall maintain Professional Liability insurance which shall pay for any injuries arising out of errors or omissions in the rendering, or failure to render professional services under the contract. The minimum limit of liability for the Professional Liability insurance of such professional services subcontractor shall be \$2,000,000 per claim and in the aggregate. A certificate of insurance, in a form satisfactory to Metro, evidencing said coverage shall be provided to Metro prior to commencement of performance of this Contract and in the event of a professional services subcontractor, a certificate from such professional liability subcontractor evidencing the Professional Liability insurance. Throughout the term of this contract, Contractor and any professional liability subcontractor shall provide an updated certificate of insurance upon expiration of the current certificate.

21. Guaranteed Savings Bond. For each comprehensive energy conservation and cost reduction plan approved by Metro, Contractor shall secure a guaranteed savings bond in an amount equal to the guaranteed amount of energy and cost savings specified in the plan. The cost of such bonds shall be included in the 18 percent allocation for overhead, one of the unit costs identified in the preliminary comprehensive energy conservation and cost reduction plan.

22. Contingent Fees. Contractor hereby represents that Contractor has not been retained or retained any persons to solicit or secure a Metropolitan Government contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Breach of the provisions of this paragraph is, in addition to a breach of this contract, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under Metropolitan Government contracts.

23. Gratuities and Kickbacks. 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 program requirement or a purchase request influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefor. It shall be 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 a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this contract, a breach of ethical standards, which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under Metropolitan Government contracts.

24. Indemnification and Hold Harmless. Contractor shall indemnify and hold harmless Metro, its officers, agents and employees from:

a) Any claims, damages, costs and attorney fees for injuries or damages to the extent arising in part, or in whole, from the negligent or intentional acts or omissions of Contractor, its officers, employees and/or agents, including its sub or independent contractors, in connection with the performance of the contract.

b) Any claims, damages, penalties, costs and attorney fees to the extent arising from any failure of Contractor, its officers, employees and/or agents, including its sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.

c) Metro will not indemnify, defend or hold harmless in any fashion the Contractor from any claims arising from any failure, regardless of any language in any attachment or other document that the Contractor may provide.

d) Contractor shall pay Metro any expenses incurred as a result of Contractor's failure to fulfill any obligation in a professional and timely manner under this Contract.

25. Assignment-Consent Required. The provisions of this contract shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to Contractor under this contract which Contractor may assign for purposes of obtaining financing in connection with funding payment on this Contract, neither this contract nor any of the rights and obligations of Contractor hereunder shall be assigned or transferred in whole or in part without the prior written consent of Metro. Any such assignment or transfer shall not release Contractor from its obligations hereunder. NOTICE OF ASSIGNMENT OF ANY RIGHTS TO MONEY DUE TO CONTRACTOR UNDER THIS CONTRACT MUST BE SENT TO THE ATTENTION OF METRO'S CHIEF ACCOUNTANT, DIVISION OF ACCOUNTS, DEPARTMENT OF FINANCE, 222 THIRD AVENUE NORTH, SUITE 750, NASHVILLE, TENNESSEE 37201.

26. Entire Contract. This contract sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.

27. Force Majeure. No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout labor dispute, civil disturbance, war, national emergency, act of Government act of public enemy, or other cause of similar or dissimilar nature beyond its control.

28. Governing Law. The validity, construction, and effect of this contract, and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that the Contractor may provide.

29. Venue. Any action between the parties arising from this agreement shall be maintained in the courts of Davidson County, Tennessee.

30. Severability. Should any provision of this contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this contract.

31. Effective Date. This contract shall not be binding upon the parties until it has been signed first by the Contractor and then by the authorized representatives of the Metropolitan Government and has been filed in the office of the Metropolitan Clerk. When it has been so signed and filed, this contract shall be effective as of the date first written above.

32. Consequential Damages. Anything in the contract documents notwithstanding, in no event shall either Subcontractor or Customer be liable for special, indirect, incidental or consequential damages, including commercial loss, loss of use, or lost profits, even if either party has been advised of the possibility of such damages.

33. Authority and Authorization. Customer represents, warrants and covenants that (a) it has done all things necessary to preserve and keep in full force and effect (i) its existence and (ii) the Agreement; (b) all requirements have been met and procedures have been followed to ensure enforceability of the Agreement; and (c) there is not any pending, or to the best of Customer's knowledge, threatened, suits or actions, litigation or proceedings against or affecting Customer that affects the validity or enforceability of this Agreement.

THE METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY:
Purchasing Agent

Stephen B. Gamm
RECOMMENDED:

Various Depts.

Department:
APPROVED AS TO AVAILABILITY OF FUNDS

SA Gene Plante
Director of Finance

APPROVED AS TO INSURANCE:
Stephen M. Chinn
Director of Insurance

APPROVED AS TO FORM AND LEGALITY:
John J. Lee
Metropolitan Attorney

CONTRACTOR:
Siemens Building Technologies, Inc.

BY: [Signature]

Title: Assistant Secretary

Sworn to and subscribed to before me, a Notary

Public, this 7th day of
April, 1999 by

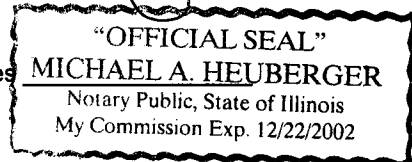
Darryl L. Peake, the

Assistant Secretary of Contractor and duly

authorized to execute this instrument on Contractor's behalf

[Signature]
Notary Public

My Commission Expires



APPROVED:

Metropolitan Council Ordinance No. 099-1802

FILED WITH METROPOLITAN CLERK:

Marilyn S. Swing
Marilyn S. Swing, Metropolitan Clerk

8/3/99

Affidavits

State of IllinoisCounty of Lake

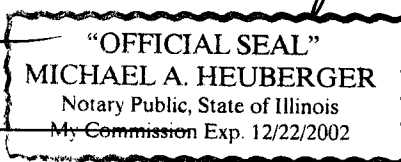
Contingent Fees Statement: In accordance with the Metropolitan Governments 1992 Procurement Code, it is a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a Metropolitan Government contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. After first being duly sworn according to law, the undersigned (Affiant) states that he/she is the Assistant Secretary (Offeror) and that the Offeror has not retained anyone in violation of the foregoing.

Fair Employment Practices Affidavit: After first being duly sworn according to law, the undersigned (Affiant) states that he/she is the Assistant Secretary (Offeror) and that by its employment policy standards, and practices the Offeror does not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment dismissal, or laying off of any individual due to his/her race, creed, color, national origin, age, or sex, and that the Offeror is not in violation of and will not violate any applicable laws concerning the employment of individuals with disabilities.

And Further Affiant sayeth not:

By: [Signature]Title: Assistant SecretaryAddress: 5010 Linbar Dr., Suite 125Nashville, TN 37211Sworn to and subscribed before me on this 11 day of April, 1999[Signature]

Notary Public My commission expires: _____



04/15/99 17:00 615 834 2541

SIEMENS

002/002

APR-15-99 THU 04:57 PM J&H MARSH MCLENNAN, INC. THE METRO GOV

ACORD. CERTIFICATE OF INSURANCEDATE (MM/DD/YY)
04/15/99**PRODUCER**J&H MARSH & MCLENNAN, INC.
44 WHIPPANY ROAD
PO BOX 1966
MORRISTOWN NJ 07962-1966

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

COMPANY A GERLING AMERICA INSURANCE CO.

COMPANY B N/A

COMPANY C TRAVELERS INDEMNITY CO. OF ILLINOIS

COMPANY D

INSUREDSIEMENS BUILDING TECHNOLOGIES, INC.
1000 DEERFIELD PARKWAY
BUFFALO GROVE, IL 60089-4513**COVERAGES**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	4002018	10/01/98	10/01/99	GENERAL AGGREGATE	\$ 2,000,000
	☒ COMMERCIAL GENERAL LIABILITY				PRODUCTS - COM/OP AGG	\$ 2,000,000
	☐ CLAIMS MADE ☒ OCCUR				PERSONAL & ADV INJURY	\$ 1,000,000
	OWNER'S & CONTRACTOR'S PI/BI				EACH OCCURRENCE	\$ 1,000,000
					FIRE DAMAGE (Any one fire)	\$ 500,000
					MED EXP (Any one person)	\$ 10,000
C	AUTOMOBILE LIABILITY	TC2J-CAP-229T2283-TIL-98(AOS)	10/01/98	10/01/99	COMBINED SINGLE LIMIT	\$ 1,000,000
	☒ ANY AUTO	TC2E-CAP-229T229-5-TCT-98 (TX)			BODILY INJURY (Per person)	\$ N/A
	☒ ALL OWNED AUTOS	TJEAP-229T2302-TIL-98(MA-XS)			BODILY INJURY (Per accident)	\$ N/A
	☒ SCHEDULED AUTOS				PROPERTY DAMAGE	\$ N/A
	☒ HIRED AUTOS					
	☒ NON-OWNED AUTOS					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
	ANY AUTO				OTHER THAN AUTO ONLY	
					EACH ACCIDENT	\$
					AGGREGATE	\$
A	EXCESS LIABILITY	4002019 - GL	10/01/98	10/01/99	EACH OCCURRENCE	\$ 5,000,000
	☒ UMBRELLA FORM				AGGREGATE	\$ 5,000,000
	OTHER THAN UMBRELLA FORM					\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	TDRJ-UB-229T226A-98 (AZ, HI, OR, MT, WI)	10/01/98	10/01/99	☒ STATUTORY LIMITS	
	THE PROPRIETOR, PARTNERS/EXECUTIVE OFFICERS ARE:	TC2J-UB-229T2258-98 (A/O/S)			EACH ACCIDENT	\$ 1,000,000
	☒ INCL. ☐ EXCL.				DISEASE - POLICY LIMIT	\$ 1,000,000
	OTHER				DISEASE - EACH EMPLOYEE	\$ 1,000,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS (LIMITS MAY BE SUBJECT TO RETENTIONS)RE: SITE SURVEYS AND IMPLEMENTATION OF PERFORMANCE CONTRACTING OPPORTUNITIES AS DISCOVERED - SIEMENS 212-X-1111
METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY ARE INCLUDED AS ADDITIONAL INSURED UNDER THE ABOVE REFERENCED GENERAL LIABILITY/AUTOMOBILE POLICIES. BUT ONLY WITH RESPECT TO ALL WORK PERFORMED BY AND ON BEHALF OF THE NAMED INSURED, SIEMENS BUILDING TECHNOLOGIES, INC. FOR CERTIFICATE HOLDER UNDER CONTRACT.**CERTIFICATE HOLDER**THE METROPOLITAN GOVERNMENT OF NASHVILLE
AND DAVIDSON COUNTY
c/o DIRECTOR - INSURANCE DIVISION
222 3rd AVENUE NORTH
5th FLOOR
NASHVILLE, TN 37201**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Certificate Of Completion

Envelope Id: 061DE5FE92074482AB0E874FA96D8298

Status: Completed

Subject: Sole Source Form for Sheriff's Office - SS2021052 Siemens Industry

Source Envelope:

Document Pages: 36

Signatures: 1

Envelope Originator:

Certificate Pages: 15

Initials: 0

Procurement Resource Group

AutoNav: Enabled

730 2nd Ave. South 1st Floor

Envelopeld Stamping: Enabled

Nashville, TN 37219

Time Zone: (UTC-06:00) Central Time (US & Canada)

prg@nashville.gov

IP Address: 170.190.198.185

Record Tracking

Status: Original

Holder: Procurement Resource Group

Location: DocuSign

2/19/2021 8:09:05 AM

prg@nashville.gov

Signer Events

Judy Cantlon

Judy.Cantlon@nashville.gov

Security Level: Email, Account Authentication
(None)

Signature

Completed

Using IP Address: 170.190.198.185

Timestamp

Sent: 2/19/2021 8:16:15 AM

Viewed: 2/19/2021 8:18:20 AM

Signed: 2/19/2021 8:19:13 AM

Electronic Record and Signature Disclosure:

Accepted: 2/19/2021 8:18:20 AM

ID: 239c7eef-c992-4e6d-8d61-a2228feba4d4

Zachary Kelley

Zak.Kelley@Nashville.gov

Finance Manager

Metro Nashville Government

Security Level: Email, Account Authentication
(None)

Completed

Using IP Address: 104.189.125.42

Sent: 2/19/2021 2:23:07 PM

Viewed: 2/22/2021 11:47:29 AM

Signed: 2/22/2021 1:15:55 PM

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Michelle A. Hernandez Lane

michelle.lane@nashville.gov

Chief Procurement Officer/Purchasing Agent

Metro

Security Level: Email, Account Authentication
(None)

Michelle A. Hernandez Lane

Signature Adoption: Pre-selected Style

Using IP Address: 170.190.198.185

Sent: 2/19/2021 8:19:15 AM

Resent: 2/22/2021 1:15:57 PM

Viewed: 2/19/2021 1:48:35 PM

Signed: 3/1/2021 3:31:24 PM

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

In Person Signer Events

Signature

Timestamp

Editor Delivery Events

Status

Timestamp

Agent Delivery Events

Status

Timestamp

Intermediary Delivery Events

Status

Timestamp

Certified Delivery Events

Status

Timestamp

Carbon Copy Events

Status

Timestamp

Carbon Copy Events	Status	Timestamp
Pete Lutz plutz@dco.nashville.org Finance Manager Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 2/26/2021 10:06:20 AM ID: 8a6e1324-2fff-42b1-ab4b-fff4f86139a0	COPIED	Sent: 3/1/2021 3:31:27 PM
Amber Gardner amber.gardner@nashville.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 3/1/2021 3:31:27 PM
Nikita Cousin ncousin@dco.nashville.org Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 3/1/2021 3:31:28 PM
Terri L. Ray Terri.Ray@nashville.gov Senior Procurement Officer Metropolitan Government of Nashville and Davidson County Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 3/1/2021 3:31:28 PM
PRG prg@nashville.gov Metropolitan Government of Nashville and Davidson County Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 3/1/2021 3:31:29 PM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	2/19/2021 8:16:15 AM
Certified Delivered	Security Checked	2/19/2021 1:48:35 PM
Signing Complete	Security Checked	3/1/2021 3:31:24 PM
Completed	Security Checked	3/1/2021 3:31:29 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		