

April 22, 2021

Carroll County Commissioners, c/o Melissa Seamans
Carroll County Business Office
Attn: Carroll County HVAC Service Agreement/RTU-2 Repair
95 Water Village Rd. Box 1
Ossipee, NH 03864

Melissa:

Enclosed please find a Service Agreement Proposal from Siemens Industry in response to your RFP for HVAC & Mechanical Service at the Carroll County Complex.

Siemens Industry is bidding only on the Service Agreement (Part 1) and will not be submitting a proposal for the repair of RTU-2 (Part 2).

Thank you for the opportunity to bid on the RFP.

Michael Wentworth
Account Development



Advantage Services[®]

Carroll County Facilities:
Preventative Maintenance Service Agreement

April 19, 2021

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Advantage Services

Carroll County Facilities
Preventative Maintenance Service Agreement

April 19, 2021

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1 Overview

1.1 Executive Summary

You have made a significant investment in your facility and its complex technical systems which are critical to the profitability and productivity of your 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 facility, and the services provided herein will help you in achieving your facility goals.

1.2 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.

1.3 Account Management

Quality Assurance

Through implementation of our Quality Assurance process, Siemens will ensure that our delivered services are of the highest quality. We will meet with you to discuss our performance and your satisfaction with the quality of service that is being provided under your Advantage Services Agreement. We will discuss the performance of your systems, your facility, and make recommendations for improvements. We can discuss recommendations for changes in the service program to better meet your changing needs. We also augment this program with periodic customer satisfaction telephone surveys of your key staff members.

1.4 HVAC SERVICES – Mechanical

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

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. Emergency services are not included in this service contract proposal. Materials for emergency repair are not included within the scope of this contract.

Annual Maintenance

We will perform scheduled annual preventive maintenance in accordance with a program of standard routines as determined by our experience, equipment application, and equipment operating hours that are recommended by each equipment manufacturer and location. This service is designed to optimize the reliability and efficiency of the equipment, extend the useful life of your equipment, and provide you with possible indications of excessive wear and damage to your systems before a catastrophic failure occurs during the next operating season. Depending on our findings we may also provide recommendations for additional service(s) that will better enhance equipment performance. The equipment included under this service is itemized in the List of Maintained Equipment section of this Service Agreement.

Combustion Analysis & Adjustment

We will utilize electronic flue gas analysis to perform combustion analysis whereby we adjust the burner controls and linkages as required for efficiency and pollution control. If existing equipment cannot meet current pollution requirements, we will make recommendations for system improvements. The equipment included under this service is itemized in the List of Maintained Equipment in this Service Agreement.

Fireside Brush Cleaning

Through this service we will clean soot ash and debris, allowing for better heat transfer and system efficiency. We will open the fire side of boiler and brush fire tubes, remove soot and debris from the fireside of the boiler, inspect tubes, burners and burner throat, fire box and door refractory, and close boiler doors with new gaskets and door seals. Upon completion of this service we will provide recommendations for corrective action(s), if uncovered. The equipment included under this service is itemized in the List of Maintained Equipment in this Service Agreement.

Seasonal Inspection- Heating

Through this service we will help to assure optimum heating system performance and safety and assure the mechanical equipment is ready prior to the heating season. We will provide seasonal inspection services in accordance with a program of standard routines as determined by our experience, the equipment manufacturer's published recommendations, equipment application, and location. This service is designed to optimize the reliability and efficiency of the equipment and provide you with possible indications of excessive wear and damage to your systems to minimize the possibility of catastrophic failure during the next operating season. This service will focus on equipment operation, fluid levels, operating and safety controls, and safe equipment operation. A list of covered equipment and the frequency of the inspection service for heating equipment is included in the List of Maintained Equipment section of this Service Agreement.

Air Handling Units

Through this service per manufacturer's recommendations, we will check mechanical components and operation of the unit including fan/blower operation, check belts, grease fittings, check damper operations, etc.... Upon completion of this service, we will provide recommendations for corrective action(s), if uncovered. The equipment included under this service is itemized in the List of Maintained Equipment in this service agreement. For filters see equipment list.

Operating Inspection – Cooling

Through this service we will help to assure mechanical equipment continues to operate efficiently, safely and with little operating disruptions during the operating season. We will provide routine operating inspection(s) to check system performance in accordance with a program of standard routines as determined by our experience, the equipment manufacturer's published recommendations, equipment application, and location. You will find a detailed list of the tasks included with this service in the Equipment Tasking section of this Service Agreement. This service will focus on equipment operation, fluid levels, operating and safety controls, and safe equipment operation. The equipment included under this service is itemized in the List of Maintained Equipment in this Service Agreement.

Air Cooled Condenser Coil Cleaning

Through this service we will improve airflow across condenser coils and improve heat transfer. This service will extend the life of the compressors. Coil cleaning consists of cleaning the outside surface of the condensing unit coils to remove any airborne particles, dirt build-up by using a brush, high pressure air, chemical with low pressure wash or chemical with high pressure wash at our discretion based on condition of outside environment, and coil accessibility. The equipment included under this service is itemized in the List of Maintained Equipment in this Service Agreement.

Evaporator Coil Cleaning

We will clean your air handling unit evaporator coils to help to improve air circulation in the air distribution system, which will reduce dust and dirt that is in the system. Coils will be cleaned at a time that is mutually agreeable for your staff and us. Coil cleaning consists of cleaning the surface of the evaporator coil to remove dust and dirt particles that have collected on the evaporator coil. Coils will be cleaned using a vacuum cleaner or other device that allows us to properly clean the coil. The equipment included under this service is itemized in the List of Maintained Equipment in this Service Agreement.

2 Service Implementation

2.1 Maintained Equipment Table

Qty	Description	Type	Building
2	Trane Split System 4 Ton	RTU	MV Nursing Home
2	Trane Split System 7 Ton	RTU	MV Nursing Home
1	Trane Split System 8 Ton	RTU	MV Nursing Home
4	Trane Split System 10 Ton	RTU	MV Nursing Home
8	Trane Split System Condenser	CU	MV Nursing Home
1	Trane 10 Ton	RTU	MV Nursing Home
4	Munters	ERV	MV Nursing Home
1	Trane 17.5 Ton	RTU	MV Nursing Home
20	Mitsubishi City-Multi Condenser	CU	MV Nursing Home
4	Lochinvar Intelli-Fin Condensing	Boiler	MV Nursing Home
3	Lochinvar Power-Fin	Boiler	Annex
1	Goodman 4 Ton	CU	Annex
1	Lennox 25 Ton	RTU	Admin
1	Lennox 50 Ton	RTU	Admin
2	Viessmann Vitodens B2HA-80	Boiler	Admin
1	Mitsubishi PURY-P312TSLMU-A	Condensing Unit	Admin
2	Mitsubishi PUMY-P360NKMU-1	Condensing Unit	Corrections Building
1	Trane CGAM 90	Chiller	Corrections Building
2	Viessman VitoCrossal CM2-500	Boiler	Corrections Building

2.2 Service Team

An important benefit of your Service Agreement derives from having the trained service personnel of Siemens Industry, Inc. be 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.

Michael Wentworth, Account Development – manages the overall strategic service plan based upon your current and future service requirements.

Tyler Daigler, Client Service Manager - 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.

Jeffrey Wynot, Service Mechanic - is responsible for performing the ongoing service of your Mechanical systems.

April Bourgoine, Service Mechanic (backup) - is responsible for performing the ongoing service of your Mechanical systems.

Paul Doughty, Service Operations Manager - is responsible for managing the delivery of your entire support program and service requirements.

3 Siemens Industry, Inc.

3.1 Signature Page and Investment By and Between:

Siemens Industry, Inc.
66 Mussey Road
Scarborough, ME 04074
Michael Wentworth

Carroll County Facilities
93 Water Village Road
Ossipee, NH 03864
Robert Murray

Services shall be provided at:

Mountain View Community Facility
Annex Building
Administration Building
Corrections Facility

Duration: This agreement shall remain in effect for a Term of 1 year beginning 06/01/2021

Investments:

Year 1 06/01/2021 to 05/31/2022 \$27,896.00 annually paid annually in advance

Applicable sales taxes are not included in the price of this proposal. Prices quoted in this proposal are firm for 30 days from the date of this proposal.

Proposal accepted by:
Robert Murray
Director of Maintenance
Carroll County Facilities

Proposal submitted by:
Michael Wentworth
Account Development
Siemens Industry, Inc.

Signature Date

Signature Date

P.O.# _____

Michael O'Brien Sr, Branch Manager

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

Or (continued)

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

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.

3.2 Terms And Conditions

GENERAL TERMS AND CONDITIONS (SERVICE) (v.10-15)

Article 1: General

1.1 These General Terms and Conditions, including any supplemental terms (each a "Rider"), are attached to and made part of the Proposal, Advantage Services Agreement, or other document as the case may be including any change order, in which these General Terms and Conditions are incorporated (the "Document"), that when approved in writing by the Customer and accepted by an authorized representative of Siemens shall (a) constitute the entire, complete and exclusive contract between the parties (this "Agreement") (i) to implement the services identified in the Document (the "Services") to be provided by Siemens and (ii) for the physical equipment ("Equipment"), software owned or licensable by Siemens ("Software"), any related documentation ("Related Documentation"), deliverable Instruments (as defined in Section 9.2), and Work Product Deliverables (as defined in Section 9.1) identified in the Document to be provided by Siemens under the Agreement in accordance with the performance of the Services (collectively, the "Deliverables") and (b) supersedes and cancels all prior proposals, agreements and understandings, written or oral, relating to the subject matter of this Agreement.

1.2 Neither party may assign this Agreement or any rights or obligations hereunder without the prior written consent of the other except that either party may assign this Agreement to its affiliates and Siemens may grant a security interest in the proceeds to be paid to Siemens under this Agreement; assign proceeds of this Agreement; and/or use subcontractors in performance of the Services.

1.3 The terms and conditions of this Agreement shall not be modified or rescinded except in writing, with the prior approval of the Legal Departments of Siemens and Customer and signed by duly authorized officers or managers of Siemens and Customer.

1.4 In the event of conflict between the Document and these General Terms and Conditions, these General Terms and Conditions shall control. In the event of conflict between a Rider and Document or these General Terms and Conditions, the Rider shall control. Any differing or additional terms and conditions in any purchase order or other document are of no force and effect unless specifically accepted in writing by the parties.

1.5 Nothing contained in this Agreement shall be construed to give any rights or benefits to anyone other than the Customer and Siemens without the express written consent of both parties. All provisions of this Agreement allocating responsibility or liability between the parties shall survive the completion of the Services and termination of this Agreement.

1.6 Certain terms and conditions contained herein may not apply to the Services to be provided hereunder. It is the intent of the parties, however, that the interpretation to be given to the terms and conditions is to apply all terms and conditions unless clearly inapplicable given the type of Services included.

1.7 This Agreement shall be governed by and enforced in accordance with the laws of the State of Illinois. Any litigation arising under this Agreement shall be brought in the State or Commonwealth in which the Services are provided to Customer. TO THE EXTENT PERMITTED BY LAW, THE PARTIES WAIVE ANY RIGHT TO A JURY TRIAL ON MATTERS ARISING OUT OF THIS AGREEMENT.

1.8 AFTER THE EXPIRATION OF THE INITIAL TERM, THIS AGREEMENT SHALL AUTOMATICALLY RENEW FOR SUCCESSIVE ONE YEAR PERIODS BEGINNING ON THE ANNIVERSARY DATE OF THE INITIAL TERM UNLESS STATED OTHERWISE IN THE DOCUMENT.

1.9 This Agreement is non-cancellable during the Initial Term. Either party, however, may terminate this Agreement at the end of the Initial Term or at the end of a renewal term by giving the other party at least sixty (60) days prior written notice of its intent not to renew.

1.10 If, during or within ninety (90) days after the term of this Agreement, Customer engages any Siemens employee who has performed work under this or any other agreement between Customer and Siemens, Customer shall pay Siemens an amount equal to the employee's latest annual salary.

Article 2: Covered Equipment

2.1 "Covered Equipment" shall mean the equipment expressly identified in the Document upon which Services will be performed.

Customer represents at the commencement of this Agreement that, with the exception of Covered Equipment that is an Equipment Deliverable under this Agreement, if any, all Covered Equipment is in satisfactory working condition and complies with all applicable codes.

2.2 If a fire or life safety system is included as part of the Covered Equipment and does not comply with all applicable codes or if removal of any item of Covered Equipment from coverage would compromise or impair the integrity or the compliance with law of any system or Services, and Customer fails to take all necessary corrective action, then Siemens may terminate this Agreement without further obligation and retain all monies received pursuant to this Agreement.

2.3 All testing and inspection of any Covered Equipment provided for in this Agreement will be performed at the time and place and in the manner deemed appropriate by Siemens, in accordance with applicable law and the requirements of then current National Fire Protection Association ("NFPA") guidelines if applicable, and other relevant standards. Customer is solely responsible for, and hereby indemnifies and holds Siemens harmless from and against, any liability arising from Customer's specification of a testing schedule other than then current NFPA or other applicable standards or laws.

2.4 If the Covered Equipment is altered or moved by any person, including Customer, other than Siemens or a person authorized by Siemens, Customer shall immediately notify Siemens in writing, and Siemens reserves the right to perform a reacceptance test on, or, if necessary, a recommissioning of the system at Customer's expense. Reacceptance tests will be performed in accordance with then current NFPA or other applicable requirements, and charged on a time and materials basis.

Article 3: Services by Siemens

3.1 Siemens shall only perform the Services identified in this Agreement. Siemens is not required to conduct safety or other tests, install or maintain any devices or equipment or make modifications or upgrades to any equipment beyond the scope of this Agreement. Any request to change the scope or the nature of the Services must be in the form of a mutually agreed change order, effective only when executed by all parties hereto.

3.2 Siemens shall perform the Services during its local, normal working hours, unless otherwise stated in this Agreement.

3.3 Siemens shall have no liability or obligation to continue providing Services in the event Customer fails to (a) authorize a reacceptance test or re-commissioning that Siemens reasonably deems necessary; (b) notify Siemens of any modifications or changes to the Covered Equipment or unusual or materially changed operating conditions, hours of usage, system malfunctions or building alterations that may affect the Services; (c) provide the access to any site where Services are to be performed; or (d) operate, service or maintain the Covered Equipment in accordance with manufacturer's or supplier's instructions or this Agreement. After any of the aforesaid events, Siemens may terminate or suspend services under this Agreement immediately, upon giving notice to Customer.

3.4 Any repairs and replacements of Covered Equipment as may be expressly included in the Services are limited to restoring the proper working condition of such Covered Equipment. Siemens will not be obligated to provide replacement Covered Equipment that represents significant capital improvement compared to the original. Exchanged or removed components become the property of Siemens, except Hazardous Materials (as defined in Section 10.1), which under all circumstances remain the property and responsibility of Customer.

3.5 The Services shall be performed in a manner consistent with the degree of care and skill ordinarily exercised by persons performing the same or similar Services in the same locale under similar circumstances and conditions.

3.6 Where Services include energy consulting, any estimates of probable construction or implementation costs, financial evaluations, feasibility studies or economic analyses prepared by Siemens, the documents prepared for the Customer represent Siemens' best judgment based on Siemens' experience and the information reasonably available to Siemens at the time that the Services are performed. Customer acknowledges that Siemens does not control: (a) the costs of labor, materials, equipment or services furnished by

**GENERAL TERMS AND CONDITIONS
(SERVICE) (v.10-15)**

others; (b) overall market conditions; or, (c) other contractors' methods of determining prices. Accordingly, Customer acknowledges that proposals, bids or actual costs may differ from opinions, evaluations or studies submitted by Siemens as part of the Services provided hereunder.

3.7 In the event Energy Management & Controlling ("EMC") is expressly included, Siemens will have a disaster recovery plan and a disaster contingency plan.

3.8 In the event Online Data Backup & Protection Services are expressly included in the Document, 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. For the purposes of these General Terms and Conditions, "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 Customer's automation control, fire and life safety, and/or security systems.

Article 4: Responsibilities of Customer

4.1 Customer, without cost to Siemens, shall:

(a) Designate a contact person with authority to make decisions for Customer regarding the Services and provide Siemens with information sufficient to contact such person in an emergency. If such representative cannot be reached, any request for Services received from a person located at Customer's site will be deemed authorized by Customer, and Siemens will, in its reasonable discretion, act accordingly;

(b) Provide or arrange without cost all reasonable provisions, means and access for Siemens to the Covered Equipment;

(c) Permit Siemens to control and/or operate all controls, systems, apparatus, equipment and machinery necessary to perform the Services;

(d) Furnish Siemens with all available information pertinent to the Services;

(e) Obtain and furnish to Siemens all approvals, permits and consents from government authorities and others as may be required for performance of the Services except for those Siemens has expressly agreed in writing to obtain;

(f) Maintain the Services 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;

(g) Comply with all laws and provide any notices required to be given to any government authorities in connection with the Services, except such notices Siemens has expressly agreed in this Agreement to give;

(h) Provide Siemens with Material Safety Data Sheets (MSDS) conforming to OSHA requirements related to all Hazardous Materials at the site which may impact the Services;

(i) Furnish to Siemens any contingency plans related to the site;

(j) Furnish the specified operating environment, including without limitation, suitable, clean, stable, properly conditioned electrical power and other utilities;

(k) Maintain all Covered Equipment in good working order in compliance with all applicable laws and service, repair and replace all Covered Equipment as necessary; and,

(l) Perform inspections and tests as indicated in the Life Safety System Logbook and record same in the Life Safety System logbook.

4.2 Unless contrary to applicable law or regulation, Customer acknowledges that the technical and pricing information contained herein is proprietary to Siemens and Customer shall not disclose or otherwise make it available to others.

4.3 Customer acknowledges that it is now and shall be at all times in control of the Services site. Siemens shall not have any responsibility, duty or authority to direct, supervise or oversee any employees or contractors of Customer or their work or to provide the means, methods or sequence of their work or to stop their work. Siemens' work and/or presence at a site shall not relieve others of their responsibility to Customer or to others. Except as expressly provided herein, Siemens is not responsible for the adequacy of the health, safety or

security programs or precautions related to Customer's or its other contractors' activities or operations; the work of any other person or entity; or Customer's site conditions. Siemens is not responsible for inspecting, observing, reporting or correcting health or safety conditions or deficiencies of Customer or others at Customer's site. So as not to discourage Siemens from voluntarily addressing such issues, in the event Siemens does make observations, reports, suggestions or otherwise regarding such issues, Siemens shall not be liable or responsible for same.

4.4 Except as expressly stated in this Agreement, Customer is solely responsible for any removal, replacement or refinishing of the building structure or finishes that may be required to perform or gain access to the Services.

4.5 Customer alone shall act to protect life and property from the time a partial or full system failure occurs until Siemens notifies Customer that such system is operational or the emergency has been cleared. Customer's actions shall include all appropriate interim safety precautions (such as a manual "fire watch"). Siemens shall have no obligation to provide guards, fire watch personnel, or other services following a system failure, except Services as are specifically provided for in this Agreement.

4.6 Customer shall not attach to the Covered Equipment any device that interferes with the Services or the proper operation of the Covered Equipment.

4.7 Customer 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. For the purposes of these Terms and Conditions, "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.

4.8 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 4.7 OF THIS ARTICLE.

4.9 Customer 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 4.7 of this Article.

Article 5: Compensation

5.1 THE ANNUAL FEE IS NON- REFUNDABLE EXCEPT AS MAY BE PROVIDED HEREIN.

5.2 Payments to be made under this Agreement will provide for, and be in consideration of, only Services specifically included under the scope section of the Document. All other Services, including but not limited to the following, shall be separately billed or surcharged on a time and materials basis: (a) emergency Services performed at Customer's request, if inspection does not reveal any deficiency covered by this Agreement; (b) Services performed other than during Siemens' normal working hours; and (c) Service performed on equipment not covered by this Agreement.

5.3 Siemens shall invoice Customer as provided in this Agreement, or if not expressly provided, then on an annual basis prior to the agreed start date and annually thereafter on the anniversary of such start date. Invoices are due and payable net cash upon receipt unless Customer has applied and been approved for credit with Siemens, in which case the invoice is payable within 30 calendar days of receipt by Customer or as otherwise set forth in this Agreement. If any payment is not received when due, Siemens may deem Customer to be in breach hereof and may enforce any remedies available to it hereunder or at law, including without limitation, acceleration of payments and suspension or termination of Services at any time and without notice,

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and shall be entitled to compensation for Services previously performed and costs reasonably incurred in connection with the suspension or termination. In the event that any payment due hereunder is not paid when due, Customer shall pay, upon demand, as a late charge, one and one-half percent (1.5%) of the amount of the payment per month, limited by the maximum rate permitted by law of each overdue amount under this Agreement. Customer shall reimburse Siemens' costs and expenses (including reasonable attorneys' and witnesses' fees) incurred for collection under this Agreement. If Customer disputes any portion or all of an invoice, it shall notify Siemens in writing of the amount in dispute and the reason for its disagreement within 21 days of receipt of the invoice. The undisputed portion shall be paid when due, and interest on any unpaid portion shall accrue as aforesaid, from the date due until paid, to the extent that such amounts are finally determined to be payable to Siemens.

5.4 Except to the extent expressly identified in this Agreement, Siemens' fees do not include any taxes, excises, fees, duties, permits or other government charges related to the Services. Customer shall pay such amounts or reimburse Siemens for any amounts it pays. If Customer claims a tax exemption or direct payment permit, it shall provide Siemens with a valid exemption certificate or permit and indemnify, defend and hold Siemens harmless from any taxes, costs and penalties arising out of same.

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

Article 6: Changes; Delays; Excused Performance

6.1 As the Services are performed, conditions may change or circumstances outside Siemens' reasonable control (such as changes of law) may develop which require Siemens to expend additional costs, effort or time to complete the Services, in which case Siemens shall notify Customer and an equitable adjustment made to the compensation and time for performance. In the event conditions or circumstances require Services to be suspended or terminated, Siemens shall be compensated for Services performed and for costs reasonable incurred in connection with the suspension or termination.

6.2 Siemens shall not be responsible for loss, delay, injury, damage or failure of performance that may be caused by circumstances beyond its control, including but not limited to acts or omissions by Customer or its employees, agents or contractors, Acts of God, war, terrorism, civil commotion, acts or omissions of government authorities, fire, theft, corrosion, flood, water damage, lightning, freeze-ups, computer viruses, program or system hackers, strikes, lockouts, differences with workmen, riots, explosions, quarantine restrictions, delays in transportation, or shortage of vehicles, fuel, labor or materials. In the event of any such circumstances, Siemens shall be excused from performance of the Services and the time for performance shall be extended by a period equal to the time lost plus a reasonable recovery period and the compensation equitably adjusted to compensate for additional costs Siemens incurs due to such circumstances.

Article 7: Warranties; Disclaimers; Limitation of Liability

7.1 Labor in performing the Services is warranted to be free from defects in workmanship for 90 days after the Services are performed. All labor provided by Siemens hereunder found to be defective and otherwise qualifying under this warranty shall be re-performed by Siemens. Such re-performance hereunder shall not interrupt or prolong the terms of this warranty. In the event that any such re-performance fails to cure such defects, then Customer's exclusive remedy against Siemens for damages from any cause whatsoever, whether in contract or tort, shall not exceed an amount equal to the limitation set forth in Section 7.9 herein.

7.2 To the extent that Equipment is a Deliverable as part of the

Services under this Agreement, Equipment manufactured by Siemens or bearing its nameplate shall be warranted for the earlier of one (1) year from the date of first beneficial use or from the date of installation to be free from defects. To the extent that Software is a Deliverable as part of the Services for use in the Equipment or in a computer owned by the Customer, Customer agrees to take delivery of any such Software subject to (i) any applicable Siemens or third party end-user license agreement (EULA) accompanying such Software, or (ii), if no EULA accompanies such Software, the EULA posted at www.usa.siemens.com/btccpseula (Siemens' EULA web site) for such Software used in or with the Equipment identified by product model or part number on the Siemens EULA web site. Such Software shall be warranted in accordance with its applicable EULA unless an exception is explicitly identified in the Document under this Agreement. For all other Equipment, Siemens hereby assigns to Customer, without recourse, any and all assignable warranties available from any manufacturer or supplier of such Equipment and such Software and will assist Customer in enforcement of such assigned warranties.

7.3 The limited warranties set forth in Sections 7.1. and 7.2 respectively, will be void as to, and shall not apply to, any Services, Equipment or Software (i) repaired, altered or improperly installed by any person other than Siemens or its authorized representative; (ii) Equipment subjected to unreasonable or improper use or storage, used beyond rated conditions, operated other than per Siemens' or manufacturer's instructions, or otherwise subjected to improper maintenance, negligence or accident, by Customer or others; (iii) damaged because of any use of the Equipment after Customer has, or should have knowledge of any defect in the Equipment.

7.4 Any claim under the limited warranties granted above must be made in writing to Siemens within thirty (30) days after discovery of the claimed defect unless discovered directly by Siemens. Such limited warranty only extends to Customer and not to any subsequent owner of the Equipment. As to the Equipment, Customer's sole and an exclusive remedy for any Equipment found to be defective during the warranty period is repair or replacement of the parts or components found to be defective.

7.5 THE EXPRESS LIMITED WARRANTIES PROVIDED ABOVE ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, STATUTORY, EXPRESS, OR IMPLIED, INCLUDING WITHOUT LIMITATION ALL EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, QUALITY, CAPACITY, OR WORKMANSHIP, ALL EXPRESS OR IMPLIED WARRANTIES AGAINST THIRD PARTY INTELLECTUAL PROPERTY ("IP") INFRINGEMENTS (INCLUDING PATENT, COPYRIGHT AND OTHER REGISTERED OR UNREGISTERED THIRD PARTY IP RIGHTS) OR DEFECTS, WHETHER HIDDEN OR APPARENT, AND EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO COMPLIANCE OF THE COVERED EQUIPMENT AND DELIVERABLES WITH THE REQUIREMENTS OF ANY LAW, REGULATION, SPECIFICATION OR CONTRACT RELATIVE THERETO, WHICH ARE HEREBY EXPRESSLY DISCLAIMED.

7.6 Customer hereby, for it and any parties claiming under it, releases and discharges Siemens from any liability arising out of all hazards covered by Customer's insurance. All claims against Siemens arising out of such hazards, including any right of subrogation by Customer's insurance carrier, are hereby waived by Customer.

7.7 ANY IDEAS, SUGGESTIONS, RECOMMENDATIONS, FINANCIAL EVALUATIONS, FEASIBILITY STUDIES OR ECONOMIC ANALYSIS PREPARED BY SIEMENS UNDER THIS AGREEMENT WILL REPRESENT ITS BEST JUDGMENT BASED ON ITS EXPERIENCE AND THE AVAILABLE INFORMATION. CUSTOMER ACKNOWLEDGES THAT THE ENERGY MARKET IS VOLATILE AND SUBJECT TO FREQUENT PRICE AND REGULATORY CHANGES. THEREFORE, CUSTOMER FURTHER ACKNOWLEDGES THAT SIEMENS DOES NOT CONTROL FUTURE MARKET CONDITIONS OR THE ENERGY MARKET'S REGULATORY CLIMATE. NOTHING HEREIN SHALL BE

**GENERAL TERMS AND CONDITIONS
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CONSTRUED BY CUSTOMER AS A PREDICTION OF FUTURE ENERGY MARKET CONDITIONS OR ENERGY PRICES. ACCORDINGLY, SIEMENS DOES NOT PROVIDE CUSTOMER A GUARANTY OR WARRANTY OF THE RESULTS OF SIEMENS' RECOMMENDATIONS. CUSTOMER MAKES ANY AND ALL ENERGY PROCUREMENT AND RELATED DECISIONS. CUSTOMER ACKNOWLEDGES THAT ALL ENERGY PROCUREMENT AND RELATED DECISIONS ARE MADE AT CUSTOMER'S SOLE RISK.

7.8 WITH RESPECT TO ANY LIABILITY (WARRANTY OR OTHERWISE) THAT SIEMENS MAY HAVE UNDER THIS AGREEMENT, IN NO EVENT SHALL SIEMENS BE LIABLE (INCLUDING WITHOUT LIMITATION, UNDER ANY THEORY IN TORTS) FOR ANY LOSS OF USE, REVENUE, ANTICIPATED PROFITS OR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS AND/OR LOST BUSINESS OPPORTUNITIES) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES WHETHER ARISING IN WARRANTY, TORT, CONTRACT, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY, WHETHER, FOR WARRANTY, LATE OR NON-DELIVERY OF ANY SERVICES, AND WHETHER SIEMENS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.9 It is understood and agreed by and between the parties that Siemens is not an insurer and this Agreement is not intended to be an insurance policy or a substitute for an insurance policy. Insurance, if any, shall be obtained by Customer. Fees are based solely upon the value of the Services provided hereunder, and are unrelated to the value of Customer's property or the property of others on Customer's premises. Accordingly, Siemens' aggregate liability for any and all claims, losses or expenses (including attorney's fees) arising out of this Agreement, or out of any Services or goods furnished under this Agreement, whether based in contract, negligence, strict liability, agency, warranty, trespass, indemnity or any other theory of liability, shall be limited, as liquidated damages, to the greater of \$1,000 or 10% of the total compensation received by Siemens from Customer under this Agreement.

7.10 Siemens reserves the right to control the defense and settlement of any claim for which Siemens has an obligation under the warranty hereunder.

7.11 The parties acknowledge that the price which Siemens has agreed to perform its Services and obligations under this Agreement is calculated based upon the foregoing limitations of liability, and that Siemens has expressly relied on, and would not have entered into this Agreement but for such limitations of liability.

Article 8: Limitations of Maintenance or Service Obligations

8.1 Unless agreed otherwise, Services do not include and Siemens is not responsible for: (a) service or provision of consumable supplies, including but not limited to batteries and halon cylinder charging; (b) reinstallation or relocation of Covered Equipment; (c) painting or refinishing of Covered Equipment or surrounding surfaces; (d) changes to Services; (e) parts, accessories, attachments or other devices added to Covered Equipment but not furnished by Siemens; (f) failure to continually provide suitable operating environment including, but not limited to, adequate space, ventilation, electrical power and protection from the elements; (g) the removal or reinstallation of replacement valves, dampers, waterflow and tamper switches, airflow stations, venting or draining systems, and any other permanently mounted integral pipe or air duct component; or (h) latent defects in the Covered Equipment that cannot be discovered through the standard provision of the Services. Siemens is not responsible for services performed on any Covered Equipment other than by Siemens or its agents.

8.2 Siemens will not be responsible for the maintenance, repair or replacement of, or Services necessitated by reason of: (a) non-maintainable, non-replaceable or obsolete parts of the Covered Equipment, including but not limited to ductwork, shell and tubes, heat exchangers, coils, unit cabinets, casings, refractory material, electrical wiring, water and pneumatic piping, structural supports, cooling tower

fill, slats and basins, etc. unless otherwise specifically stated in the Document; or (b) negligence, abuse, misuse, improper or inadequate repairs or modifications, improper operation, lack of operator maintenance or skill, failure to comply with manufacturer's operating and environmental requirements.

8.3 Siemens is not responsible for repairs, replacements or services to Covered Equipment due to corrosion, erosion, improper or inadequate water treatment by others, electrolytic or chemical action, or reasons beyond its reasonable control.

8.4 WHERE SERVICES INCLUDE EFFORTS BY SIEMENS TO HELP CUSTOMER TO ATTAIN REBATES AND/OR INCENTIVES FROM AVAILABLE SOURCES OR ENERGY/FUEL COST REDUCTION, CUSTOMER ACKNOWLEDGES THAT ANY REBATE/INCENTIVE OR ENERGY/ FUEL COST REDUCTION THAT MAY BE AVAILABLE TO CUSTOMER IS GRANTED BY A THIRD PARTY OUTSIDE THE CONTROL OF SIEMENS. CUSTOMER FURTHER ACKNOWLEDGES THAT WHILE SIEMENS WILL EITHER ASSIST CUSTOMER OR ENDEAVOR ITSELF TO OBTAIN ANY AND ALL REBATES/INCENTIVES OR ENERGY/FUEL COST REDUCTION AVAILABLE, SIEMENS DOES NOT GUARANTEE THAT IT WILL OBTAIN OR APPLY FOR ALL REBATES/INCENTIVES OR ENERGY/ FUEL COST REDUCTIONS THAT MAY BE AVAILABLE TO CUSTOMER. FURTHER, CUSTOMER HEREBY RELEASES SIEMENS FROM ANY AND ALL LIABILITY TO CUSTOMER OR ANY THIRD PARTY ARISING FROM SIEMENS' FAILURE TO OBTAIN OR APPLY FOR ANY REBATE/INCENTIVE OR ENERGY/FUEL COST REDUCTION THAT COULD IN ANY WAY BE OBTAINED BY CUSTOMER.

Article 9: License and Intellectual Property

9.1 Any tangible form of a report or drawing specifically developed for, commissioned by and deliverable to the Customer in connection with Services performed by Siemens under this Agreement ("*Work Product Deliverables*") shall become the Customer's property upon receipt by the Customer and payment of any fees due Siemens under this Agreement. Siemens may retain file copies of such Work Product Deliverables.

9.2 If any know-how, tools and related documentation owned or licensed by Siemens and used by Siemens to install or commission Equipment and Software for operation at the Site, including but not limited to tools for installing any Software, performing diagnostics on Equipment as installed at the Site as well as any reports, notes, calculations, data, drawings, estimates, specifications, manuals, documents, all computer programs, codes and computerized materials prepared by or for Siemens and used by Siemens to provide the Services ("*Instruments*") are provided to the Customer under this Agreement, any such Instruments shall remain Siemens property, including the intellectual property conceived or developed by Siemens in the Instruments.

9.3 In addition, all intellectual property: (i) that has been conceived or developed by an employee or subcontractor of Siemens before Siemens performs any Services under this Agreement; (ii) that is conceived or developed by such employee or subcontractor at any time wholly independently of Siemens performing the Services under this Agreement, or, (iii) if developed while performing the Services under this Agreement, where the development of intellectual property for the benefit of the Customer is not expressly identified as an item of Services to be provided to the Customer or where such Services comprised or corresponded to an update, improvement, configuration, or modification of Equipment or Software made in the ordinary course of business solely to allow such products to interface with any software and/or equipment and/or to operate at a site specified by Customer, (collectively, "*Siemens Pre-existing Intellectual Property*") that may be included in scope provided to the Customer under this Agreement shall also remain Siemens' property including the Siemens Pre-existing Intellectual Property included in the Work Product Deliverables. Siemens Pre-existing Intellectual Property is also included in all reports, notes, calculations, data, drawings, estimates, specifications, manuals, documents, all computer programs, codes and computerized materials prepared by or for Siemens.