

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 and Conditions of Sale for Services, and the attached Siemens' proposal, and Siemens Standard Terms Addendum for Fire and Life Safety, which are incorporated by reference, 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 LFUCG's acceptance of this Agreement. Any additional or conflicting terms in LFUCG'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 LFUCG'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 as stated in Siemens' proposal.

(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 LFUCG's financial condition, Siemens may withhold performance of Services, require cash payments or advance payments, or require other satisfactory financial security before performance of Services.

(c) Taxes - Unless stated in writing by Siemens, Siemens' rates exclude charges for taxes, excises, fees, duties, tariffs charged on the importation of goods into the United States, or other government charges related to the Services. LFUCG will pay these amounts or reimburse Siemens. If LFUCG claims a tax or other exemption or direct payment permit, LFUCG 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 LFUCG'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 LFUCG 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 LFUCG to timely notify Siemens of any dispute constitutes a waiver of LFUCG's claim. If LFUCG only disputes a portion of the invoice LFUCG must pay the undisputed portion in accordance with Article 2(a).

(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 LFUCG's financial condition, including, but not limited to bankruptcy, insolvency, or liquidation.

3. CANCELLATION. 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 thirty (30) days prior written notice of its intent to cancel the Agreement.

4. TERMINATION FOR CAUSE. LFUCG may terminate this Agreement because of Siemens's failure to perform its' duties under the Agreement.

(a) If Siemens is determined to be in default, LFUCG shall notify Siemens of the determination in writing, and may include a specified date by which Siemens shall cure the identified deficiencies. LFUCG may proceed with termination if Siemens fails to cure the deficiencies within the specified time.

(b) A default in performance by Siemens for which the Agreement may be terminated shall include, but shall not necessarily be limited to:

- i. Failure to perform the Agreement according to its terms, conditions and specifications;
- ii. Failure to diligently advance the work under the Agreement;

- iii. The filing of a bankruptcy petition by or against Siemens; or
- iv. Actions that endanger the health, safety or welfare of the LFUCG or its citizens.

5. AT WILL TERMINATION. Notwithstanding the above provisions, the LFUCG may terminate this Agreement at will in accordance with the law upon providing thirty (30) days written notice of that intent, Payment for services or goods received prior to termination shall be made by the LFUCG provided these goods or services were provided in a manner acceptable to the LFUCG. Payment for those goods and services shall not be unreasonably withheld.

6. LFUCG NON-APPROPRIATION CLAUSE. Siemens acknowledges that LFUCG is a governmental entity, and the Agreement validity is based upon the availability of public funding under the authority of its statutory mandate.

In the event that public funds are not appropriated for the performance of LFUCG's obligations under this Agreement, then this Agreement shall automatically expire without penalty to the LFUCG thirty (30) days after written notice to Siemens of the unavailability and non-appropriation of public funds. It is expressly agreed that LFUCG shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this Agreement, but only as an emergency fiscal measure during a substantial fiscal crisis, which affects generally its governmental operations.

In the event of a change in LFUCG's statutory authority, mandate and mandated functions, by state and federal legislative or regulatory action, which adversely affects LFUCG's authority to continue its' obligations under this Agreement, then this Agreement shall automatically terminate without penalty to LFUCG upon written notice to Siemens of such limitation or change in LFUCG's legal authority.

7. 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. Siemens will notify LFUCG 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.

8. LFUCG'S REQUIREMENTS. Siemens' performance is contingent upon LFUCG timely complying with and fulfilling all of its obligations under this Agreement. These obligations include LFUCG supplying all necessary access to Equipment, where applicable, and all required "Third Party Parts" (parts, components, equipment or materials provided by LFUCG 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. LFUCG 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 LFUCG, LFUCG's contractors, successors or assigns to meet these obligations or any other obligations in this Agreement.

LFUCG 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.

9. INDEMNITY AND HOLD HARMLESS PROVISION. It is understood and agreed by the parties that Siemens hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Siemens or its employees, agents, servants, owners, principals, licensees, assigns or subcontractors of any tier under or in connection with this Agreement and/or the provision of goods or services and the performance or failure to perform any work required thereby.

Siemens shall indemnify, save, hold harmless and defend the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, agents, volunteers, and successors in interest from and against all liability, damages, and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees that are in any way incidental to or connected with,

or that arise or are alleged to have arisen, directly or indirectly, from or by Siemens's performance or breach of the Agreement and/or the provision of goods or services provided that: (a) it is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors or omissions or willful misconduct of the Siemens; and (b) not caused solely by the active negligence or willful misconduct of LFUCG.

Notwithstanding, the foregoing, with respect to any professional services performed by Siemens hereunder (and to the fullest extent permitted by law), Siemens shall indemnify, save, hold harmless and defend LFUCG from and against any and all liability, damages and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees, for any damage due to death or injury to any person or injury to any property (including the loss of use resulting therefrom) to the extent arising out of, pertaining to or relating to the negligence, recklessness or willful misconduct of Siemens in the performance of this Agreement.

In the event LFUCG is alleged to be liable based upon the above, Siemens shall defend such allegations and shall bear all costs, fees and expenses of such defense, including but not limited to, all reasonable attorneys' fees and expenses, court costs, and expert witness fees and expenses, using attorneys approved in writing by LFUCG, which approval shall not be unreasonably withheld.

These provisions shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this Agreement. LFUCG is a political subdivision of the Commonwealth of Kentucky. Siemens acknowledges and agrees that LFUCG is unable to provide indemnity or otherwise save, hold harmless, or defend Siemens in any manner.

10. 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 10(a) within ninety (90) days from completion of the Services ("Warranty Period"), and LFUCG 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 LFUCG 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) LFUCG 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) LFUCG discontinuing use of the Equipment after it has, or should have had knowledge of any defect in the Equipment; (v) LFUCG providing Siemens with reasonable access to operating and maintenance data as requested by Siemens, (which may include secure broadband connection). Without expense to Siemens, LFUCG 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) LFUCG not being in default of any payment obligation. LFUCG 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.

(d) **Warranty Notice.** LFUCG 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.

11. INTELLECTUAL PROPERTY.

Siemens will, at its own option and expense, defend or settle any suit or proceeding brought against LFUCG 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 LFUCG's Site is located. LFUCG 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. LFUCG 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 LFUCG is enjoined, Siemens will, at its option and expense, either: (i) procure for LFUCG the right to continue using said process; (ii) replace it with substantially equivalent non-infringing process; or (iii) modify the process so its use is non-infringing.

Siemens will have no duty or obligation under this Article 11 if the process is: (i) performed according to LFUCG's design or instructions and compliance therewith has caused Siemens to deviate from its normal course of performance; (ii) modified by LFUCG or its contractors after performance; or (iii) combined by LFUCG 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 LFUCG. In addition, if by reason of such design, instruction, modification or combination, a suit or proceeding is brought against Siemens, LFUCG must protect Siemens in the same manner and to the same extent that Siemens has agreed to protect LFUCG under this Article 11.

ARTICLE 11 AND 12 ARE THE EXCLUSIVE STATEMENTS OF SIEMENS' DUTIES AND LFUCG'S REMEDIES RELATING TO PATENTS, TRADE SECRETS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY INFRINGEMENT THEREOF.

12. TRADE OR SERVICE MARKS.

Siemens will not appropriate or make use of the Lexington-Fayette Urban County Government (LFUCG) name or any of its' trade or service marks or property (including but not limited to any logo or seal), in any promotion, endorsement, advertisement, testimonial or similar use without the prior written consent of the government. If such consent is granted LFUCG reserves the unilateral right, in its sole discretion, to immediately terminate and revoke such use for any reason whatsoever. Siemens agrees that it shall cease and desist from any unauthorized use immediately upon being notified by LFUCG.

13. 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) LFUCG 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 LFUCG'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. LFUCG 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 LFUCG 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.

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

15. CHANGES IN SERVICES. No change will be made to the scope of Services unless LFUCG 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.

16. 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. No failure or delay by the parties in exercising any right, remedy, power or privilege hereunder, nor any single or partial exercise thereof, nor the exercise of any other right, remedy, power or privilege shall operate as a waiver hereof or thereof. No failure or delay by the parties in exercising any right, remedy, power or privilege under or in respect of this Agreement shall affect the rights, remedies, powers or privileges of the parties hereunder or shall operate as a waiver thereof.

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

18. 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. 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 LFUCG's consent. It is expressly acknowledged that LFUCG shall never be required or obligated to consent to any request for assignment or subcontract; and further that such refusal to consent can be for any or no reason, fully within the sole discretion of LFUCG.

19. APPLICABLE LAW AND JURISDICTION. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. In the event of any proceedings regarding this Agreement, the parties agree that the venue shall be the Fayette County Circuit Court or the U.S. District Court for the Eastern District of Kentucky, Lexington Division. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Agreement or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.

20. 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.

21. SURVIVAL. The Articles entitled "Intellectual Property", "Indemnity and Hold Harmless Provision", "Confidentiality," and "Export/Import Compliance", survive any termination, expiration or cancellation of this Agreement.

22. SITE SAFETY. LFUCG 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 LFUCG's Site complies with all applicable safety requirements. In the event LFUCG's Site safety is non-

compliant, Siemens may suspend the Services until such time as LFUCG corrects the non-compliance. To the extent Siemens incurs additional time and expense as the result of LFUCG'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.

LFUCG 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. LFUCG shall reimburse Siemens for additional costs, if any, incurred in complying with any such laws, regulations, rules and/or ordinances.

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 LFUCG 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 LFUCG shall, at LFUCG'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 LFUCG 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.

LFUCG 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 LFUCG 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 LFUCG 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 LFUCG'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.

25. THIRD PARTY PARTS

LFUCG 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.

26. ABILITY TO MEET OBLIGATIONS. Siemens affirmatively states that there are no actions, suits or proceedings of any kind pending against Siemens or, to the knowledge of Siemens, threatened against Siemens before or by any court, governmental body or agency or other tribunal or authority which would, if adversely determined, have a materially adverse effect on the authority or ability of Siemens to perform its obligations under this Contract, or which question the legality, validity or enforceability hereof or thereof.

27. STATUS OF CONTRACTOR. Siemens understands and agrees that its' employees, agents, or subcontractors are not employees of LFUCG for any purpose whatsoever. Siemens is an independent contractor at all times during the performance of the services specified.

28. AUTHORITY TO DO BUSINESS. Siemens affirmatively states it is authorized to do business under the laws of

Kentucky. Siemens affirmatively states it is in good standing and has full legal capacity to provide the services specified under this Agreement. Siemens affirmatively states it has all necessary right and lawful authority to enter into this Agreement for the full term hereof and that proper corporate or other action has been duly taken authorizing Siemens to enter into this Agreement. Siemens will provide LFUCG with a copy of a corporate resolution authorizing this action and a letter from an attorney confirming that it is authorized to do business in the State of Kentucky if requested.

SIEMENS INDUSTRY, INC.

By: Lawrence Mueller
Greg Saylor
Lawrence Mueller, Louisville BGM

8/22/2019
Date

LEXINGTON- FAYETTE URBAN COUNTY GOVERNMENT

By: _____

Date

