

AGREEMENT FOR BUILDING AUTOMATION ANNUAL SERVICE AT VARIOUS CITY FACILITIES – HVAC CONTROL SERVICES

SIEMENS INDUSTRY, INC.

On this _____ day of _____, 2017, the CITY OF RIVERSIDE, a California charter city and municipal corporation (“City”) and SIEMENS INDUSTRY, INC., a Delaware corporation, with its principal offices at 1000 Deerfield Parkway, Buffalo Grove, Illinois 60089, State Contractor's License No. 758796 (“Contractor”), mutually agree as follows:

1. **Scope of Services.** Contractor shall furnish all labor, materials, tools, and equipment necessary to perform the work of Building Automation Annual Service – HVAC Control Services at Various City Facilities as set forth in Exhibit “A” attached hereto and incorporated herein by reference (“Work”). The “Various City Facilities” are identified as: Orange Police Department (4102 Orange Street, Riverside, CA), City Hall (3900 Main Street, Riverside, CA), Riverside Convention Center (3443 Orange Street, Riverside, CA), Utilities Operation Center (2911 Adams, Riverside, CA), Main Library (3581 Mission Inn, Riverside, CA).

2. **Term.** The term of this Agreement shall be from July 1, 2017, through June 30, 2020, unless earlier terminated as provided herein. The term may be extended by mutual written consent of the parties for a total of two (2) one (1) year extensions.

3. **Compensation.** Compensation will be as set forth in Exhibit “B” attached hereto and incorporated herein by reference.

4. **Warranties.** Contractor warrants to the City that: (i) the materials furnished under this Agreement will be of good quality and new unless otherwise permitted by the Contract Documents; (ii) the Work will be of good quality and free from defects; and (iii) the Work will conform to the requirements of the Contract Documents.

5. **Extra Materials.** Contractor shall not be compensated for any extra materials used or time expended, over and above the contract price, unless prior written approval for the same has been granted by City.

6. **Business Tax.** Contractor understands that the Work performed under this Agreement constitutes doing business in the City of Riverside, and Contractor agrees that Contractor will register for and pay a business tax pursuant to Chapter 5.04 of the Riverside Municipal Code and keep such tax certificate current during the term of this Agreement.

7. **Offsets.** Contractor acknowledges and agrees that with respect to any business tax or penalties thereon, utility charges, invoiced fee or other debt which is owed, or which becomes owed, by Contractor to City, City reserves the right to withhold and offset said amounts from any payments, refunds or reimbursements owed by City to Contractor under the Contract. Notice of such withholding and offset shall promptly be given to Contractor by City in writing. In the event of a dispute as to the amount owed or whether such amount is owed to City, City will hold

such disputed amount until either the appropriate appeal process has been completed or until the dispute has been resolved.

8. Independent Contractors. In the performance of this Agreement, Contractor, and Contractor's employees, subcontractors and agents, shall act in an independent capacity as independent contractors, and not as officers or employees of the City of Riverside. Contractor acknowledges and agrees that the City has no obligation to pay or withhold state or federal taxes or to provide workers' compensation or unemployment insurance to Contractor, or to Contractor's employees, subcontractors and agents. Contractor, as an independent contractor, shall be responsible for any and all taxes that apply to Contractor as an employer.

9. Indemnification. Except as to the sole negligence, active negligence or willful misconduct of the City, Contractor shall indemnify and hold the City, and its employees, officers, managers, agents and council members, harmless from any and all loss, damage, claim for damage, liability, expense or cost, including attorneys' fees, to the extent the same arises out of, or is related to, or is in any manner connected with the negligent performance of Work, activities, operations or duties of Contractor, or willful misconduct of Contractor, or anyone employed by or working under Contractor, and from all claims by anyone employed by or working under Contractor for services rendered to Contractor in the performance of this Agreement, notwithstanding that the City may have benefited from their services. This indemnification provision shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Contractor or of anyone employed by or working under Contractor.

The parties expressly agree that any payment, attorneys' fees, costs or expense that the City incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation is included as a loss, expense or cost for the purposes of this Section, and that this Section shall survive the expiration or early termination of the Agreement.

10. Duty to Defend. Contractor agrees, at its cost and expense, to promptly defend the City and the City's employees, officers, managers, agents and council members (collectively the "Parties to be defended") from and against any and all claims, allegations, lawsuits or other legal proceedings which arise out of, or are related to, or are in any manner connected with: 1) the Work, activities, operations, or duties of Contractor, or of anyone employed by or working under the Contractor, or 2) any breach of this Agreement by Contractor. This duty to defend shall apply whether or not such claims, allegations, lawsuits or proceedings have merit or are meritless, or which involve claims or allegations that any of the Parties to be defended were actively, passively or concurrently negligent, or which otherwise assert that the parties to be defended are responsible, in whole or in part, for any loss, damage or injury. Contractor agrees to provide this defense immediately upon written notice from the City, and with well qualified, adequately insured and experienced legal counsel acceptable to the City.

11. Hazardous Materials. Anything in the contract documents notwithstanding, the Work does not include directly or indirectly performing or arranging for the detection, monitoring, handling, storage, removal, transportation, disposal or treatment of Hazardous Materials, as defined herein. Contractor will notify City immediately if it discovers or suspects the presence of any

Hazardous Material. All Work has been contemplated and priced based on the absence of Hazardous Materials at the Property. The presence of Hazardous Materials constitutes a change in the work equivalent to a change order whose terms must be agreed to by Contractor before its obligations hereunder will continue. This prohibition does not apply to the following Hazardous Materials: refrigerants, refrigeration oils, and cooling agents utilized and removed by Contractor as part of the Work.

Contractor expressly agrees to and shall indemnify, defend, release and hold the City and its employees, officers, managers, agents and council members harmless from and against any liability, loss, fine, penalty, fee, charge, lien, judgment, damage, entry, claim, cause of action, suit, proceeding (whether legal or administrative), remediation, response, removal, or clean-up, and all costs and expenses associated therewith, and all other costs and expenses (including, but not limited to, attorney's fees, expert fees, and court costs) in any way related to the removal, transportation, treatment and disposal of any Hazardous Material identified as refrigerants, refrigeration oils, and cooling agents utilized and removed by Contractor, or by anyone employed by or working under Contractor, as part of the Work. This indemnity, defense and hold harmless obligation shall survive the expiration or termination of this Agreement.

12. Hazardous Substances. Hazardous Substances shall mean any (a) substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to CERCLA, 42 U.S.C. § 9601, *et seq.*; The Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* ("RCRA"); The Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; The Clean Water Act, 33 U.S.C. § 1251, *et seq.*; The Hazardous Waste Control Act, California Health and Safety Code ("H. & S.C.") § 25100, *et seq.*; the Hazardous Substance Account Act, H. & S.C. § 25330, *et seq.*; the California Safe Drinking Water and Toxic Enforcement Act, H. & S.C. § 25249.5, *et seq.*; Underground Storage of Hazardous Substances H. & S.C. § 25280, *et seq.*; the Carpenter-Presley-Tanner Hazardous Substance Account Act (H. & S.C. § 25300 *et seq.*); The Hazardous Waste Management Act, H. & S.C. § 25170.1, *et seq.*; Hazardous Materials Response Plans and Inventory H. & S.C. § 25001 *et seq.*; or the Porter-Cologne Water Quality Control Act, Water Code § 13000, *et seq.*, all as amended, or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, (b) substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes, (c) petroleum, crude oil or any substance which contains gasoline, diesel fuel or other petroleum hydrocarbons other than petroleum and petroleum products contained within regularly operated motor vehicles, and (d) polychlorinated biphenyls (PCB), radon gas, urea-formaldehyde, asbestos and lead.

13. Workers' Compensation. By executing this Agreement, Contractor certifies that Contractor is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance before commencing any of the Work. Contractor shall comply with Labor Code section 1861 by signing and filing the workers' compensation certification.

Prior to the City's execution of this Agreement, Contractor shall file with the City either (1) a certificate of insurance or self-insurance evidencing that such insurance is in effect, or that Contractor is self-insured for such coverage; or (2) a certified statement that Contractor has no employees, and acknowledging that if Contractor does employ any person, the necessary certificate of insurance will immediately be filed with City. Any Certificate filed with the City shall provide that City shall be given (10) days' prior written notice before modification or cancellation thereof.

Contractor's workers' compensation insurance carrier shall be authorized to transact insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or larger.

14. Commercial General and Automobile Liability Insurance. Prior to City's execution of this Agreement, Contractor shall secure, and shall thereafter maintain until completion of the Agreement, such commercial general and automobile liability insurance as shall protect Contractor from claims for damages for personal injury, including accidental death, as well as from claims for property damage which may arise from or which may concern operations under this Agreement, whether such operations be by or on behalf of Contractor, any subcontractor or anyone directly or indirectly employed by, connected with or acting for or on behalf of any of them.

All liability insurance shall be issued by an insurance company or companies authorized to transact liability insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or larger and shall cover commercial general and automobile liability for both bodily injury (including death) and property damage, including but not limited to aggregate products, aggregate operations, aggregate protective and aggregate contractual with the following minimum limits:

Commercial General	\$1,000,000 per occurrence
	\$2,000,000 aggregate
Automobile	\$1,000,000 per occurrence

Original certificates of insurance and completed City Additional Insured Endorsement forms (or insurance company equivalent acceptable to City) evidencing the coverage required by this Agreement for both commercial general and automobile liability, shall be filed with City and shall include City as an additional insured. The policy or policies shall be in the usual form of public liability insurance, but shall also include, in substance the following provisions:

Solely as respects work done by and on behalf of the named insured for the City of Riverside, it is agreed that the City of Riverside and its officers and employees are added as additional insureds under this policy.

The policies shall not be canceled unless thirty (30) days' prior written notification of intended cancellation has been given to City by first class mail.

The insurance policy or policies shall also comply with the following provisions:

- a. Policies shall include premises/operations, products completed operations, independent contractors, owners and contractors' protection, broad form contractual, personal injury with employment exclusion deleted, and broad form property damage.
- b. The policy shall be endorsed to waive any right of subrogation against the City and its subconsultants, employees, officers, agents and directors for work performed under this Agreement.
- c. If policies are written on a claims made basis, the certificate should so specify and the policy must continue in force for one year after completion of the project. The retroactive date of the coverage must also be listed.
- d. The policy shall specify that the insurance provided by Contractor will be considered primary and not contributory to any other insurance available to the City of Riverside.

15. Prevailing Wage.

15.1 Public Work Project. This Project is a public work as defined in California Labor Code Section 1720. Contractor and all Subcontractors of any tier are required to pay all workers employed in the execution of the work not less than the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations ("DIR") under Section 1720 et seq. of the California Labor Code and implemented by Resolution No. 13346 of the City Council of the City of Riverside. The Director's determination of prevailing rates is available on-line at www.dir.ca.gov/dlsr/DPreWageDetermination.htm and is referred to and made a part hereof; the wage rates therein ascertained, determined and specified are referred to and made a part hereof as though fully set forth herein. Per Senate Bill 854 (2014), Contractor and subcontractors shall register with the Department of Industrial Relations (DIR) in order to bid and perform public works projects. Contractors and subcontractors on all public works projects shall submit electronic certified payrolls to the Labor Commissioner and City unless excused from this requirement.

15.2 California Labor Code. Contractor is aware of and stipulates that Contractor will also comply with the following sections of the California Labor Code:

- a. Section 1775 prescribing sanctions for failure to pay prevailing wage rates;
- b. Section 1776 requiring the making, keeping and disclosing of detailed payroll records and prescribing sanctions for failure to do so;

- c. Section 1777.5 prescribing the terms and conditions for employing registered apprentices;
- d. Section 1810 providing that eight hours of labor shall be a day's work;
- e. Section 1813 prescribing sanctions for violations of the provisions concerning eight-hour work days and forty-hour work weeks; and
- f. Sections 1725.5 and 1771.1 requiring all general contractors and subcontractors to be registered with DIR. Registration can be accomplished through the DIR website by using this link: <http://www.dir.ca.gov/Public-Works/PublicWorks.html>.

16. Federal, State and Local Laws. Contractor shall keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect those employed by Contractor, or in any way affect the performance of Work by Contractor pursuant to this Agreement. Contractor shall at all times observe and comply with all such laws, ordinances and regulations, and shall be solely responsible for any failure to comply with all applicable laws, ordinances and regulations.

17. Amendments. This Agreement may be modified or amended only by a written agreement and/or change order executed by the Contractor and City.

18. Termination. City shall have the right to terminate any or all of Contractor's services and work covered by this Agreement at any time upon sixty (60) calendar days' written notice to Contractor. In the event of such termination, Contractor shall submit Contractor's final written statement of the amount of services provided as of the date of such termination for payment by the City.

Notwithstanding the foregoing, the City may terminate Contractor's performance of this Agreement upon five (5) calendar days' written notice if:

- (1) Contractor fails promptly to begin the Work;
- (2) Contractor fails to perform the Work in accordance with this Agreement including conforming to applicable standards set forth therein;
- (3) Contractor discontinues performance of the Work;
- (4) Contractor fails to make payment to subcontractors for materials or labor in accordance with applicable law;
- (5) Contractor disregards laws, ordinances, or rules, regulations, or orders of a public authority having jurisdiction;

- (6) Contractor otherwise is guilty of breach of a provision of this Agreement;
or
- (7) Contractor becomes insolvent, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors and fails to provide City with adequate assurances of Contractor's ability to satisfy its contractual obligations.

A receiver, trustee, or other judicial officer shall not have any right, title, or interest in or to this Agreement. Upon that person's appointment, City has, at its option and sole discretion, the right to immediately cancel the Agreement and declare it null and void.

19. **Successors and Assigns.** This Agreement shall not be assigned by Contractor, either in whole or in part, without the prior consent of the City.

20. **Non-Discrimination.** Except as provided in Section 12940 of the California Government Code, during Contractor's performance of this Agreement, Contractor shall not on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex, genetic information, gender, gender identity, gender expression, or sexual orientation, in the selection and retention of employees and subcontractors and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Further, Consultant agrees to conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

21. **Notices.** Service of any notices, bills, invoices or other documents required or permitted under the Contract shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows:

City

City of Riverside
General Services Department
3900 Main Street
Riverside, California 92522
Attn: Cindie Perry

Contractor

Julie Slick
Sales Representative
Siemens Industry, Inc.
6141 Katella Ave
Cypress, California 90630

22. **Venue.** This Agreement shall be governed by the laws of the State of California without regard to choice of law principles thereof. Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county. In the event either party hereto shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any

term or condition of this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs thereof, including reasonable attorneys' fees, to be set by the court in such action.

23. **Authority.** The individuals executing this Agreement and the instruments referenced herein on behalf of Contractor each represent and warrant that they have the legal power, right and actual authority to bind Contractor to the terms and conditions hereof and thereof.

24. **Severability.** Each provision, term, condition, covenant and/or restriction, in whole and in part, in this Agreement shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, in this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant and/or restriction of this Agreement and the remainder of the Agreement shall continue in full force and effect.

25. **Entire Agreement.** This Agreement contains the entire Agreement of the parties hereto, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are not representations, agreements, arrangements, or understandings, oral or written, between the parties hereto, relating to the subject matter contained in this Agreement which are not fully expressed herein.

[SIGNATURES ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the day and year first above written.

CITY OF RIVERSIDE, a California
charter city and municipal corporation

SIEMENS INDUSTRY, INC., a
Delaware corporation

By: _____
City Manager

Attest: _____
City Clerk

By: _____

Sam Spears
[Printed Name]
Sales Manager
[Title]

By: _____

Diablo
[Printed Name]
Director of Finance
[Title]

Approved as to Form:

By: [Signature]
Chief Assistant City Attorney

CERTIFIED AS TO FUNDS AVAILABILITY

BY: [Signature]
Chief Financial Officer/ City Treasurer

WORKERS' COMPENSATION CERTIFICATION

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

DATED: 10/3/17

SIEMENS INDUSTRY, INC.

By: Sam Spears

Title: Sales Manager



Advantage Services[®]

Agreement for City of Riverside
Maintenance Agreement for Siemens Building Automation System

June 01, 2017

SIEMENS
Ingenuity for life



Advantage Services

Agreement for City of Riverside

June 01, 2017

Proposal Submitted by:

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Table of Contents

Advantage Services	1
1 Overview	3
1.1 Executive Summary	3
1.2 Customer Objectives	3
1.3 Benefits to City of Riverside as a Siemens Preferred Service Agreement Customer	3
1.4 Siemens Capabilities & Commitment to Our Customers	3
2 The Proven Outcomes Approach	4
2.1 Vision	4
2.2 The Approach	4
2.3 Established Key Performance Indicators (KPIs)	4
3 Service Solution	5
3.1 HVAC CONTROL SERVICES – Automation	6
3.1.1 Account Management	6
3.1.2 Customer Support Services	6
3.1.3 Technical Support Services	7
3.1.4 System Performance Updates & Upgrades	9
3.1.5 Proven Outcomes – KPI Reporting (Year 1)	10
4 Service Implementation Plan	11
4.1 HVAC Control Services – Automation On-site Response Time and Call Windows	11
4.2 Maintained Equipment Table	12
4.3 Service Team	14
4.4 Buildings Maintained Under this Service Agreement	14
5 Siemens Industry, Inc.	15
5.1 Signature Page and Investment By and Between:	15
5.2 Terms And Conditions	16
Appendix A. Special Discounted Labor & Material Pricing	33
Appendix B. Customer Report Card	34

1 Overview

1.1 Executive Summary

City of Riverside has made a significant investment in its facility and its complex technical systems which are critical to the profitability and productivity of its overall business. This proposed service solution, our Service Agreement, will proactively serve to protect that substantial investment through a program of planned service tasks by our trained technical staff.

This Service Agreement has been specifically developed to support your unique facilities, and the services provided herein will help you in achieving your facility goals.

1.2 Customer Objectives

City of Riverside has Siemens controls that need maintenance, updates and upgrades from time to time. The City requires Siemens' factory trained staff to provide preventive maintenance, software upgrades and maintenance, city facility staff directed support, training and to help protect the investment in Siemens systems within the facility

1.3 Benefits to City of Riverside as a Siemens Preferred Service Agreement Customer

- Comfortable Employees & Customers
 - Discounted Software Upgrades
 - Discounted Online Support Rate (approx 30% discount)
 - Discounted Labor Rate (approx 30% discount) & Materials Rate (60% discount)
 - Discounted Facility Staff Training from Siemens
 - Preference for online/onsite support over non-service agreement customers
 - Hands on Preventive Maintenance by factory trained Siemens specialists
 - Protects Initial Investment & Minimizes Energy & Operational Costs
 - Minimizes Downtime
 - City Staff interaction with dedicated Siemens specialists
 - Dedicated account management team
-

1.4 Siemens Capabilities & Commitment to Our Customers

Siemens Industry, Inc. is the 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. Siemens is pleased to offer this proposal for technical support services to your facility. For more than 150 years, Siemens has built a culture of long-term commitment to customers through innovation and technology. We are confident that we have the capabilities to meet your critical facility needs today and in the future, and we look forward to the opportunity to serve you.

2 The Proven Outcomes Approach

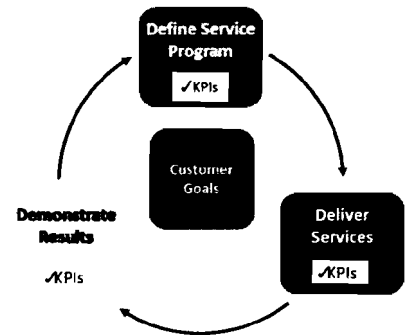
2.1 Vision

This agreement will serve as the cornerstone of a relationship whereby Siemens Industry, Inc. assist City of Riverside in delivering comfort in a highly efficient manner with exceptional quality and safety outcomes for the benefit of the occupants at the City.

2.2 The Approach

Proven Outcomes is a performance-based service philosophy designed to better help customers achieve their business goals. Through it we define a tailored service program, deliver outcomes and demonstrate results, all based on customer-specific benchmarks for success.

You have goals. Siemens helps ensure you meet them. With our Proven Outcomes service philosophy, your business objectives become the cornerstone of a tailored service program. You can trust our services to deliver the outcomes you require, from maximizing uptime to increasing efficiency and extending system life.



Built around your goals

With Proven Outcomes, our service offering is built around your specific goals. We work with you to understand your drivers, needs and challenges. Key performance indicators (KPIs) are agreed upon and we work collaboratively to ensure all targets are met.

Defining success

With goals and KPIs clearly identified, we define a service program specifically to meet your unique needs. Together, we will put in place the process for monitoring performance and measuring results.

Delivering performance

Through your service program you'll be leveraging the full resources of our industry-leading service organization to address your business goals.

Demonstrating results

We document results through tracking and reporting of your KPIs, providing the metrics you need to demonstrate performance. Regularly, we review the results of the service program and discuss potential changes.

2.3 Established Key Performance Indicators (KPIs)

The Outcome Based Service Offering proposed in this agreement is specifically designed for City of Riverside in order to meet the mutually agreed upon specific business needs below for Year 1:

1. Improve occupant comfort through Preventive Maintenance and correcting issues
KPI - % of Time within parameters, Failed points in Field Panels, No. of Alarm Points
2. Improve Facility Staff know how of Siemens Apogee Insight Building Automation system
KPI – No. of Facility Staff attending Siemens Instructor-Led Training in Cypress every year

3 Service Solution

Services that deliver the outcomes you want to achieve.

We've structured our service portfolio around achieving the common facility outcomes that help organizations meet their business goals.

 <p>Manage System Operation & Compliance</p>	 <p>Optimize Performance & Productivity</p>	 <p>Protect Lifecycle Investment</p>
<p>Services that keep systems performing at their best, as designed and intended to operate, help you achieve:</p> <ul style="list-style-type: none"> • Optimized comfort, safety, and security • Fulfilled regulatory requirements • Reduced operating risk <p>Facility Assessment & Planning In-depth building system assessment and recommendations, definition of relevant KPIs, and development of your service program</p> <p>Test & Inspection Regular check-ups to measure system performance compared to your defined facility and regulation requirements and risks</p> <p>Preventive Services Services performed on a regular schedule or based on data analytics to verify and improve system state</p> <p>Documentation Management Management of critical building system and compliance information with organization and access determined by your needs</p> <p>Corrective Services Immediate response to system failures or faults to restore functionality and integrity to desired state</p>	<p>Performance Reporting Continuous reporting of system performance with data analytics to help you understand and predict system behavior</p> <p>Productivity Enhancement Facility services that help you understand and predict system behavior to increase staff productivity</p> <p>Planning and prioritization of improvement measures to increase building and/or process performance and efficiencies</p> <p>Proactive Monitoring Systems are audited and monitored to detect abnormalities or faults, with recommendations provided and/or corrective actions taken</p> <p>System Improvement / Upgrades Enhancements or additions to your current system to increase staff productivity, system performance, and operational/energy efficiencies</p> <p>Staff Training / Support Training, coaching, and on-site support to increase staff productivity and knowledge</p> <p>Alerting and Response On-site and/or remote resources monitor system events and alarms and take appropriate action</p>	<p>Leverage past investments and address future requirements with advanced and proven technology, to achieve outcomes such as:</p> <ul style="list-style-type: none"> • Extended system life • Maximized return on investment • Realized benefits of new technology <p>Technology Planning Consulting services identify technology improvement opportunities that help achieve performance goals while leveraging past investments</p> <p>System Updates / Upgrades Software upgrades and firmware updates are completed, delivering the most current technology and functionality</p> <p>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</p> <p>Retrofits & Extensions Modifications are made to existing systems to accommodate changes to your facility usage and footprint</p> <p>New Installation Services Startup, commissioning, and other installation services are completed to ensure new equipment operates at maximum performance</p>

Performance Reporting • Quality Assurance Meetings

3.1 HVAC CONTROL SERVICES – Automation

3.1.1 Account Management

Customer Report Card

Through implementation of a Customer Report Card, *Siemens will ensure that our delivered services are of the highest quality.* The criteria for the “Customer Report Card” are developed between your facility staff and Siemens, and will reflect the goals and objectives of the scope of this Service Agreement. We will meet with you to discuss our performance and your satisfaction with the quality of service that is being provided under your agreement. *We will discuss the performance of your systems, your facility, and make recommendations for improvement. We can discuss recommendations for changes in the service program to better your changing needs.* A copy of the Customer Report Card has been provided with this service agreement.

3.1.2 Customer Support Services

Operator Coaching

Through our individual Operator Coaching, we will review and reinforce learned skills, leading to greater operator knowledge and productivity. This service will insure your operator’s gain full utilization of the system implemented in your facility. *Siemens will assist your staff in identifying, verifying and resolving problems found in executing daily tasks.* During the coaching sessions, we can address log book and system 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.

Under this agreement, we shall provide operator coaching which will be conducted on normal business days and hours, **during scheduled PM visits only.**

3.1.3 Technical Support Services

Preventive Maintenance

We will provide preventive maintenance in accordance with a program of routines as determined by our experience, equipment application and location. 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.*

Based on the site requirement, site conditions and equipments present at the site, some of the tasks performed during preventive maintenance include the following:-

- Visually Inspect cabinet and observe operating environment
- Check Diagnostic LEDs
- Identify overridden HOA Switches
- Review with the customer before attempting to change/correct
- Check electrical wiring and tighten loose connections
- Verify supply air pressure to the panel, if applicable
- Pinch branch line and check for leaks (Pressure drop), if applicable
- Check for air leaks and oil or water contamination
- Ensure all wiring and tubing is dressed properly
- Secure all loose components in panel
- Clean as necessary

Note: The tasks mentioned above are generic tasks. All of the above tasks may or may not be performed based on the equipment maintained at your facility.

- **The equipment to be included as part of this service, is itemized in the List of Maintained Equipment in this service agreement.**

Data Protection & Data Recovery Services

Siemens will perform scheduled database back-ups of your Insight Server database & 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.**

Software Maintenance

Using appropriate tools from Siemens' suite of diagnostic tools, *Siemens periodically performs system diagnostics and then takes corrective actions to help to ensure that the Building Automation System is performing at peak efficiency or to Customer requirements.* Siemens makes sure that software changes are clear and consistent, address any failed points, points in alarm, points in operator priority and take corrective action. Siemens identifies and corrects software corruption and inconsistencies; eliminates duplicate points, redundant loops and causes of unnecessary traffic; and addresses unresolved points and alarm reporting problems. This will help to ensure that the system operates quickly, accurately and efficiently as originally designed and installed or as determined by current standards or requirements.

Emergency Online/Phone Response: Monday through Sunday, 24 Hours per Day – 2 Hour Response

System and software troubleshooting and diagnostics will be provided remotely to enable faster response to emergency service requests and to reduce the costs and disruptions of downtime. *Siemens will respond within 2 hours, Monday through Sunday, 24 hours per day, including Holidays, upon receiving notification of an emergency, as determined by your staff and Siemens.*

Where applicable, Siemens will furnish and install the necessary online service technology to enable us to remotely dial into your system, through a dedicated telephone line that will be provided by the facility. Where remote access is not available to the system, Siemens will provide phone support to your staff to assist in their onsite troubleshooting and diagnosis. If remote diagnostics determine a site visit is required to resolve the problem, a technician can be dispatched. Based on your Service agreement coverage, **the on-site dispatch will be a billable service call.**

Emergency Onsite Response: Monday through Sunday, 24 Hours per Day – 4 Hours Response

Emergency Onsite Response will be provided to reduce the costs and disruptions of downtime when an unexpected problem does occur. *Siemens will provide this service between scheduled service calls and respond onsite at your facility within 4 hours for critical emergencies, or within 24 hours for non-emergency conditions, Monday through Sunday, 24 hours per day, including Holidays, upon receiving notification of an emergency.* Critical emergencies, as determined by your staff and Siemens, are failures at a system or panel level that would result in the loss of the operation of an entire section of a building or place the facility at high risk. Non-emergency conditions, as determined by your staff and Siemens, are failures at an individual component level resulting in minimal impact to the overall operation of the facility. Non-emergency conditions, as determined by your staff and Siemens, may be incorporated into the next scheduled service call. **The on-site dispatch will be a Billable service call.**

3.1.4 System Performance Updates & Upgrades

Software Support and Updates

Siemens will provide you with software and documentation updates to your existing Siemens software as they become available (approximately annually). Included is onsite training to familiarize you with the new features and their associated benefits. These updates deliver the benefits of Siemens Industry, Inc. 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.)

3.1.5 Proven Outcomes – KPI Reporting (Year 1)

An integral part of the service agreement is reporting on the established Key Performance Indicators. The service agreement includes:

3.1.5.1 Customer Directed Support Time

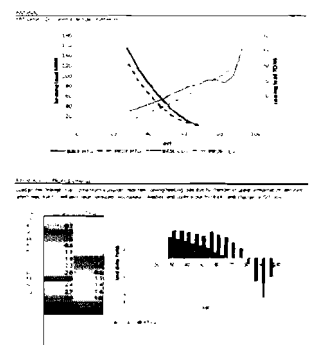
- **(16) Hours** of Specialist Time to provide one to one reporting on the Service Agreement performance, discuss failed points, alarmed points, % of time within parameters.
- This time can also be used for Customer Directed Support. The intent of this service is to offer you labor assistance in completing a special project, or to meet a facility objective. Typical scenarios are:-
 - Providing Operator coaching to help clarify any questions regarding the system functionality
 - Providing a specialist to complete special projects at the customer's direction
 - Participate in customer's evaluation and planning of future expansion and/or change of facility use. Research and document information required.
 - Providing a specialist for a specific period of time during facility startup / or commissioning, or sometimes during a re-commissioning of the facility in lieu of regular PM visit.
 - Evaluate and recommend where system efficiency may be enhanced and operation improved.

3.1.5.2 Instructor-Led Training for City of Riverside

- Siemens recognizes the importance of maximizing the efficiency of your facility systems and optimizing their functionality. *Through training provided by Siemens Building Technologies, your organization will lower building costs while enhancing building performance.*
- Your employees will be able to provide more meaningful analysis of building operations data and build their professional development with Continuing Education Credits through the Master Operator and Master Programmer Curriculum.
- Special Service Agreement discounted Price for the City to have employees trained for a 3 day instructor-led training at Siemens Cypress Branch Training Center is **included for (1) City of Riverside Facility Staff every year.**

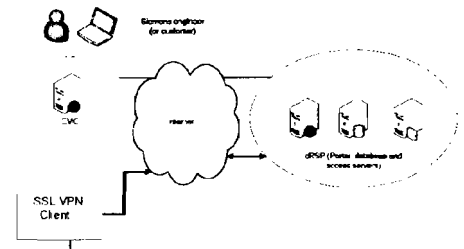
3.1.5.3 Automation Service Health Report (Siemens ZoneRx & DATAFox)

- The assigned energy engineer (up to 8 hours) will collect the necessary trends from the Siemens Apogee Insight Building Automation System and perform analysis to look for areas of improvement and areas of energy efficiency.
- Siemens will provide a report on the system once a year to the City of Riverside



3.1.5.4 Secure Remote Connectivity - eCumulus

- Cost effective option for building connectivity using cellular technology on 4G LTE modems with reduced security threats to corporate network via completely separate virtual private network
- Provides easy, secure and reliable access to Siemens BAS for data collection, analysis, measurement & verification as well as continuous monitoring and optimization



- Provides quick access for troubleshooting and emergency visits without city paying specialist visit fee and truck charges

4 Service Implementation Plan

4.1 HVAC Control Services – Automation On-site Response Time and Call Windows

Attribute	
Emergency Online/Phone Response	2 hours (Billable after 12 hours annually)
Response time - onsite for critical components	4 hours (Billable)
Response time - onsite for non-emergency	24 hours (Billable)
Hours of Service	24 x 7 (Billable)
Window for Call Handling	24 x 7 – Availability to take your call

- ❖ Labor and material costs for troubleshooting problems and repairing or replacing components are handled separately. These costs are billable. See [List of Maintained Equipment](#) to view your current Repair and Replacement Coverage.

4.2 Maintained Equipment Table

SIEMENS

Siemens Building Technologies Service Agreement

Equipment Category	Equipment SubCategory	Equipment	Qty	Location
Control Systems - Summary Level	Control Loop Tuning	Periodic Loop Tuning	10	City Hall, PD, UOC, Library
Services (Times per year): Control Loop Tuning (2)				
Control Systems - Summary Level	Data Protection & Data Recovery	Insight 3.X Back Up on-site	1	
Services (Times per year): Data Protection & Recovery Services (12)				
Control Systems - Summary Level	Data Protection & Data Recovery	Panel Backup (via POST)	14	
Services (Times per year): Data Protection & Recovery Services (1)				
Apogee System	Apogee	MBC	2	PD
Services (Times per year): Preventative Maintenance (2) - Software Maintenance (1)				
Apogee System	Apogee	MBC	1	Library
Services (Times per year): Preventative Maintenance (1) - Software Maintenance (1)				
Apogee System	Apogee	MEC	9	City Hall
Services (Times per year): Preventative Maintenance (3)				
Apogee System	Apogee	SCU	1	City Hall
Services (Times per year): Preventative Maintenance (3) - Software Maintenance (1)				

Apogee System	Apogee	DPU	10	City Hall
Services (Times per year): Preventative Maintenance (3)				

Apogee System	Apogee	AEM	3	City Hall, PD, Library
Services (Times per year): Preventative Maintenance (6)				

Apogee System	Apogee	TEC	98	City Hall, PD
Services (Times per year): Preventative Maintenance (1) <i>[TEC Maintenance will be using Insight Reports only. Physical Inspection of TECs is not included]</i>				

Apogee System	Apogee	BACnet Integration Driver	1	City Hall
Services (Times per year): Preventative Maintenance (2) - Software Maintenance (1)				

4.3 Service Team

An important benefit of your Service Agreement derives from having the trained 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.

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:

Akshay Grover - **Sales Account Representative** manages the overall strategic service plan based upon your current and future service requirements. (Mobile – 714.519.8243)

Clifford Tracy Gannaway - **Service Account Engineer** 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.

David Garza - **Primary Service Specialist** is responsible for performing the ongoing service of your system.

TBD – **Energy Engineer** is responsible for performing the reports to look into energy efficiency opportunities

Josh Beck - **Service Operations Manager** is responsible for managing the delivery of your entire support program and service requirements.

Maria Serrano - **Service Coordinator** is responsible for scheduling your planned maintenance visits, and handling your emergency situations by taking the appropriate action.

Maria Serrano - **Service Administrator** is responsible for all service invoicing including both service agreement and service projects.

4.4 Buildings Maintained Under this Service Agreement

The following buildings will be maintained under this service agreement:

1. Arlington Library – 1 Siemens Controller
2. Corporation Yard – 1 Siemens Controller
3. Casablanca Family Center – 1 Siemens Controller
4. Emergency Operations Center – 1 Siemens Controller
5. La Sierra Library – 3 Siemens Controllers
6. Lincoln Police Department – 1 Siemens Controller
7. Main Library – 1 Siemens Controller
8. Orange Square – 1 Siemens Controller
9. Orange Police Department – 1 Siemens Controller
10. Riverside Airport – 1 Siemens Controller
11. Riverside City Hall – 18 Siemens Controllers

5 Siemens Industry, Inc.

5.1 Signature Page and Investment By and Between:

Siemens Industry, Inc.
6141 Katella Avenue
Cypress, CA 90630

City of Riverside
8095 Lincoln Avenue
Riverside, CA 92504

Services shall be provided at **the above mentioned facilities at City of Riverside**

Siemens Industry, Inc. shall provide the services as outlined in the attached proposal dated 06/01/2017 and the attached terms and conditions.

Duration: This agreement shall remain in effect for an Initial Term of 1 Year beginning 07/01/2017 and from year to year thereafter.

Investments:

Year 1	07/01/2017 to 06/30/2018	\$49,530 annually	paid \$49,530 annually in advance
Year 2	07/01/2018 to 06/30/2019	\$52,006 annually	paid \$52,006 annually in advance
Year 3	07/01/2019 to 06/30/2020	\$54,606 annually	paid \$54,606 annually in advance

This is the final out of pocket price for City of Riverside. Use Tax is applicable which will be paid by Siemens. Sales Tax is not applicable. Prices quoted in this proposal are firm for 160 days.

Proposal accepted by:
Ed Luke
Operations Superintendent
City of Riverside

Proposal submitted by:
Akshay Grover
Sr. Sales Executive
Siemens Industry, Inc.

Signature Date

Signature Date

P.O.# _____

- ☐ Customer purchase order included as an attachment to this agreement and will be referenced on invoices.

Or

- ☐ Customer purchase order not required. Invoices will be approved and processed with signature of authorized customer representative.

Sam Spears
Service Sales Manager
Siemens Industry, Inc.

Signature Date

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

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

5.2 Terms And Conditions

STANDARD TERMS AND CONDITIONS OF SALE FOR SERVICES

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

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

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

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

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

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

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

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

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

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

4. CANCELLATION. Except for Siemens right to terminate in accordance with Article 2 and Article 4, this Agreement is non-cancellable during the Initial Term. Thereafter, either party may terminate this Agreement effective at the end of the Initial Term or at the end of a renewal period by giving the other party at least sixty (60) days prior written notice of its intent to cancel the Agreement. Either party may terminate this Agreement for material breach of the other

party, provided that the breaching party has not remedied the breach or commenced to cure the breach within a reasonable period, having due regard to the nature of the breach..

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

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

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

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

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

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

(b) Conditions to the Warranties. The Warranties are conditioned on: (i) no repairs, modifications or alterations being made to the Equipment" other than by Siemens or its authorized representatives; (ii) Buyer handling, using, storing, installing, operating and maintaining the Equipment in compliance with any parameters or instructions in any specifications attached to, or incorporated into this Agreement, (iii) or in the absence of such conditions, parameters or instructions or to the extent not applicable, in accordance with the generally accepted industry standards applicable in the locale where the Services are being performed and having regard to the nature of the Services; (iv) Buyer discontinuing

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

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

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

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

(f) THE WARRANTIES IN THIS ARTICLE 8 ARE SIEMENS' SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO THE LIMITS OF LIABILITY IN ARTICLE 9 BELOW. SIEMENS MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE.

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

SIEMENS' MAXIMUM LIABILITY UNDER THIS AGREEMENT UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), UNDER WARRANTY, INDEMNITY OR OTHERWISE, SHALL NOT EXCEED THE TOTAL PRICE PAID TO SIEMENS UNDER THIS AGREEMENT.

BUYER AGREES THAT THE EXCLUSIONS AND LIMITATIONS IN THIS ARTICLE 9 WILL PREVAIL OVER ANY CONFLICTING TERMS AND CONDITIONS IN THIS AGREEMENT AND MUST BE GIVEN FULL FORCE AND EFFECT WHETHER OR NOT ANY OR ALL SUCH REMEDIES ARE DETERMINED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THESE LIMITATIONS OF LIABILITY ARE EFFECTIVE EVEN IF SIEMENS HAS BEEN ADVISED BY BUYER OF THE POSSIBILITY OF SUCH DAMAGES. THE WAIVERS AND DISCLAIMERS OF LIABILITY, RELEASES FROM LIABILITY AND LIMITATIONS ON LIABILITY EXPRESSED IN THIS ARTICLE 9 EXTEND TO SIEMENS' AFFILIATES, PARTNERS, PRINCIPALS, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, SUBCONTRACTORS, AGENTS AND SUCCESSORS AND ASSIGNS OF SIEMENS.

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

10. INTELLECTUAL PROPERTY.

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

Siemens will have no duty or obligation under this Article 10 if the process is: (i) performed according to Buyer's design or instructions and compliance therewith has caused Siemens to deviate from its normal course of performance; (ii) modified by Buyer or its contractors after performance; or (iii) combined by Buyer or its contractors with devices, methods, systems or processes not furnished hereunder and by reason of said design, instruction, modification, or combination a suit is brought against Buyer. In addition, if by reason of such design, instruction, modification or combination, a suit or proceeding is brought against Siemens, Buyer must protect Siemens in the same manner and to the same extent that Siemens has agreed to protect Buyer under this Article 10.

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

11. CONFIDENTIALITY.

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

(b) Nothing in this Agreement requires a party to treat as confidential any information which: (i) is or becomes generally known to the public, without the fault of the receiving party; (ii) is disclosed to the receiving party, without obligation of

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

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

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

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

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

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

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

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

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

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

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

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

A. Buyer's Insurance

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

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

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

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

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

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

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

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

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

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

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

24. ASBESTOS

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

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

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

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

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

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

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

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

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

25. THIRD PARTY PARTS

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

SIEMENS STANDARD TERMS AND CONDITIONS
Standard Terms Addendum for Online Data Backup & Protection Services

The terms and conditions of this Addendum for Online Data Backup & Protection Services are applicable only to the Online Data Backup & Protection Services identified in the Proposal ("ODB&P") and supplements the Standard Terms and Conditions with the following seven (7) paragraphs:

ODB&P 1. "Facilities Data" means electronic data that is collected or generated by Siemens through scheduled back-ups of the databases and/or graphics residing in the workstation(s) and/or field panel(s) that constitute part of Buyer's automation control, fire and life safety, and/or security systems.

ODB&P 2. "Personally Identifiable Information" means any personal information that relates to, describes, or is capable of being associated with, a particular individual. By way of example and not of limitation, Personally Identifiable Information includes an individual's first name or first initial and last name, plus one or more of the following: social security number, health insurance identification number, medical information, insurance policy number, passport number, taxpayer identification number, account number, credit card number or any other financial information.

ODB&P 3. Siemens will take reasonable steps to protect the security of all Facilities Data stored offsite. Siemens does not represent or warrant that Facilities Data will not be disseminated, compromised or corrupted by reason of unauthorized actions of third parties.

ODB&P 4. Buyer represents and warrants that it will not use workstations or field panels that constitute parts of its automation control, fire and life safety, and/or security systems for electronic storage of any Personally Identifiable Information.

ODB&P 5. SIEMENS HEREBY DISCLAIMS ANY AND ALL LIABILITY FOR DAMAGES, INJURY OR LOSS ARISING OUT OF DISCLOSURE OR DISSEMINATION OF PERSONALLY IDENTIFIABLE INFORMATION THAT WAS STORED IN VIOLATION OF PARAGRAPH ODB&P 4.

ODB&P 6. Buyer shall indemnify, defend and hold Siemens harmless from any claims, losses or damages arising out of disclosure or dissemination of Personally Identifiable Information that was stored in violation of paragraph ODB&P 4.

ODB&P 7. Buyer acknowledges that all Facilities Data is owned by Siemens and may be used by Siemens in a commingled or other reasonable manner; *provided that*, such use does not identify Buyer or the location(s) of the Site or Sites to which Facilities Data pertains.

SIEMENS STANDARD TERMS AND CONDITIONS
Standard Terms Addendum for Software License/Warranty Addendum

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

ARTICLE 1: ORDER OF PRECEDENCE AND CONTRADICTION OF TERMS

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

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

ARTICLE 2: SOFTWARE LICENSE TERMS AND CONDITIONS

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

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

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

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

2.2 License Grant and Conditions.

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

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

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

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

2.4 Licensee Responsibilities and Prohibited Actions.

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

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

2.5 **Warranties and Disclaimers.**

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

ARTICLE 3: SOFTWARE MAINTENANCE TERMS AND CONDITIONS

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

ARTICLE 4: GENERAL TERMS AND CONDITIONS

- 4.1 Limitation of Liability.** Siemens' entire liability for all claims or damages arising out of or related to this Addendum, regardless of the form of action, whether in contract, tort or otherwise, will be limited to and will not exceed, in the aggregate the amount paid to Siemens for the Software licensed under this Addendum. This limitation is not applicable to claims covered by Article 4.2 of this Addendum.
- 4.2 Intellectual Property Infringement Indemnity.**
- (a) Siemens will, at its option and expense, defend or settle any suit or proceeding brought against Licensee based on an allegation that the Software or use thereof for its intended purpose constitutes an infringement of any Patent Cooperation Treaty country member's patent or misappropriation of a third party's trade secret or copyright in the country where the Software is delivered by Siemens. Licensee will promptly give Siemens written notice of the suit or proceeding and the authority, information, and assistance needed to defend the claims. Siemens shall have the full and exclusive authority to defend and settle such claim(s) and will pay the damages and costs awarded in any suit or proceeding so defended. Licensee shall not make any admission(s) which might be prejudicial to Siemens and shall not enter into a settlement without Siemens' consent. Siemens is not responsible for any settlement made without its prior written consent. If the Software, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement or its use by Licensee is enjoined, Siemens will, at its option and expense, either: (i) procure for Licensee the right to continue using the Software; (ii) replace it with substantially equivalent non-infringing Software; or (iii) modify the Software so it is non-infringing.
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- (c) Nothing in this Agreement requires a party to treat as confidential any information which was independently developed by receiving party or its representatives, as evidenced by written records, without the use of discloser's Confidential Information.
- (d) Data Protection. Licensee represents and warrants that it is in compliance with all applicable data protection laws and that it has obtained all necessary consents as required by applicable law in respect of personal data Licensee transfers or makes available to Siemens for processing in the course of this Addendum or any related maintenance and/or support services and will indemnify Siemens in respect of all costs, claims, liabilities and demands incurred by Siemens in respect of any breach of this warranty.
- (e) Survival of Confidentiality Obligations. This Article 4.5 will survive the expiration or termination of this Addendum or Sales Agreement for any reason.

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Exhibit A to Software License/Warranty Addendum

**Siemens' Building Technologies Division ("Siemens BT")
Product Specific Terms**

The standard terms and conditions that govern the license of software furnished by Siemens, including Siemens BT 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. SII BT Software Specific Terms

The following product specific terms and conditions are specific to Siemens BT software that is deliverable under the Agreement ("Siemens BT Software Specific Terms"): Licensee agrees to take delivery of such Siemens BT software subject to (i) any applicable Siemens BT end-user license agreement (EULA) and third party license (including any OSS license) accompanying such Siemens BT software, or (ii) if no EULA or third party license accompanies such Siemens BT software, the EULA posted at www.usa.siemens.com/btcpu9eula (Siemens BT's EULA web site) for such Siemens BT software. Notwithstanding the foregoing, in the event of any inconsistency between the terms of the Agreement and the EULA for such Siemens BT 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 BT 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 BT software; however, for such objection to stand it shall be subject to Siemens written acceptance of the same.

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

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

Software as defined in the Agreement and with respect to this Section shall mean Siemens BT's Field Panel Web Server Solution Software, which includes Siemens' 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' 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.

Appendix A. Special Discounted Labor & Material Pricing

As an Advantage Service Agreement (ASA) customer with an active contract, **City of Riverside** will receive the *benefit of a discount from our standard labor rates and material prices*. Standard rates and preferred customer rates are documented below.

Siemens Industry, Inc.

Rates effective from January 1, 2017 through December 31, 2017

Please note: Rates shown are for the period referenced above and are subject to change.

Service	City of Riverside Discounted Rates			Non Service Agreement Customers Standard Rates		
	ASA Customer Standard Time	ASA Customer Over Time	ASA Customer Double Time	Non-ASA Customer Standard Time	Non-ASA Customer Over Time	Non-ASA Customer Double Time
On-Line Support: Modem or Phone	1 Hr Min \$169.00/hr	1 Hr Min \$220.00/hr	1 Hr Min \$287.00/hr	2 Hr Min \$210.00/hr	2 Hr Min \$273.00/hr	2 Hr Min \$357.00/hr
Automation On-Site Service Call	2 Hr Min \$169.00/hr	2 Hr Min \$220.00/hr	2 Hr Min \$287.00/hr	4 Hr Min \$210.00/hr	4 Hr Min \$273.00/hr	4 Hr Min \$357.00/hr
Mechanical On-Site Service Call	2 Hr Min \$149.00/hr	2 Hr Min \$193.00/hr	2 Hr Min \$238.00/hr	4 Hr Min \$191.00/hr	4 Hr Min \$285.00/hr	4 Hr Min \$379.00/hr
Electronic Installer On-Site Service Call	2 Hr Min \$123.00/hr	2 Hr Min \$160.00/hr	2 Hr Min \$209.00/hr	4 Hr Min \$161.00/hr	4 Hr Min \$210.00/hr	4 Hr Min \$274.00/hr
Electrical Services On-Site Service Call	2 Hr Min \$195.00/hr	2 Hr Min \$253.00/hr	2 Hr Min \$332.00/hr	4 Hr Min \$253.00/hr	4 Hr Min \$329.00/hr	4 Hr Min \$430.00/hr
Fire On-Site Service Call	2 Hr Min \$156.00/hr	2 Hr Min \$203.00/hr	2 Hr Min \$250.00/hr	4 Hr Min \$204.00/hr	4 Hr Min \$264.00/hr	4 Hr Min \$326.00/hr
Security On-Site Service Call	2 Hr Min \$150.00/hr	2 Hr Min \$195.00/hr	2 Hr Min \$240.00/hr	4 Hr Min \$190.00/hr	4 Hr Min \$285.00/hr	4 Hr Min \$380.00/hr
Project Manager / Service Account Engineer On-Site Service Call	2 Hr Min \$215.00/hr	2 Hr Min \$215.00/hr	2 Hr Min \$215.00/hr	4 Hr Min \$281.00/hr	4 Hr Min \$281.00/hr	4 Hr Min \$281.00/hr
Fee: On Site Trip	\$70.00 / Trip	\$70.00 / Trip	\$70.00 / Trip	\$95.00 / Trip	\$95.00 / Trip	\$95.00 / Trip

Overtime Rates: Overtime rates in the table apply for calls Monday through Friday 4:30 P.M. – 8:00 A.M. excluding holidays.

Double Time Rates: Double time applies for Sundays and Holidays

Minimum Charge: Service involving travel to the customer site will incur a **two-hour minimum labor charge**

Material Rates: Customers with an active Service Agreement will benefit from a **60% discount** off the standard pricing for Siemens Industry, Inc. Building Technologies Building Automation manufactured products. Customers without a Service Agreement will pay standard pricing for Siemens Industry, Inc. products.

Appendix B. Customer Report Card

Reporting Criteria

Continuous Improvement Toward Outstanding Customer Satisfaction

How are we doing?

You've previously identified those performance criteria most important to you. These are restated below. Now it's time to let us know how we're doing from your perspective.

A = Very Satisfied B = Satisfied C = Neutral D = Unsatisfied F = Very Unsatisfied

	A	B	C	D	F
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	A	B	C	D	F
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	A	B	C	D	F
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	A	B	C	D	F
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Overall, how satisfied are you currently with Siemens in meeting your organizations needs for service and technical support.	A	B	C	D	F
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:

Your Name	Facility Name	Date
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Your open and honest feedback on our performance is important. Please complete this Report Card at your earliest convenience and return it by simply folding the card so that the return Siemens Building Technologies, Inc. address is on the outside. The postage is already included for your convenience. Your confidential comments and evaluation will be used to ensure that we are providing the best possible service at your facility.

Legal Name	Registration Number	County	City	Registration Date	Expiration Date
SIEMENS INDUSTRY, INC.	1000002447	ALAMEDA	HAYWARD	05/03/2017	06/30/2018