

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: February 7, 2017

Consent

Regular

Public Hearing

Department: Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Sole Source Term Contract (Contract) with Siemens Demag Delaval Turbomachinery, Inc. (Siemens) for Turblex Blower Model KA22SV-GL225 OEM Parts & Service, over a five (5) year term in an amount not to exceed \$1,250,000 with no renewal options.

Summary: Siemens is the sole source manufacturer and provider of the Turblex Blower Model KA22SV-GL225, inclusive of OEM repair parts and service. The Contract will be used for scheduled maintenance, repairs, and the purchase of OEM parts, on an "as needed" basis, for existing Siemens equipment currently located at the Southern Regional Reclamation Wastewater Treatment Facility. The sole source term contract is for a five (5) year term with no renewal options. The Contract is for a not to exceed amount of \$1,250,000, based on anticipated usage. Work will be assigned during the five (5) year period by formal Delivery Orders (DOs) drawn against this continuing contract with the project cost identified in each DO. The unit prices contained in this Contract will be used in determining the cost of these DOs. The Small Business Enterprise (SBE) participation goal established by the SBE Ordinance is 15% overall. This Contract with Siemens provides for SBE participation of 0% overall. Siemens is a sole source vendor.

Siemens' Selling Policy requires that the County indemnify and hold Siemens harmless for certain actions of the County related to intellectual property infringement, release of confidential information, asbestos and hazardous materials, non-compliance with export laws, and negligent acts and omissions. The non-standard indemnity provisions have been limited to what is permissible under Florida law and have been approved by the County Attorney's Office. (Sole Source Solicitation No. SS555325/KM) Districts 2, 3, 5 and 6. (MJ)

Background and Justification: This sole source Contract provides for scheduled maintenance, repairs, and purchase of OEM parts to maintain existing Siemens equipment located at Southern Regional Reclamation Wastewater Facility. In December 2016, Palm Beach County and Siemens completed negotiations of terms and conditions to establish a sole source term contract.

Attachments:

1. Insurance Certificate
2. Two (2) Original Contracts

Recommended By: Jim Stiles 1-29-17
 Department Director Date

Approved By: [Signature] 2-6-17
 Deputy County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2017	2018	2019	2020	2021
Operating Expenditures	<u>\$250,000</u>	<u>\$250,000</u>	<u>\$250,000</u>	<u>\$250,000</u>	<u>\$250,000</u>
External Revenues	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Program Income (County)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match County	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
NET FISCAL IMPACT	<u>\$250,000</u>	<u>\$250,000</u>	<u>\$250,000</u>	<u>\$250,000</u>	<u>\$250,000</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Budget Account No.: Fund 4001 Dept 720 Unit 2582 Object 4615

Is Item Included in Current Budget? Yes X No

Reporting Category N/A

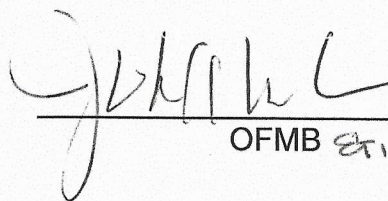
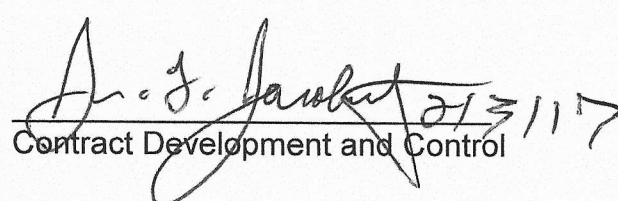
B. Recommended Sources of Funds/Summary of Fiscal Impact:

Contract will be funded by Water Utility Department user fees.

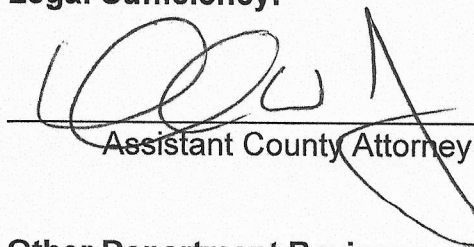
C. Department Fiscal Review: Selma M. West

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

 OFMB <u>2/1/24</u> <u>QAA 1/23</u>	 Contract Development and Control <u>2/3/17</u>
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B. Legal Sufficiency:


 Assistant County Attorney 2/3/17

C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/17/2016

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

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

PRODUCER MARSH USA, INC. 445 SOUTH STREET MORRISTOWN, NJ 07960-6454 100129-DDT-16/17 DDT RITTER	CONTACT NAME: PHONE (A/C, No, Ext): _____ FAX (A/C, No): _____ E-MAIL ADDRESS: _____ <table style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 80%;">INSURER(S) AFFORDING COVERAGE</th> <th style="width: 20%;">NAIC #</th> </tr> <tr> <td>INSURER A : HDI Global Insurance Company</td> <td style="text-align: center;">41343</td> </tr> <tr> <td>INSURER B : The Travelers Indemnity Company</td> <td style="text-align: center;">25658</td> </tr> <tr> <td>INSURER C : Travelers Property Casualty Co. of America</td> <td style="text-align: center;">25674</td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : HDI Global Insurance Company	41343	INSURER B : The Travelers Indemnity Company	25658	INSURER C : Travelers Property Casualty Co. of America	25674	INSURER D :		INSURER E :		INSURER F :	
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INSURER F :															
INSURED SIEMENS ENERGY, INC. POWER GENERATION SERVICES SIEMENS DEMAG DELAVAL TURBOMACHINERY, INC. 4400 ALAFAYA TRAIL ORLANDO, FL 32826-2399															

COVERAGES CERTIFICATE NUMBER: NYC-008597152-01 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: _____			GLD1110108	10/01/2016	10/01/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 100,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 1,000,000 PRODUCTS - COMP/OP AGG \$ INCL. \$
C	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			TC2JCAP7440L34A16	10/01/2016	10/01/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ N/A BODILY INJURY (Per accident) \$ N/A PROPERTY DAMAGE (Per accident) \$ N/A \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			CUD1110208	10/01/2016	10/01/2017	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$
C B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N	N/A	TC2JUB7440L27116 (AOS) TRKUB7440L28316 (AZ, MA, OR & WI)	10/01/2016 10/01/2016	10/01/2017 10/01/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 PALM BEACH COUNTY IS HEREBY ADDITIONAL INSURED AS OBLIGATED UNDER CONTRACT UNDER THE REFERENCED GENERAL LIABILITY AND AUTOMOBILE LIABILITY INSURANCE POLICIES.

 SUCH INSURANCE AS IS AFFORDED BY THE ADDITIONAL INSURED ENDORSEMENT SHALL APPLY AS PRIMARY INSURANCE & OTHER INSURANCE MAINTAINED BY THE CERTIFICATE HOLDER SHALL BE EXCESS ONLY & NOT CONTRIBUTING WITH INSURANCE PROVIDED UNDER THIS POLICY.

CERTIFICATE HOLDER PALM BEACH COUNTY ATTN: VERNETHA GREEN 50 SOUTH MILITARY TRAIL, SUITE 110 WEST PALM BEACH, FL 33415	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Manashi Mukherjee <i>Manashi Mukherjee</i>
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Cindy Beaudreau

From: pbc@instracking.com
Sent: Monday, November 21, 2016 6:56 PM
To: Vernetha Green
Subject: Insured: Siemens Energy, Inc. | Insured ID: SS16-002-PBC | ITS Account #: PLC2324

Hello,

Please see below the updated insurance compliance status for:

Insured: **Siemens Energy, Inc.** | Insured ID: **SS16-002-PBC** | ITS Account #: **PLC2324**

RE: Palm Beach County - Water Utilities Procurement

Contract: SS16-002

Status: **Compliant**

Insurance Policy Expiration Dates:

- General Liability: (10/1/2017)
- Automobile Liability: (10/1/2017)
- Excess/Umbrella Liability: (10/1/2017)
- Workers' Comp./Employers Liability: (10/1/2017)

Thank you,

Insurance Tracking Services, Inc. (ITS)
+1 (888) 435-2955 - P
+1 (562) 435-2999 - F
www.instracking.com - W

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Board of County Commissioners

Paulette Burdick, Mayor
Melissa McKinlay, Vice Mayor
Hal R. Valeche
Dave Kerner
Steven L. Abrams
Mary Lou Berger
Mack Bernard



County Administrator

Verdenia C. Baker

Purchasing Department
www.pbcgov.org/purchasing

**BOARD OF COUNTY COMMISSIONERS
SOLE SOURCE SOLICITATION
#SS555325/KM**

TURBLEX BLOWER MODEL KA22SV-GL225 OEM PARTS & SERVICE, TERM CONTRACT

DUE DATE: _____ AT 4:00 P.M.

It is the sole purpose and intent of this solicitation to secure a contract for item(s) and/or services as listed herein. The sole source vendor is hereby placed on notice that acceptance of its response by Palm Beach County shall constitute a binding contract.

This Solicitation, General Conditions, Instructions, Special Conditions, Specifications, Attachments, Amendments (if issued), and/or any other referenced document form a part of this solicitation and response thereto, and by reference are made a part thereof. The sole source vendor shall be bound by all terms, conditions and requirements in these documents. Vendor shall notify Palm Beach County Purchasing Department immediately if the sole source status changes.

SUBMIT SOLICITATION TO:

Palm Beach County Purchasing Department
Attention Buyer: Kristen A. Monnett, Senior Buyer
50 South Military Trail, Suite 110
West Palm Beach, Florida 33415-3199
Fax #: (561) 242-6724
E-mail: kmonnett@pbcgov.org

Solicitation may be submitted via fax or e-mail.

Please contact (561) 616-6824 if you have any questions.

In accordance with the provisions of ADA, this document may be requested in an alternate format.

**50 South Military Trail, Suite 110, West Palm Beach, FL 33415-3199
(561) 616-6800 FAX: (561) 616-6811**

GENERAL CONDITIONS, INSTRUCTIONS AND INFORMATION GENERAL CONDITIONS

1. GENERAL INFORMATION

Vendor is advised that this package, together with Siemens Selling Policy 1200-Palm Beach County (the "Selling Policy", which is attached hereto and incorporated herein as **Exhibit "A"**) constitutes the complete set of specifications, terms, and conditions which forms the binding contract between Palm Beach County and the vendor. Changes to this solicitation may be made only by written amendment issued by the County Purchasing Department and accepted by vendor. Vendor is further advised to closely examine every section of this document, to ensure that all sequentially numbered pages are present, and to ensure that it is fully understood. Questions or requests for explanations or interpretations of this document must be submitted to the Purchasing Department contact in writing. Vendor certifies that its response is made without reliance on any oral representations made by the County.

The obligations of Palm Beach County under this award are subject to the availability of funds lawfully appropriated for its purpose.

2. LEGAL REQUIREMENTS

- a. **COMPLIANCE WITH LAWS AND CODES:** Federal, State, County and local laws, ordinances, rules and regulations that in any manner affect the items covered herein apply. Lack of knowledge by the vendor shall in no way be a cause for relief from responsibility. The vendor shall strictly comply with Federal, State and local building and safety codes. Equipment shall meet all State and Federal Safety regulations. Vendor certifies that all products (materials, equipment, processes, or other items supplied in response to this solicitation) contained in its response meets all legal requirements applicable to the products and all other Federal and State requirements. Vendor further certifies that if the product delivered is subsequently found to be deficient in any of the aforementioned requirements in effect on date of delivery, all costs necessary to bring the product into compliance shall be borne by the vendor.

Any toxic substance provided to the County as a result of this solicitation or resultant contract shall be accompanied by its Safety Data Sheet (SDS).

The Uniform Commercial Code (Florida Statutes, Chapter 672) shall prevail as the basis for contractual obligations between the vendor and Palm Beach County for any terms and conditions not specifically stated in the solicitation, it being understood by the County and VENDOR that the warranty provisions in the Selling Policy shall prevail over conflicting UCC provisions.

- b. **DISCRIMINATION PROHIBITED:** Palm Beach County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R-2014-1421, as may be amended, the vendor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression or genetic information. Per Resolution R-2014-1421, as may be amended, the vendor shall comply with the requirements set forth in Section 3.d. hereinbelow.
- c. **INDEPENDENT CONTRACTOR RELATIONSHIP:** The vendor is, and shall be, in the performance of all work, services, and activities under this Contract, an Independent Contractor and not an employee, agent, or servant of the County. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the vendor's sole direction, supervision, and control. The vendor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the vendor's relationship, and the relationship of its employees, to the County shall be that of an Independent Contractor and not as employees or agents of the County.
- d. **CRIMINAL HISTORY RECORDS CHECK ORDINANCE:** Pursuant to Palm Beach County Code Section 2-371 through 2-377, the Palm

Beach County Criminal History Records Check Ordinance ("Ordinance"), the County will conduct fingerprint based criminal history record checks on all persons not employed by the County who repair, deliver, or provide goods or services for, to, or on behalf of the County. A fingerprint based criminal history record check shall be conducted on all employees of vendors, contractors, and subcontractors of contractors, including repair persons and delivery persons, who are unescorted when entering a facility determined to be either a critical facility ("Critical Facilities") or a criminal justice information facility ("CJI Facilities"), which are critical to the public safety and security of the County. County facilities that require this heightened level of security are identified in Resolution R-2003-1274, as amended. In October 2013, compliance with the requirements of the U. S. Federal Bureau of Investigations CJI Security Policy was added to the Ordinance, which includes a broad list of disqualifying offenses. The vendor is solely responsible for understanding the financial, schedule, and/or staffing implications of this Ordinance. Further, the vendor acknowledges that its bid price includes any and all direct or indirect costs associated with compliance of with this Ordinance, except for the applicable FDLE/FBI fees that shall be paid by the County.

- e. **PUBLIC ENTITY CRIMES:** F.S. 287.133 requires Palm Beach County to notify all vendors of the following: "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a response on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in F.S. 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list."
- f. **NON-COLLUSION:** Vendor certifies that it has entered into no agreement to commit a fraudulent, deceitful, unlawful, or wrongful act, or any act which may result in unfair advantage for one or more vendors over other vendors. Conviction for the Commission of any fraud or act of collusion in connection with any sale, bid, quotation, proposal or other act incident to doing business with Palm Beach County may result in permanent debarment.
- No premiums, rebates or gratuities are permitted; either with, prior to or after any delivery of material or provision of services. Any such violation may result in award cancellation, return of materials, discontinuation of services, removal from the vendor bid list(s), and/or debarment or suspension from doing business with Palm Beach County.
- g. **CONFLICT OF INTEREST:** Vendor shall disclose with their response the name of any officer, director, or agent who is also an employee or a relative of an employee of Palm Beach County. Further, vendor shall disclose the name of any County employee or relative of a County employee who owns, directly or indirectly, an interest of ten percent or more in the vendor's firm or any of its branches.
- h. **SUCCESSORS AND ASSIGNS:** The County and the vendor each binds itself and its successors and assigns to the other party in respect to all provisions of this Contract. Except as provided in Article 25.E of the Selling Policy, neither the County nor the vendor shall assign, sublet, convey or transfer its interest in this Contract without the prior written consent of the other.
- i. **INDEMNIFICATION:** Indemnification obligations shall be per the provisions of Article 22 of the Selling Policy.
- j. **PUBLIC RECORDS, ACCESS AND AUDITS:** Any material submitted in response to this solicitation is considered a public document in accordance with Section 119.07, F.S. This includes material which the vendor might consider to be confidential. All submitted information that the vendor believes to be confidential and exempt from disclosure (i.e., a trade secret or as provided for in Section 119.07 and Section

812.081, F.S.) must be specifically identified as such. Upon receipt of a public records request for such information, the vendor has designated as a trade secret or as otherwise exempt from Section 119.07, F.S., a determination will be made as to whether the identified information is, in fact, confidential.

The vendor shall maintain records related to all charges, expenses, and costs incurred in performing work performed on a time and materials or other unit-based form of payment for at least three (3) years after completion or termination of this Contract. The County shall have access to such records as required in this Section for the purpose of inspection or audit during normal business hours, at the vendor's place of business.

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., where the Vendor: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2), F.S., the Vendor shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The Vendor is specifically required to:

- 1) Keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the service;
- 2) Upon request from the County's Custodian of Public Records ("County's Custodian") or the County's representative/liaison, on behalf of the County's Custodian, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The Vendor further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
- 3) Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Contract, if the Vendor does not transfer the records to the public agency. Nothing contained herein shall prevent the disclosure of or the provision of records to the County.
- 4) Upon completion of the Contract, the Vendor shall transfer, at no cost to the County, all public records in possession of the Vendor unless notified by the County's representative/liaison, on behalf of the County's Custodian, to keep and maintain public records required by the County to perform the service. If the Vendor transfers all public records to the County upon completion of the Contract, the Vendor shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Vendor keeps and maintains public records upon completion of the Contract, the Vendor shall meet all applicable requirements for retaining public records. All records stored electronically by the Vendor must be provided to County, upon request of the County's Custodian or the County's representative/liaison, on behalf of the County's Custodian, in a format that is compatible with the information technology systems of the County, at no cost to the County.

Vendor acknowledges that it has familiarized itself with the requirements of Chapter 119, F. S., and other requirements of state law applicable to public records not specifically set forth herein. Failure of the Vendor to comply with the requirements of this Section, Chapter 119, F.S. and other applicable requirements of state law, shall be a material breach of this Contract. The County shall have the right to exercise any and all remedies available to it for breach of contract, including but not limited to, the right to terminate for cause.

IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT,

PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT 561-355-6680.

- k. **INCORPORATION, PRECEDENCE, JURISDICTION:** This solicitation shall be included and incorporated in the final award. The order of contractual precedence shall be the solicitation document (original terms and conditions, which includes and supplements the Selling Policy,) response, and purchase order or term contract order. Any and all legal action necessary to enforce the award or the resultant contract shall be held in Palm Beach County and the contractual obligations shall be interpreted according to the laws of Florida.
- l. **LEGAL EXPENSES:** The County shall not be liable to a vendor for any legal fees, court costs, or other legal expenses arising from the interpretation or enforcement of this contract, or from any other matter generated by or relating to this contract.
- m. **NO THIRD PARTY BENEFICIARIES:** No provision of this Contract is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Contract, including but not limited to any citizen or employees of the County and/or vendor.
- n. **SCRUTINIZED COMPANIES (WHEN CONTRACT VALUE IS GREATER THAN \$1 MILLION):** As provided in F.S. 287.135, by entering into a Contract or performing any work in furtherance of this Sole Source solicitation, the VENDOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473, or on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725, or is engaged in business operations in Cuba or Syria.

If the County determines, using credible information available to the public, that a false certification has been submitted by VENDOR, the resulting Contract from this Sole Source solicitation may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Contract shall be imposed, pursuant to F.S. 287.135.
3. **SUBMISSION OF RESPONSE: Response must be submitted on the provided Sole Source "Response" Form.** Responses on vendor letterhead/quotation forms shall not be accepted. Responses must be signed by an agent of the company having authority to bind the company or firm. FAILURE TO SIGN THE RESPONSE FORM AT THE INDICATED PLACE(S) SHALL BE CAUSE FOR REJECTION OF THE RESPONSE. Responses are to be submitted to the Palm Beach County Purchasing Department representative no later than the time indicated herein.
 - a. **CERTIFICATIONS, LICENSES AND PERMITS:** Vendor shall obtain all permits and licenses which by law must be held in vendor's name. It is the responsibility of the vendor to ensure that all required certifications, licenses and permits are maintained in force and current throughout the term of the contract. Failure to meet this requirement shall be considered default of contract.
 - b. **PERFORMANCE DURING EMERGENCY:** By submitting a response vendor agrees and promises that, during and after a public emergency, disaster, hurricane, flood, or acts of God, Palm Beach County shall be given "first priority" for all goods and services under this contract. Vendor agrees to provide all goods and services to Palm Beach County during and after the emergency at the terms, conditions, and prices as provided in this solicitation on a "first priority" basis.

Vendor shall furnish a 24-hour phone number to the County in the event of such an emergency.

c. INTENTIONALLY OMITTED

d. VENDOR'S NON-DISCRIMINATION POLICY: The vendor shall perform the following and shall use the attached form "Non-Discrimination Policy" in order to do the same:

1. Submit to Palm Beach County a copy of its non-discrimination policy, which shall be consistent with the non-discrimination policy of Palm Beach County as set forth in Section 2.b. hereinabove; **OR**
2. In the event that the vendor **does not** have a written non-discrimination policy or one that conforms to Palm Beach County's policy, the vendor shall sign and submit to Palm Beach County a statement affirming that it will conform to Palm Beach County's non-discrimination policy as provided in Palm Beach County Resolution R-2014-1421, as may be amended.

The vendor shall satisfy the requirements set forth in this Section 3.d. prior to execution of a contract with Palm Beach County and within a time frame specified by Palm Beach County (normally within 2 working days of request). The vendor's failure to satisfy the requirements set forth herein shall render its bid non responsive. It is the responsibility of the successful bidder to maintain a written or non-written non-discrimination policy that conforms with the County's policy as set forth in Section 2.b. hereinabove throughout the term of the contract. Failure to meet this requirement shall be considered default of contract.

4. CONTRACT ADMINISTRATION

a. DELIVERY AND ACCEPTANCE: Deliveries of all items shall be made pursuant to the applicable agreed purchase order. Deliveries resulting from this solicitation are to be made during the normal working hours of the County. Transfer of risk of loss shall be per the applicable agreed delivery term.

Delivered items shall not be considered "accepted" until an authorized agent for Palm Beach County has, by inspection or test of such items, determined that they appear to fully comply with specifications. The Board of County Commissioners may return, at the expense of the vendor and for full credit, any item(s) received which fail to meet the performance standards. The County shall inspect such items within five (5) working days from the date of Delivery and shall communicate its acceptance or rejection within such time period. If the County fails to perform such inspection or to communicate the results within the aforesaid time period, the items shall be deemed to have been accepted by the County.

b. FEDERAL AND STATE TAX: Palm Beach County is exempt from Federal and State taxes. The authorized agent for Purchasing shall provide an exemption certificate to the vendor, upon request. Vendors are not exempted from paying sales tax to their suppliers for materials to fulfill contractual obligations with the County, nor are vendors authorized to use the County's Tax Exemption Number in securing such materials. Any such taxes shall be reimbursed by Palm Beach County.

c. PAYMENT: Payment shall be per the provisions of Article 4 of the Selling Policy.

d. CHANGES: Changes shall be governed by the provisions of Article 18 of the Selling Policy.

e. DEFAULT: Termination for Default is addressed In Section 11 of the Siemens Selling Policy.

f. TERMINATION FOR CONVENIENCE: The Director of Purchasing may, whenever the interests of the County so require, terminate the contract, in whole or in part, for the convenience of the County. The Director of Purchasing shall give thirty (30) days prior written notice of termination to the vendor, specifying the portions of the contract to be terminated and when the termination is to become effective. If only

portions of the contract are terminated, the vendor has the right to withdraw, without adverse action, from the entire contract.

Unless directed differently in the notice of termination, the vendor shall incur no further obligations in connection with the terminated work, and shall stop work to the extent specified and on the date given in the notice of termination. Additionally, unless directed differently, the vendor shall terminate outstanding orders and/or subcontracts related to the terminated work.

g. INTENTIONALLY OMITTED

h. INTENTIONALLY OMITTED

5. PALM BEACH COUNTY OFFICE OF THE INSPECTOR GENERAL AUDIT REQUIREMENTS:

Pursuant to Palm Beach County Code, Section 2-421 – 2-440, as amended, Palm Beach County's Office of Inspector General is authorized to review past, present and proposed County contracts, transactions, accounts, and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm Beach County Code, Section 2-421 – 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

THIS IS THE END OF "GENERAL CONDITIONS."

SPECIAL CONDITIONS

6. GENERAL/SPECIAL CONDITION PRECEDENCE

In the event of conflict between General Conditions and Special Conditions, the provisions of the Special Conditions shall have precedence.

7. CRIMINAL HISTORY RECORDS CHECK

This solicitation includes sites and/or buildings which have been designated as either "critical facilities" or "criminal justice information facilities" pursuant to Palm Beach County Code Section 2-371 through 2-377, the Palm Beach County Criminal History Records Check Ordinance ("Ordinance"), and Resolution R-2003-1274, as amended. County staff representing the User County Department will contact the vendor and provide specific instructions for meeting the requirements of this Ordinance. This provision applies to and must be adhered to by all vendors, contractors, and subcontractors of contractors, including repair persons and delivery persons, who are unescorted when entering critical facilities or criminal justice information facilities.

Individuals passing the background check will be issued a badge. Vendor shall make every effort to collect the badges of its employees and its subcontractors' employees upon conclusion of the contract work and return them to the County. If the vendor or its subcontractor terminates an employee who has been issued a badge, the vendor must notify the County within two (2) hours. At the time of termination, the vendor shall retrieve the badge and return it to the County in a timely manner. The County reserves the right to suspend any vendor that; 1) does not comply with the requirements of County Code Section 2-371 through 2-377 as amended; 2) does not contact the County regarding a terminated vendor employee or subcontractor employee within the stated time; or 3) fails to make a good faith effort in attempting to comply with the badge retrieval policy.

8. INTENTIONALLY OMITTED

9. INVOICES

When invoicing the County for goods and services purchased under this solicitation, the vendor must provide complete, accurate invoices which must include the applicable purchase order number. The vendor shall submit all invoices to:

Palm Beach County Finance Department
Supervisor, Pre-Audit Division
P.O. Box 4036
West Palm Beach, Florida 33402-4036
(561) 355-3011

10. Audit

All items sold to Palm Beach County as a result of this bid award are subject to post sale audit adjustment. In the event an audit indicates the vendor has not honored quoted price lists, the vendor shall be liable for any and all overage charges, and may be considered in default of this contract.

11. TIME AND MATERIAL CONTRACT (MATERIAL PRICING)

The price to be paid for services sold to Palm Beach County as a result of this bid award shall be based on the specified field service rate sheet in effect at the time the contract is entered and shall be valid for a period of twelve (12) months. Price to be paid for materials shall be per the applicable proposal submitted by Vendor and agreed by the County by issuing a purchase order incorporating these terms and conditions and the Selling Policy.

12. METHOD OF ORDERING (TERM CONTRACT)

A contract shall be issued for a term of five (5) years or until the estimated amount is expended, at the discretion of the County. The County will order on an "as needed" basis, subject to vendor's availability.

13. INTENTIONALLY OMITTED

14. INTENTIONALLY OMITTED

15. INTENTIONALLY OMITTED**16. ESTIMATED EXPENDITURES**

The anticipated value during the five (5) year contract term is \$1,250,000. Palm Beach County reserves the right to increase or decrease the anticipated value as necessary to meet actual requirements, and to rebid for the contracted goods and services at any time after the anticipated value of this contract has been reached, notwithstanding that the anticipated term has not been completed.

17. WARRANTY

Warranty shall be per the provisions of Article 7 of the Selling Policy.

18. WORK SITE SAFETY/SECURITY

The vendor shall at all times guard against damage or loss to the property of Palm Beach County, the vendor's own property, and/or that of other contractors, and shall be held responsible for replacing or repairing any such loss or damage. When applicable, the County shall provide fences, signs, barricades, flashing lights, etc. necessary to protect and secure the work site(s) and Vendor shall insure that all County, State of Florida, OSHA, and other safety regulations applicable to the Vendor's work are met. Additionally, except as provided in Section 25.I of the Selling Policy, vendor shall provide for the prompt removal of all debris from Palm Beach County property. Palm Beach County may withhold payment or make such deductions as deemed necessary to ensure reimbursement or replacement for loss or damage to property through negligence of the vendor or its agents. Vendor's liability for damage to County property shall not exceed the lesser of (a) the actual cost to repair such property damage; or (b) Three Hundred Fifty Thousand Dollars (\$350,000).

19. INSURANCE REQUIRED

Insurance shall be provided by vendor pursuant to the provisions of Article 23 of the Selling Policy.

**SPECIFICATIONS
SOLE SOURCE SOLICITATION
#SS555325/KM**

TURBLEX BLOWER MODEL KA22SV-GL225 OEM PARTS & SERVICE, TERM CONTRACT

PURPOSE AND INTENT

The sole purpose and intent of this sole source solicitation is to secure a firm, fixed hourly rate, and a single fixed percentage discount applicable to spare parts from the current MSRP, and establish a term contract for OEM parts & service on an as needed basis for Turblex Blower Model KA22SV-GL225, Serial #'s 3756 & 3757 used within the Water Utilities Department.

GENERAL

The single fixed percentage discount offered shall apply to all spare parts within the price list.

Parts for service or the purchase of parts ONLY shall be billed at the single fixed percentage discount as indicated on the Response page.

The same percentage of discount shall apply for both delivered items and items picked up by authorized County personnel at vendor's place of business.

Vendor is cautioned to calculate their discount percentage carefully. Separate shipping charges are not allowed under this contract, and shall be taken into consideration when offering your percentage discount.

No overtime shall be paid under this contract.

VENDOR'S RESPONSIBILITIES

Vendor shall provide service for equipment on-site during normal working hours, Monday through Friday, 7:00 a.m. to 5:00 p.m.

All services shall be in accordance with Manufacturer's requirements / specifications and all applicable laws governing the performance of the services.

Vendor shall provide the designated Water Utilities representative with a written estimate containing a scope of work, estimated number of hours to complete work, list of necessary parts with pricing, and an estimated time of completion for each job.

Vendor shall obtain written approval prior to commencement of work.

Vendor shall coordinate scheduling of work with the designated Water Utilities representative.

Vendor shall provide all labor, tools, parts, materials and accessories necessary to complete repairs.

Vendor shall be required to supply OEM replacement parts or the manufacturers approved equal.

COUNTY'S RESPONSIBILITIES

County shall provide access to work area and equipment.

DEFINITIONS

Standard Rate: Hourly rate, per man, for actual time worked between the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday, excluding Palm Beach County recognized holidays.

Travel Time: Hourly rate for actual time to and from job site.

Expenses: Itemized at actual cost.
(Food, Board, etc.)

**SOLE SOURCE RESPONSE PAGE
SOLICITATION #SS555325/KM**

TURBLEX BLOWER MODEL KA22SV-GL225 OEM PARTS & SERVICE, TERM CONTRACT

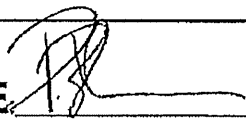
ITEM	DESCRIPTION	UNIT	HOURLY RATE
1.	STANDARD HOURLY RATE FOR SERVICE ON-SITE AS SPECIFIED HEREIN	HR	\$ <u>164.00</u> /hr
2.	HOURLY RATE FOR TRAVEL TIME	HR	\$ <u>164.00</u> /hr

ITEM	DESCRIPTION	SINGLE FIXED PERCENTAGE DISCOUNT FROM CURRENT MSRP
3.	TURBLEX BLOWER MODEL KA22SV-GL225 OEM PARTS	<u>0</u> %

Acknowledge Criminal History Records Check requirement, per Term & Condition #7? YES/INITIAL _____

Acknowledge Insurance requirements, per Term and Condition #19? YES/INITIAL _____

Acknowledge Non-Discrimination Policy Form is included as specified herein? YES/INITIAL _____

<p>* PLEASE AFFIX SIGNATURE WHERE INDICATED</p> <p>By signature on this document, vendor acknowledges and agrees that its offer includes and accepts all terms, conditions, and specifications of the County's solicitation, without exception, change or alteration of any kind, except as may have been amended by the County prior to the due date of this solicitation.</p>		
<p>FIRM NAME: (Enter the entire legal name of the bidding entity) Siemens Demag Delaval Turbomachinery, Inc.</p>		<p>DATE:</p>
<p>* SIGNATURE </p>	<p>PRINT NAME: <u>Paul A. Miller</u> PRINT TITLE: <u>CEO</u></p>	
<p>ADDRESS: 840 Nottingham Way _____</p> <p>CITY / STATE: Trenton, NJ _____ ZIP CODE: 08638 _____</p>		
<p>TELEPHONE # (609)890-5500</p> <p>EMERGENCY # () (as required herein)</p> <p>TOLL FREE # ()</p>	<p>E-MAIL: tim.rilter@siemens.com</p> <p>FAX #: ()</p>	
<p>APPLICABLE LICENSE(S) NUMBER # _____ TYPE: _____</p>		
<p>FEDERAL ID # _____</p>		

**NON-DISCRIMINATION POLICY
SOLE SOURCE SOLICITATION #SS555325/KM**

Pursuant to Palm Beach County Resolution R-2014-1421, as may be amended, it is the policy of the Board of County Commissioners of Palm Beach County that Palm Beach County shall not conduct business with nor appropriate any funds for any organization that practices discrimination on the basis of race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity and expression, disability, or genetic information.

All vendors doing business with Palm Beach County are required to submit a copy of its non-discrimination policy which shall be consistent with the policy of Palm Beach County stated above, prior to entering into any contract with Palm Beach County. In the event a vendor does not have a written non-discrimination policy or one that conforms to Palm Beach County's policy, such vendor shall be required to check the applicable statement and sign below affirming it will conform to Palm Beach County's policy.

Check one:

Vendor hereby acknowledges that it **does not** have a written non-discrimination policy or one that conforms to Palm Beach County's policy and Vendor hereby **acknowledges and affirms by signing below** that it will conform to Palm Beach County's non-discrimination policy as provided in Palm Beach County's Resolution R-2014-1421, as may be amended.

OR

Vendor hereby attaches its non-discrimination policy which is consistent with the policy of Palm Beach County.

OR

Vendor hereby attaches its non-discrimination policy which does not conform to the policy of Palm Beach County; however, Vendor hereby **acknowledges and affirms by signing below** that it will conform to Palm Beach County's non-discrimination policy as provided in Palm Beach County's Resolution R-2014-1421, as may be amended.

NOTE:

Vendor's failure to either: (i) have a written or non-written non-discrimination policy in conformance with Palm Beach County's policy set forth above; or (ii) provide Palm Beach County with the information set forth above, will render vendor non-responsive.

Vendor shall notify Palm Beach County in the event it no longer maintains a written or non-written non-discrimination policy that is in conformance with Palm Beach County's policy set forth above. Failure to maintain said non-discrimination policy shall be considered a default of contract.

VENDOR:

Siemens Demag Delaval Turbomachinery, Inc.
Company Name

[Signature]
Signature

Paul J. Keller
Name (type or print)

(CEO)
Title

IN WITNESS WHEREOF, County and Vendor have executed or have caused this Sole Source Solicitation, with the named Exhibits attached, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

ATTEST:
PALM BEACH COUNTY, BY ITS
BOARD OF COUNTY
COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Paulette Burdick, Mayor

(SEAL)

APPROVED AS TO FORM AND TO
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By: _____
County Attorney

By: Jim Stiles
Director of Water Utilities

Siemens Demag Delaval Turbomachinery, Inc.

By: [Signature]

Signed in the presence of:

Joanne D. Fish
Witness
Joanne D. Fish
Print Name

Date: 12/13/16



Siemens Demag Delaval Turbomachinery, Inc.
A Siemens Company
840 Nottingham Way
Trenton, New Jersey, U.S.A. 08638

Selling Policy 1200-Palm
Beach County

(For Sales in the U.S.A.
Excluding the States of Louisiana and Mississippi)

November 1, 2012
Supersedes Selling Policy 1200 dated May 1, 2005

**These Terms and Conditions Govern
the Sale of Equipment and Services**

The terms and conditions set forth in the Siemens Demag Delaval Turbomachinery, Inc. proposal and in this Selling Policy 1200 are the terms and conditions governing the Siemens proposal and any Agreement between the parties for the Equipment and/or Services covered by such proposal. Each proposal is valid for sixty (60) days from the date of the proposal unless extended or withdrawn in writing by Siemens. The issuance of a Purchaser purchase order or any other reasonable manner of acceptance by Purchaser communicated to Siemens during such validity period will form an Agreement based upon the terms and conditions of the Siemens proposal and this Selling Policy 1200.

1. Definitions

Whenever used in this document with initial capitalization, the following definitions shall be applicable:

- A. "ACM" as used herein shall mean Asbestos and Presumed Asbestos Containing Materials.
- B. "Agreement" means the Siemens proposal, this Selling Policy 1200, Purchaser's purchase order, as accepted by Siemens, (excluding any pre-printed terms and conditions on said purchase order and in any attachments to or Purchaser documents referenced in said purchase order) and the applicable Palm Beach County Sole Source Solicitation (as agreed by the Parties) (hereinafter, the "Sole Source Solicitation") or other document evidencing acceptance of the Siemens offer as set forth in the Siemens proposal; or an integrated agreement signed by Siemens and Purchaser, for the Equipment, and/or Services.
- C. "Asbestos" shall have the meaning set forth in United States Code of Federal Regulations Chapter 29, Sections 1926.1101 et seq.
- D. "Equipment" means equipment, components, parts, materials and Software provided by Siemens pursuant to the Agreement.
- E. "Field Installation Services" means the installation by Siemens of Purchaser's Material at the Site.
- F. "Field Repair and Modernization Services" means the repair, modification or modernization work, or some or all of them, performed by Siemens on Purchaser's Material at the Site and for certain activities at a repair facility selected by Siemens.
- G. "Hazardous Material" means any material listed in the "Hazardous Material Table" set forth in 49 CFR 172.101 as amended.
- H. "Maintenance Services" means the disassembly, inspection and reassembly of Purchaser's Material at the Site.
- I. "Nuclear Incident" shall have the meaning set forth in the Atomic Energy Act of 1954, 42 U.S.C. 2011, et seq., as amended.
- J. "Party" means individually either Siemens or Purchaser.
- K. "Parties" means collectively both Siemens and Purchaser.
- L. "Presumed Asbestos Containing Material" shall have the meaning set forth in United States Code of Federal Regulations Chapter 29, Sections 1926.1101 et seq.
- M. "Purchaser" means the entity purchasing Equipment and/or Services, as well as any other owners of the facility where the Equipment or Purchaser's Material is or will be situated.
- N. "Purchaser's Material" means the equipment, materials, components and items of any kind owned by Purchaser or any other owner of the Site for which Services are to be provided or are provided under the Agreement.
- O. "Services" means Shop Repair and Modernization Services, Field Installation Services, Field Repair and Modernization Services, Maintenance Services, and Technical Services; or some or all of them provided by Siemens pursuant to the Agreement.
- P. "Services on Third Party Parts" means Services in connection with Third Party Parts.
- Q. "Shop Repair and Modernization Services" means work performed by Siemens on Purchaser's Material at a Siemens manufacturing plant, a Siemens repair facility or another suitable facility selected by Siemens.
- R. "Siemens" means Siemens Demag Delaval Turbomachinery, Inc. and its affiliated companies and their subsidiaries, successors and assigns, and each of their respective partners, principals, shareholders, directors, officers, employees, and agents.
- S. "Site" means the Purchaser's facility where the Equipment or Purchaser's Material is or will be situated.
- T. "Special Services" means the performance by a Siemens field service representative of diagnostic and operational troubleshooting on Purchaser's Material, both on line and off line. This work may be conducted on Site or by telecommunication.

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U. "Software" means instructions in machine readable form, other than source code, and associated documentation delivered by Siemens to Purchaser in chip, disk and/or tape format.

V. "Subsupplier" means any subcontractor or supplier of any tier who supplies goods and services to Siemens in connection with the obligations of Siemens under the Agreement.

W. "Technical Field Assistance" means the advice and consultation given to Purchaser's personnel by a field service representative of Siemens with respect to:

- (1) installation, inspection, repair and/or maintenance activities performed by others at the Site, and
- (2) any Siemens recommended quality assurance procedures for activities performed at the Site.

Technical Field Assistance does not include management, supervision or regulation of Purchaser's personnel, agents or contractors.

X. "Technical Services" means (i) Technical Field Assistance; (ii) Special Services; (iii) inspection of equipment which has been disassembled by Purchaser or others; (iv) technical evaluation of inspections performed by Siemens, Purchaser or others; (v) technical information provided by Siemens, including data interpretation and reports; (vi) inspections, technical evaluation of inspections, technical analysis of materials and technical recommendations related to Shop Repair and Modernization Services; (vii) advice and consultation given to Purchaser's personnel at the Site or at a Siemens facility by a Siemens engineer or technician; and/or (viii) advice and guidance given to Purchaser by Siemens field engineer(s) regarding methods and procedures for installation, maintenance and/or calibration of the Equipment or Purchaser's Material.

Y. "Third Party Parts" means parts, components, equipment or materials provided by Purchaser under the Agreement or that exist in the Purchaser's Material which were not manufactured or supplied by Siemens or the predecessors of Siemens or which were originally supplied by Siemens or the predecessors of Siemens and subsequently repaired, serviced or otherwise modified or altered by any party not affiliated with Siemens or with a predecessor of Siemens.

2. Scope

Siemens will furnish to Purchaser Equipment, and/or Services as specified in and pursuant to the Agreement.

3. Price Policy

For an Agreement for Equipment supply only, unless otherwise stated in the Siemens proposal, the price does not include disassembly and reassembly of Equipment at the Site.

Prices are firm for (i) Equipment with a scheduled shipment date of sixty (60) weeks or less from Siemens' acceptance of the Purchase Order and (ii) Services which are scheduled to be performed within sixty (60) weeks from Siemens' acceptance of the Purchase Order.

For (i) Equipment with a scheduled shipment date in excess of sixty (60) weeks and (ii) Services scheduled to be completed beyond sixty (60) weeks from Siemens' acceptance of the Purchase Order, the prices are subject to adjustment upward or downward for changes in the specified labor and material indexes in accordance with the provisions of the applicable Siemens Price Adjustment Policy.

4. Terms of Payment

A. Unless otherwise specified, Siemens shall issue invoices in accordance with the schedule set forth in the Siemens proposal. If an invoice schedule is not set forth in the Siemens proposal, Siemens shall issue invoices as the work is completed, but no more often than monthly. In any event, all invoices shall be paid within thirty (30) days after the date of the invoice. Notwithstanding anything to the contrary herein, the provisions of the Local Government Prompt Payment Act, Section 218.70 *et seq.*, Florida Statutes, shall apply to payments made under this Agreement.

B. In any instance where Purchaser is unable to return components to Siemens for fitting or for coordination with other assemblies by the specific date agreed to in the Agreement or where a portion of the work is to be performed by Siemens at a later date, Siemens reserves the right to invoice Purchaser for work performed to date and either ship the components to Purchaser in their existing state or hold the components in storage at Purchaser's risk and expense. That portion of the work which is to be performed by Siemens at a later date will be performed as a Purchaser requested change under Article 18, Changes.

C. If shipments are delayed by Purchaser, affected payments shall become due based on the date Siemens is prepared to make shipment.

D. Any past due amounts shall, without prejudice to the right of Siemens to payment when due, bear interest at a floating rate equivalent to one-twelfth (1/12) of the per annum prime rate charged by JPMorgan Chase Bank, New York, New York, U.S.A., as such prime rate is published on the first banking day following the date payment is due, plus an additional one-half of one percent (0.5%), payable each month or portion thereof that payment is delayed. If payments are not made when due Siemens may, upon fifteen (15) days written notice and at its option, (i) terminate this Agreement (which termination shall be treated as a termination pursuant to Article 11, Termination) or (ii) suspend all further work hereunder. Resumption of work thereafter is contingent upon correction of the payments deficiency by Purchaser. The schedule for the resumed work will be established by Siemens based on its then current work load and the availability of other resources. All Siemens expenses associated with any such suspension shall be for the account of Purchaser.

E. If there exists a good faith dispute over the amounts to be paid, Purchaser shall notify Siemens in writing that such dispute exists and Purchaser shall pay the undisputed amount. The disputed portion may be held in abeyance until resolution of the dispute with that portion, together with the interest charge specified in Paragraph D above, due thirty (30) days after said resolution.

F. Unless otherwise set forth in the Siemens proposal, if shipment (from the manufacturing plant or repair facility where the work is performed) and/or Delivery of an item of the Equipment or completion of a portion of the Services is delayed for causes which are within the reasonable control of Siemens, issuance of the invoice covering the final five percent (5%) payment for the delayed work will be deferred for twice the number of months by which shipment/Delivery of such item of the Equipment or completion of such portion such Services is delayed; provided, however, that such deferral of the final invoice shall only be applicable if the delay in shipment and/or Delivery of the Equipment or the delay in completion of the Services has actually delayed the Purchaser's project for which the Equipment and/or Services were purchased.

G. THE REMEDIES OF PURCHASER SET FORTH ABOVE AND/OR IN THE SIEMENS PROPOSAL FOR DELAY IN SHIPMENT/DELIVERY OR COMPLETION OF SERVICES CAUSED BY SIEMENS ARE PURCHASER'S SOLE AND EXCLUSIVE REMEDIES AND NO OTHER REMEDIES OF

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ANY KIND WHATSOEVER SHALL APPLY. Deferral of the issuance of the final five percent (5%) invoice as set forth above and/or provision of the remedy set forth in the Siemens proposal shall constitute complete fulfillment of all liabilities of Siemens to Purchaser for delay in shipment/Delivery of Equipment or completion of Services whether based in contract, in tort (including negligence and strict liability), or any other theory of recovery.

5. Delivery, Title and Risk of Loss or Damage

A. Unless otherwise stated in the Siemens proposal, delivery of each component of Equipment shall be made Delivered at Place (DAP Incoterms 2010) at the Site ("Delivery"). Subject to the provisions of Paragraph B below, legal and equitable title and risk of loss or damage to each such component of the Equipment shall pass from Siemens to Purchaser upon Delivery.

B. Title to and right of possession of any Software licensed hereunder, without legal process, shall remain with Siemens or its licensor, except that Purchaser shall have the right of possession and use of the Software provided hereunder for the terms of the corresponding license provided herein, so long as no breach of this Agreement has been made by Purchaser and all payments due Siemens have been paid. Nothing in this Agreement shall be construed as giving Purchaser any right to sell, assign, lease or in any other manner transfer or encumber Siemens' or its licensor's ownership of the Software, or as limiting Siemens or its licensor from using and licensing the Software to any third party.

C. Purchaser's Material sent to Siemens for Shop Repair and Modernization Services or Purchaser's Material or Equipment being returned pursuant to the provisions of the Warranty or Patents Articles of the Agreement will be delivered by Purchaser at its expense to the repair or manufacturing plant designated by Siemens where the work is to be performed. Title to such Equipment or Purchaser's Material will remain at all times with Purchaser. Risk of loss or damage to such Equipment or Purchaser's Material will transfer to Siemens upon its arrival on board the carrier at the repair or manufacturing plant and will transfer back to Purchaser upon Delivery to the Site. When repair work is performed by Siemens at the Site, title and risk of loss or damage to the Equipment, to Purchaser's Material and to other property shall remain at all times with Purchaser. Title to any defective or nonconforming components of the Equipment that are replaced by Siemens, as part of its warranty obligations shall, at Siemens' option, revert back to Siemens upon completion of the replacement, with a deemed value of zero.

D. Risk of loss of or damage to Purchaser's Material or other property located at the Site shall remain with Purchaser at all times during the performance of work hereunder. If Purchaser procures or has procured property damage insurance applicable to occurrences at the Site, Purchaser shall obtain a waiver by the insurers of all subrogation rights against Siemens and its Subsuppliers.

6. Transportation

A. Transportation and Storage: When items of Equipment are ready for shipment or Shop Repair and Modernization Services are completed on Purchaser's Material, Siemens will notify Purchaser to arrange for shipment. If Siemens has agreed in the Siemens proposal to transport Equipment, when items of Equipment are ready for shipment or Shop Repair and Modernization Services is completed on Purchaser's Material, Siemens will (i) in the absence of shipping instructions, inform Purchaser of pending shipment and Purchaser will thereafter promptly give shipping instructions to Siemens; (ii) determine the method of transportation and the routing of the shipment and (iii) ship the Equipment or Purchaser's Material freight prepaid and included in the price by Normal Carriage:

- (1) to Purchaser's designated destination when shipped by highway transport, or
- (2) to the nearest suitable rail siding to Purchaser's designated destination when shipped by rail transport.

In the event that Purchaser fails to provide Siemens with timely shipping instructions, Siemens will ship the Equipment or Purchaser's Material by Normal Carriage to Purchaser or to a suitable storage location selected by Siemens.

If the Equipment and/or Purchaser's Material is to be placed into storage in accordance with the above, delivery of the Equipment or Purchaser's Material shall be deemed to have occurred for all purposes under the Agreement, including any payment due upon delivery, at the time the Equipment or Purchaser's Material is placed on board the carrier for shipment to the storage location. If the Equipment and/or Purchaser's Material is to be stored in the facility where manufactured, or where Shop Repair and Modernization Services are performed, delivery shall be deemed to have occurred when the Equipment and/or Purchaser's Material is placed into the storage location at such facility.

In the event of storage pursuant to the preceding Paragraph, all expenses thereby incurred by Siemens, such as preparation for and placement into storage, handling, freight, storage, inspection, preservation, taxes and insurance, shall be payable by Purchaser upon receipt of an invoice(s) from Siemens. When conditions permit and upon payment to Siemens of any additional amounts due hereunder, Purchaser shall arrange, at its expense, for removing the Equipment and/or Purchaser's Material from storage.

B. Normal Carriage: When Siemens is providing the transportation of the Equipment and/or Purchaser's Material, Siemens shall make every reasonable effort to ship by highway transport unless rail transport is required. Normal Carriage means carriage either by highway transport (provided this does not necessitate use of specialized riggers trailers) or by rail transport, on normal routing from the repair facility or manufacturing plant to (i) Purchaser's designated destination when shipped by highway transport or (ii) the nearest accessible suitable rail siding to Purchaser's designated destination when shipped by rail transport or (iii) the port of export selected by Siemens in the forty-eight (48) continental United States if Purchaser's designated destination is outside the United States or is in Alaska or Hawaii.

C. Special Transportation and Services: Purchaser agrees to pay or to reimburse Siemens for any transportation charges in excess of regular charges for Normal Carriage, including, but not limited to, excess charges for special routing, special trains, specialized riggers trailers, lighterage, barging and air transport.

Purchaser also agrees to pay or to reimburse Siemens for any cost incurred or charge resulting from special services performed in connection with the transportation of the Equipment or Purchaser's Material, including, but not limited to, the construction and repair of transportation and handling facilities, bridges and roadways, of whatever kind and wherever located.

7. Warranty

A. Equipment Warranty and Exclusive Remedy (excluding Software): Siemens warrants that each component of the Equipment (excluding Software and consumables) furnished to Purchaser will be free of defects in workmanship and materials until the earlier of eighteen (18) months after the Delivery and acceptance (in accordance with General Condition 4.A – "Delivery and Acceptance" of the Sole Source Solicitation) of such component of the Equipment or one (1) year from the date of first use of such component of the Equipment (the "Equipment Warranty Period").

CONFIDENTIAL

If during the Equipment Warranty Period (or the Warranty Repair Warranty Period per Section 7.H, if applicable), Siemens is promptly notified in writing that the Equipment or any component thereof fails to conform to the Equipment Warranty, Siemens will at its option and expense correct such nonconformity by repair or replacement.

B. **Software Warranty and Exclusive Remedy:** If Equipment includes Software, Siemens also warrants that the Software will be free of errors which materially affect its utility until the earlier of eighteen (18) months after the Delivery of such Software or one (1) year from the date of first use of the Software (the "Software Warranty Period").

If during the Software Warranty Period (or the Warranty Repair Warranty Period per Section 7.H, if applicable), Siemens is promptly notified in writing that the Software fails to conform to its warranty, Siemens will at its option and expense correct the nonconformity by correction in the medium originally supplied or by providing a procedure to Purchaser for correction of the nonconformity. Third party Software shall be warranted on a pass through basis in the same manner and for the same period and extent provided to Siemens by the entity which supplied said third party software.

C. **Field Installation Services, Field Repair and Modernization Services, Maintenance Services, and/or Shop Repair and Modernization Services Warranty and Exclusive Remedy:** Siemens warrants that the work performed by Siemens on Purchaser's Material, including any materials (excluding consumables) supplied by Siemens in connection therewith (hereinafter in this Paragraph C referred to as the "Work"), will be free of defects in design, workmanship and materials until one (1) year after the completion of such services (the "Field and Shop Repair and Modernization Services Warranty Period").

If during the Field and Shop Repair and Modernization Services Warranty Period (or the Warranty Repair Warranty Period per Section 7.H, if applicable), Siemens is promptly notified in writing that the Work or any part thereof fails to conform to the Field Installation Services, Field Repair and Modernization Services, Maintenance Services, and/or Shop Repair and Modernization Services Warranty, Siemens will at its option and expense correct such nonconformity by repair, replacement or reperformance of the defective portion of the Work. If repair, replacement or reperformance is impracticable, Siemens will refund the amount of the compensation paid to Siemens by Purchaser for such nonconforming portion of the Work.

D. **Technical Services Warranty and Exclusive Remedy:** Siemens warrants for each item of Technical Services that (i) the advice, recommendations and performance of its personnel will reflect competent professional knowledge and judgment and (ii) the technical information, reports and analyses transmitted by Siemens in connection therewith will reflect competent professional knowledge and judgment, beginning with the start of the item of Technical Services and ending one (1) year after completion of said item of Technical Services by Siemens (the "Technical Services Warranty Period").

If during the Technical Services Warranty Period (or the Warranty Repair Warranty Period per Section 7.H, if applicable), Siemens is promptly notified in writing that any portion of the Technical Services fails to conform to the Technical Services Warranty, Siemens will promptly reperform such nonconforming portion of the Technical Services. If reperformance is impracticable Siemens will refund the amount of the compensation paid to Siemens for such nonconforming portion of the Technical Services.

E. **Title:** Siemens warrants that the Equipment, upon Delivery, shall not be subject to any encumbrances, liens, security interests, or other defects in title. In the event of any failure to conform to this warranty, Siemens, upon prompt written notice of such failure, shall defend the title to the Equipment.

F. **Warranty Conditions:** The warranties and remedies set forth in this Article are conditioned upon:

(1) Purchaser's receipt, handling, storage, installation, testing, operation and maintenance, including tasks incident thereto, of the Equipment, Purchaser's Material or Purchaser's equipment, in accordance with the recommendations of Siemens to the extent applicable or, in the absence of such recommendations or to the extent not applicable, in accordance with the generally accepted practices of the industry. In addition, such Equipment, Purchaser's Material or Purchaser's equipment shall not have been operated in excess of limitations specified in writing by Siemens and not have been subjected to accident, alteration, abuse or misuse; and

(2) For all warranty work, Purchaser shall provide access to any operating and maintenance data as requested by Siemens, which may include broadband connection.

(3) For all warranty work where disassembly, removal, replacement and reinstallation of Equipment, materials, structures or Purchaser's Material was not part of the Siemens scope of work under the Agreement, Purchaser providing, without cost to Siemens, access to the nonconformity by disassembling, removing, replacing and reinstalling any Equipment, materials, structures or Purchaser's Material to the extent necessary to permit Siemens to perform its warranty obligations.

(4) All warranty work being performed on a single-shift straight-time basis, Monday through Friday. In the event Purchaser requests correction of warranty items on an overtime or multiple shift schedule, the premium portion of such overtime or multiple shift shall be to Purchaser's account.

(5) Purchaser, without cost to Siemens, making its Site facilities and personnel (to the extent consistent with personnel job classifications) available to assist Siemens in the performance of its warranty obligations.

(6) Purchaser, with respect to Paragraph 5 above, reimbursing Siemens for all costs incurred in the transportation of personnel and defective, repaired or replacement parts to and from the Site.

(7) Prior to the return of any Equipment or Purchaser's Material to Siemens, the Purchaser must obtain authorization and shipping instructions from Siemens. The Equipment or Purchaser's Material must be returned with complete identification in accordance with instructions furnished by Siemens. In no event will Siemens be responsible for Equipment or Purchaser's Material returned without proper authorization and identification. Siemens reserves the right to reject any unauthorized returns and/or Hazardous Material.

G. For the avoidance of doubt, in the event that physical loss or damage to the Purchaser's property results from the failure of a warranted defective portion of the Equipment or Services to conform to its respective warranty during the applicable warranty period, should Siemens have any liability at all, Siemens' liability shall in no case exceed Siemens' obligation: (a) under Special Condition 18 – "Work Site Safety/Security" of the Sole Source Solicitation; and (b) to perform the warranty remedies specified in Article 7 subsections A, B, C, or D, as applicable, which Siemens would have had to perform if such warranty remedy had been carried out immediately following such failure but prior to the occurrence of the physical loss or damage. Notwithstanding the foregoing, nothing in this Article 7 subsection G shall be construed to release Siemens of its obligation to indemnify Purchaser pursuant to Section 22 of this Selling Policy.

CONFIDENTIAL

H. The warranty period for any Services or Equipment repaired or replaced by Siemens pursuant to this Article 7 shall not exceed the earlier of twelve (12) months after the date of completion of the item of repaired, replaced or reperfomed Equipment or Services or six (6) months after the expiration of the original warranty period (the "Warranty Repair Warranty Period").

I. Additional Conditions Applicable to the Sale of Monitoring Devices: Monitoring devices supplied by Siemens pursuant to the Agreement, such as but not limited to, monitors for generator condition and for steam chemistry, may enable users to better diagnose and control conditions within a turbine generator. While such monitors may permit earlier detection of harmful conditions, Siemens does not warrant or represent that the use of such monitors will prevent failure or detect all harmful conditions in a turbine generator and Purchaser acknowledges the same.

J. Additional Conditions Applicable to Diagnostic and Non-Destructive Examination and Testing: Diagnostic and non-destructive examination and testing techniques employed by Siemens may not detect all of the defects in Purchaser's Material (including indications of cracking) and such failure shall not constitute a breach by Siemens of its warranty obligations. Purchaser acknowledges that Siemens will not be responsible for the consequences of undetected defects including undetected cracks.

K. Additional Conditions Applicable to Technical Field Assistance: Where Siemens furnishes Technical Field Assistance under the Agreement, Purchaser is responsible for (i) the supervision, management, regulation, arbitration and determination of the number of its personnel, agents, or contractors and their work and (ii) the planning, scheduling, management and progress of the work. Unless expressly agreed to in writing by Siemens, under no circumstances shall Siemens provide or be obligated to provide Technical Field Assistance directly or indirectly to any competitor of Siemens or their employees, representatives, or consultants.

L. Exclusivity of Warranties and Remedies: THE WARRANTIES PROVIDED BY SIEMENS AS SET FORTH IN THIS ARTICLE ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER STATUTORY, EXPRESS, OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE). Correction of nonconformities in the manner and for the period of time provided above constitute Siemens' sole and exclusive liability and Purchaser's sole and exclusive remedy for defective or nonconforming Equipment and/or Services whether claims of the Purchaser are based in contract, in tort (including negligence and strict liability), or any other theory of recovery. Notwithstanding the foregoing, nothing in this Article 7 subsection L shall be construed to release Siemens of any obligation to indemnify Purchaser pursuant to Section 22 of this Selling Policy.

8. Taxes

The price paid or to be paid to Siemens under the Agreement does not include any federal, state, or local property, license, privilege, sales, use, excise, value added, gross receipts, or similar taxes (other than federal and state income taxes imposed on Siemens) now or hereafter applicable to, measured by, or imposed upon or with respect to the transaction, the Equipment and Purchaser's Material, its or their sale, their value or their use, or any Services performed in connection therewith. Purchaser agrees to defend, pay, and reimburse Siemens for any such taxes or costs, expenses, claims, liabilities, or losses including without limitations tax liabilities, penalties, and interest as a result of Purchaser's acts or omissions related to such taxes, which Siemens or its Subsuppliers are required to pay or are incurred by Siemens and its Subsuppliers.

9. Reserved.

10. Force Majeure

A. Siemens will not be liable for failure to perform or delay in performance of any obligation resulting from or contributed to by any cause beyond the reasonable control of Siemens or its Subsuppliers or from any act of God; act of civil or military authority; act of war whether declared or undeclared; act (including delay, failure to act or priority) of any governmental authority or Purchaser; act of terrorism or threat thereof; civil disturbance, rebellion, insurrection, riot or sabotage; fire, inclement weather conditions, earthquake, flood or natural disaster; strike, work stoppage or other labor difficulty; embargo, epidemic or quarantine; railroad car, fuel or energy shortage; major equipment breakdown; delay or accident in shipping or transportation; or failure or delay beyond its reasonable control in obtaining necessary manufacturing facilities, labor, work permits or working visas for Siemens' personnel or its Subsuppliers' personnel, necessary import or export licenses, or materials from usual sources.

B. In the event of a delay in performance excusable under this Article, the date of Delivery or time for performance of the work will be extended by a period of time reasonably necessary to overcome the effect of such delay, and Purchaser will reimburse Siemens for its additional costs and expenses resulting from the delay.

11. Termination

A. Reserved.

B. Purchaser may terminate the Agreement for cause in the event of (i) an act of insolvency or bankruptcy by Siemens; or (ii) a material breach of the Agreement by Siemens, which Siemens fails to commence to cure within thirty (30) days after notice thereof from Purchaser and fails to diligently pursue thereafter. In such event, as Purchaser's sole remedy for such default, Siemens will reimburse Purchaser for its reasonable and verifiable costs to complete the Services or obtain replacement Equipment up to twenty percent (20%) of the price for such item of Equipment or Services under the Agreement. If it is determined that Siemens was not in default or that the default was excusable (e.g., failure due to causes beyond the control of, or without the fault or negligence of, Siemens), the rights and obligations of the Parties shall be those provided in "Termination for Convenience" as in Article 4(f) of the Sole Source Solicitation.

C. In the event of any breach of the Agreement by Purchaser, Siemens shall be entitled to an extension of time to the extent necessitated by the breach and to reimbursement for all costs and expenses incurred by Siemens as a result of such breach. Siemens may terminate the Agreement for cause in the event of a material breach of the Agreement by Purchaser. If Siemens terminates the Agreement pursuant to this Paragraph 11.C, Purchaser shall pay Siemens the Termination Charges (as defined in Paragraph 11.A) within thirty (30) days from the date of the Siemens invoice. Termination Charges under this Section 11 will be either: (a) the applicable termination fee from the termination fee schedule set forth in the Siemens proposal; or (b) in the absence of a termination fee schedule, the portion of the purchase price for the work performed, man hours expended and materials acquired as of the date of termination plus the documented reasonable expenses associated with the termination, including, but not limited to, any additional expense incurred by reason of termination or cancellation of agreements between Siemens and its Subsuppliers, and any applicable cost allocated in contemplation of performance. Siemens will make every reasonable effort to minimize the Termination Charges. The Parties agree that such Termination Charges, including termination fees set forth in the Termination Fee Schedule, are a reasonable determination of the damages that Siemens would incur as a result of such termination and do not constitute a penalty. All Termination Charges shall be due and payable in accordance with Article 4 herein.

CONFIDENTIAL

D. In addition, if at any time during the performance of its work under the Agreement Siemens reasonably determines that the Purchaser's financial condition may render it insolvent or unable to make future payments under the Agreement, then Siemens shall be entitled to one or more of the following at Siemens' option: (i) adequate written assurances, supported by documentation, of Purchaser's ability to pay; (ii) payment in advance for any further work; (iii) future payments against an irrevocable Letter of Credit on terms, and from an issuing bank, acceptable to Siemens; (iv) other payment security or credit support mutually agreed by Purchaser and Siemens.

12. Intellectual Property Infringement

A. Siemens will, at its own expense, defend or at its option settle any suit or proceeding brought against Purchaser so far as based on an allegation that any Services on Purchaser's Material or the Equipment (including parts thereof), or use thereof for its intended purpose, constitutes an infringement of any United States patent, copyright or misappropriation of a third party's trade secret, so long as Siemens is notified promptly in writing and given authority, information, and assistance in a timely manner for the defense of said suit or proceeding. Siemens will pay the damages and costs awarded in any suit or proceeding so defended. Siemens will not be responsible for any settlement of such suit or proceeding made without its prior written consent. In case the Services on Purchaser's Material or the Equipment, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement of any such United States patent, copyright or misappropriation of a third party's trade secret, or its use by Purchaser is enjoined, Siemens will, at its option and its own expense, either: (a) procure for Purchaser the right to continue using said Equipment or Purchaser's Material; (b) replace it with substantially equivalent non-infringing equipment; or (c) modify it so it becomes non-infringing.

B. Siemens will have no duty or obligation to Purchaser under this Article to the extent that the Services on Purchaser's Material or Equipment is (a) supplied according to Purchaser's design or instructions wherein compliance therewith has caused Siemens to deviate from its normal course of performance, (b) modified by Purchaser or its contractors after delivery by Siemens, or (c) combined by Purchaser or its contractors with items not furnished hereunder and by reason of said design, instruction, modification, or combination a suit is brought against Purchaser. In addition, if by reason of such design, instruction, modification or combination, a suit or proceeding is brought against Siemens, Purchaser shall protect Siemens in the same manner and to the same extent that Siemens has agreed to protect Purchaser under the provisions of Paragraph 12.A above.

C. THIS ARTICLE IS AN EXCLUSIVE STATEMENT OF ALL THE DUTIES OF THE PARTIES RELATING TO PATENTS, COPYRIGHTS OR TRADE SECRETS AND DIRECT OR CONTRIBUTORY INFRINGEMENT THEREOF AND OF ALL THE REMEDIES OF PURCHASER RELATING TO ANY CLAIMS, SUITS, OR PROCEEDINGS INVOLVING PATENTS, COPYRIGHTS OR TRADE SECRETS. Compliance with this Article as provided herein shall constitute fulfillment of all liabilities of the parties under the Agreement with respect to patents, copyrights or trade secrets.

13. Confidential Information

A. Siemens may have a proprietary interest in information that is furnished pursuant to or in connection with the Agreement. Purchaser will keep in confidence and will not disclose any such information, or any of Siemens' intellectual property (including, but not limited to, any patents, copyrights or trade secrets), which is specifically designated as being confidential by Siemens or use any such information for other than the purpose for which it is supplied without the prior written permission of Siemens. The provisions of this Paragraph shall not apply to information, notwithstanding any confidential designation thereof, which is known to Purchaser without any restriction as to disclosure or use at the time it is furnished, which is or becomes generally available to the public without breach of any confidentiality obligation of Purchaser, or which is received from a third party, including Purchaser's subsidiaries or affiliates, without limitation or restriction on said third party or Purchaser at the time of disclosure.

B. Siemens also has a proprietary interest in (i) its proposal and the Agreement and (ii) the processes and procedures used by its personnel in performance of the Agreement. Accordingly, the quotation, the Agreement and such processes and procedures shall not be disclosed or viewed in whole or in part by third parties without the prior written permission of Siemens.

C. Siemens also has a proprietary interest in the manner of performance of the work, including but not limited to the know-how, processes, methods and techniques employed by Siemens in connection therewith. The observing or recording of the work 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, any and all copies of any such recording(s) shall be turned over to Siemens for destruction by Siemens. Siemens may (in addition to any other legal or equitable rights and remedies) stop the work 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) Purchaser will reimburse Siemens for Siemens' and its Sub-suppliers' additional costs and expenses resulting from such delay, including but not limited to any for demobilization or remobilization.

D. Without limiting its obligations pursuant to paragraphs 13.A and 13.B above, Purchaser agrees not to reverse engineer, modify, improve, or make derivative works of Siemens' confidential information or intellectual property. Purchaser further agrees not to seek any intellectual property rights directly or indirectly based in whole or part on Siemens' confidential information or intellectual property without Siemens' prior written consent. Purchaser further agrees that if it obtains any such intellectual property rights, it has acted or will act as an agent for the benefit of Siemens for the limited purpose of obtaining and securing such intellectual property rights and will upon written direction from Siemens assign the same to Siemens.

E. Purchaser shall indemnify and hold Siemens harmless from and against any loss, damage or liability arising or resulting from non-compliance with the provisions of this Article 13.

F. When required by appropriate governmental authority, including governmental regulations, applicable law or regulation, by order of a court of competent jurisdiction or lawful subpoena (hereinafter collectively referred to as "Governmental Authority"), Purchaser may disclose such confidential information pursuant to such Governmental Authority; provided, however, that prior to making any such disclosure, Purchaser will: (a) provide Siemens with timely advance written notice of the proprietary information requested pursuant to such Governmental Authority and Purchaser's intent to so disclose; (b) minimize the amount of proprietary information to be provided consonant with the interests of Siemens and its Subsuppliers and the requirements of the Governmental Authority involved; and (c) make every reasonable effort (which shall include participation by Siemens in discussions with the Governmental Authority involved) to secure confidential treatment and minimization of the proprietary information to be provided. In the event that efforts to secure confidential treatment are unsuccessful, Siemens shall have the prior right to revise such information to minimize the disclosure of such information in a manner consonant with its interests and the requirements of the Governmental Authority involved.

14. Limitation of Liability

A. PURCHASER EXPRESSLY AGREES THAT NEITHER SIEMENS NOR ITS SUBSUPPLIERS WILL UNDER ANY CIRCUMSTANCES BE LIABLE UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE AND STRICT LIABILITY), UNDER WARRANTY, OR OTHERWISE, FOR: ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE OR PUNITIVE DAMAGES WHATSOEVER; DAMAGE TO OR LOSS OF ANY PROPERTY OR EQUIPMENT; LOSS OF PROFITS OR REVENUE OR LOSS OF USE THEREOF; LOSS OF USE OF PURCHASER'S MATERIAL, EQUIPMENT OR POWER SYSTEM; LOSS OF DATA; INCREASED COSTS OF ANY KIND, INCLUDING BUT NOT LIMITED TO CAPITAL COST, FUEL COST AND COST OF PURCHASED OR REPLACEMENT POWER; OR ANY CLAIMS OF CUSTOMERS OF PURCHASER.

CONFIDENTIAL

B. PURCHASER EXPRESSLY AGREES THAT THE REMEDIES PROVIDED IN THE AGREEMENT ARE EXCLUSIVE, AND THAT UNDER NO CIRCUMSTANCES SHALL THE TOTAL AGGREGATE LIABILITY OF SIEMENS OR ITS SUBSUPPLIERS UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), UNDER WARRANTY, OR OTHERWISE, EXCEED THE TOTAL PRICE PAID TO SIEMENS UNDER THE APPLICABLE PURCHASE ORDER. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT BE APPLICABLE TO SIEMENS' INDEMNIFICATION OBLIGATIONS PURSUANT TO ARTICLE 22 OF THIS AGREEMENT.

C. ALL LIABILITY OF SIEMENS AND ITS SUBSUPPLIERS UNDER THIS AGREEMENT SHALL TERMINATE NO LATER THAN THE EXPIRATION OF THE WARRANTY PERIOD.

D. THE PROVISIONS OF THIS ARTICLE SHALL PREVAIL OVER ANY CONFLICTING OR INCONSISTENT PROVISIONS SET FORTH ELSEWHERE IN THIS AGREEMENT.

15. Transfer; Ownership and Export Compliance

A. Prior to the transfer to another party of any Equipment, Purchaser's Material, work product furnished hereunder by Siemens' or its Subsuppliers, or the transfer of any interest in said Equipment, Purchaser's Material or work product, or the facility in which or the site on which said Equipment, Purchaser's Material or work product is or will be installed or furnished, Purchaser shall obtain for Siemens written assurances from the transferee of limitation of and protection against liability following the proposed transfer at least equivalent to that afforded Siemens and its Subsuppliers under the Agreement.

B. If Purchaser is not the sole owner of the Equipment, Purchaser's Material, work product furnished hereunder by Siemens or its Subsuppliers, or the facility in which or the site on which the Equipment, Purchaser's Material or work product is or will be installed or furnished, Purchaser represents and warrants that it has (and will maintain) written assurances from each and every other owner of limitation of and protection against liability of Siemens and its Subsuppliers with respect to each and every such other owner at least equivalent to that afforded Siemens and its Subsuppliers under the Agreement.

C. Transfer contrary to the provisions of paragraph 15.A. above or in breach of paragraph 15.B. above, shall make Purchaser the indemnitor of Siemens and its Subsuppliers against any liabilities incurred by Siemens and its Subsuppliers in excess of those that would have been incurred had no such transfer or breach, as the case may be, taken place.

D. Purchaser acknowledges that Siemens is required to comply with applicable export laws and regulations relating to the sale, exportation, transfer, assignment, disposal and usage of the Equipment and/or Services provided under the Agreement, including any export license requirements. Purchaser agrees that such Equipment and/or Services shall not at any time directly or indirectly be used, exported, sold, transferred, assigned or otherwise disposed of in a manner which will result in non-compliance with such applicable export laws and regulations. It shall be a condition of the continuing performance by Siemens of its obligations hereunder that compliance with such export laws and regulations be maintained at all times. PURCHASER AGREES TO INDEMNIFY AND HOLD SIEMENS HARMLESS FROM ANY AND ALL COSTS, LIABILITIES, PENALTIES, SANCTIONS AND FINES RELATED TO NON-COMPLIANCE WITH APPLICABLE EXPORT LAWS AND REGULATIONS."

16. Software License

Siemens grants to Purchaser a nonexclusive, nontransferable license to utilize the Siemens Software furnished hereunder solely for Purchaser's internal use in connection with the Siemens equipment for which it is supplied or in which such Software is incorporated. All title and ownership of the Siemens Software, including, without limitation, the copyright to such Software, shall remain exclusively with Siemens. Purchaser may make one backup copy of the Software for the sole purpose of replacement of a worn, impaired, damaged, or destroyed original copy. Purchaser shall not itself, or with the assistance of others, reverse compile, reverse engineer, or in any other manner attempt to decipher in whole or in part the logic or coherence of any Software licensed hereunder. Third party Software provided by Siemens may be subject to a separate license agreement and /or registration requirements and limitations on copying and use.

17. Compliance with Laws

In the performance of work under the Agreement, Siemens and its Subsuppliers shall comply with all applicable provisions of Executive Order 11246, as amended, relating to equal opportunity and non-segregated facilities, the Fair Labor Standards Act of 1933 and the Occupational Safety and Health Act of 1970. The price for the work is based on compliance by Siemens with applicable laws, regulations and technical codes and standards as they are in effect on the date of the Siemens proposal (or the effective date of the Agreement if no proposal was provided).

18. Changes

A. Purchaser may request changes within the scope of the Agreement and, if accepted by Siemens, the price, performance, schedule and other pertinent provisions of the Agreement will be adjusted by mutual agreement of the parties prior to implementation of the change.

B. Expenses incurred by Siemens due to (i) delays, other than delays which are deemed to be within the reasonable control of Siemens, and (ii) changes in applicable laws, regulations and technical codes and standards or the imposition of new laws, regulations and/or technical codes and standards after the applicable date set forth in Article 17 will be treated as changes to the scope of work and the Agreement will be adjusted as set forth in the previous Paragraph.

C. Siemens may make a change(s) in the Equipment, Services on Purchaser's Material or the other Services without additional compensation from Purchaser if such change(s) does not adversely affect the warranties, the interface with Purchaser's equipment, materials and plant, the technical soundness of the work, the operability of the facility where the Equipment or Purchaser's Material is installed or for which Siemens is providing Services under the Agreement, or the schedule.

19. Inspection by Purchaser

Purchaser shall have reasonable access to the areas of the Siemens plants where work under the Agreement is being performed to enable Purchaser to observe tests on the work. Siemens, if requested, will inform the Purchaser of those tests and procedures which can be witnessed. Should Purchaser elect to witness specific tests, Purchaser must so specify such requirement in ample time to permit Siemens to include said witness tests in the schedule. Siemens, if requested, will advise Purchaser of the schedule of such tests. However, no rescheduling of tests or delays in manufacturing or shipment will be made to accommodate such inspection. Siemens will exercise reasonable efforts to secure similar rights with respect to the inspection of Purchaser's work at Subsupplier's premises.

20. Removal of Hazardous Material

Prior to the shipment of any Equipment or Purchaser's Material to Siemens for Services at Siemens' or its Subsuppliers' manufacturing plant or repair facility, the Purchaser must remove all Hazardous Material and ACM.

CONFIDENTIAL

21. Purchaser's Third Party Parts Warranty

Purchaser 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.

Purchaser assumes the entire liability and risk arising out of or resulting from Third Party Parts and Services on Third Party Parts. Siemens' warranties set forth in Article 7 do not apply to any Third Party Parts or Services on Third Party Parts, and SIEMENS DISCLAIMS ANY AND ALL WARRANTIES AND REMEDIES, WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE), OR OTHERWISE, FOR OR WITH RESPECT TO THIRD PARTY PARTS OR SERVICES ON THIRD PARTY PARTS.

22. Indemnity

Until the expiration of the applicable Warranty Period, Siemens shall indemnify, hold harmless and defend Purchaser its officers, directors and employees from and against any claims, demands, suits, liabilities, judgments, losses, damages, costs or expenses (including reasonable legal fees, costs and charges) for personal injury or death or loss of or damage to third party property (except property of customers of Purchaser or property incorporated in or intended to be incorporated in the project), to the extent caused by or arising out of any negligent act or omission or willful misconduct of Siemens, or any of its officers, directors, agents, employees or Subsuppliers in connection with performance of work under the Agreement ("Purchaser Indemnity Claim"). Siemens' indemnification obligations under this Section 22 are conditioned upon Purchaser providing Siemens with: (i) prompt notice of any Purchaser Indemnity Claim; (ii) the unrestricted right to defend any Purchaser Indemnity Claim; and (iii) full cooperation and support in the investigation, defense and/or settlement of the Purchaser Indemnity Claim.

Until the expiration of the applicable Warranty Period, and subject to the limitation established in section 768.28, Florida Statutes, Purchaser shall indemnify, hold harmless and defend Siemens its officers, directors and employees from and against any claims, demands, suits, liabilities, judgments, losses, damages, costs or expenses (including reasonable legal fees, costs and charges) for personal injury or death or loss of or damage to third party property to the extent caused by or arising out of any negligent act or omission or willful misconduct of Purchaser, or any of its officers, directors, agents, employees or subcontractors in connection with performance of work under the Agreement ("Siemens Indemnity Claim"). Purchaser's indemnification obligations under this Section 22 are conditioned upon Siemens providing Purchaser with: (i) prompt notice of any Siemens Indemnity Claim; (ii) the unrestricted right to defend any Siemens Indemnity Claim; and (iii) full cooperation and support in the investigation, defense and/or settlement of the Siemens Indemnity Claim.

23. Siemens Insurance

In connection with the Agreement, Siemens shall maintain insurance (or self insurance) as specified below:

A. **Worker's Compensation:** Siemens shall comply with workers compensation laws (or equivalent) in each jurisdiction where work is performed, and shall maintain a Workers Compensation and Employers Liability insurance policy. If any work is to be performed on or near navigable waters, the policy shall include coverage for United States Longshoreman's and Harbor Worker's Act, Death on the High Seas Act, Jones Act, or their equivalent as required by the applicable law in the jurisdiction where such work is performed. The limits of such insurance shall be as follows:

Worker's Compensation: Statutory

Employer's Liability: \$1,000,000 each accident and in the aggregate
\$1,000,000 disease each employee

B. **Commercial General Liability:** Siemens shall maintain commercial general liability insurance on an occurrence basis to provide coverage for: Bodily Injury; Personal Injury, Property Damage, Explosion, Collapse and Underground hazards (XCU); Contractual Liability (particularly applicable to the provisions of the Indemnity Article of this Agreement); and Products and Completed Operations with limits as follows:

\$1,000,000 each occurrence and in the aggregate

C. **Business Automobile Liability:** Siemens shall maintain business automobile liability insurance which shall include coverage for all owned, non-owned and hired vehicles with the following limit:

\$1,000,000 Combined Single Limit

D. **Umbrella Liability:** Siemens shall maintain umbrella liability insurance with a limit of \$2,000,000 each occurrence and in the aggregate. The policy shall be excess over the Commercial General Liability, Business Automobile Liability, and Employer's Liability coverages.

E. The coverages set forth in B, C and D above shall include Purchaser as additional insured to the extent that bodily injury, death and third party property damage are caused by the negligent acts or omissions of Siemens or its Subsuppliers.

24. Purchaser's Insurance

Without waiving the right to sovereign immunity as provided by Florida Statute, Chapter 768.28, Purchaser acknowledges to be self-insured for General Liability and Automobile Liability under Florida's sovereign immunity statute with monetary waiver limits of \$200,000 Per Person and \$300,000 Per Occurrence; or such limits that may change and be set forth by the legislature.

Purchaser acknowledges to be self-insured for Worker's Compensation & Employer's Liability insurance in accordance with Florida Statute, Chapter 440.

When requested, Purchaser agrees to provide a Certificate of Insurance evidencing self-insurance and/or sovereign immunity status, which Siemens agrees to recognize as acceptable for the above mentioned coverages.

25. Miscellaneous Provisions

A. **Shipment Dates:** Shipment dates are the dates the Equipment or Purchaser's Material will be ready for shipment from the manufacturing plant, Siemens repair facility or other facility where the Services are performed and are predicated on the prompt receipt by Siemens from Purchaser of all in-

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formation necessary to commence and complete the work without delay or interruption. Unless otherwise stated in a Purchase Order, shipment dates are not guaranteed. Should Purchaser request Siemens to ship any Equipment or Purchaser's Material prior to a date established based on Siemens standard lead time for such Equipment or Purchaser's Material, and provided Siemens accepts in writing the earlier date, an additional fee will be applied to cover the costs associated with such expedited shipment.

B. **Waivers:** The failure of either Party to enforce at any time any of the provisions of the Agreement or to require at any time performance by the other Party of any of such provisions, shall in no way be construed to be a waiver of such provision, nor in any way to affect the validity of the Agreement or any parts thereof, or the right of either Party thereafter to enforce each and every provision.

C. **Modification:** No waiver, modification, or amendment of any of the provisions of the Agreement shall be binding unless it is in writing and signed by duly authorized representatives of both parties.

D. **Headings:** The headings used in the Agreement are not to be construed as modifying, limiting or expanding in any way the scope or extent of the provisions in the Agreement.

E. **Assignment:** Except for assignment by Siemens to an affiliate of Siemens, the Agreement will not be assigned by either Party without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any purported assignment without such prior written consent shall be null and void.

F. **Governing Law:** The Agreement will be construed and interpreted in accordance with the laws of the State of Florida without application of its choice of law or conflict of law rules.

G. **Personnel:** Siemens reserves the right to change any of its personnel performing Services under the Agreement. In such event, Siemens will provide replacement personnel of equivalent capabilities and bear any additional travel and living expense associated with providing such replacement personnel.

H. **Performance Guarantee(s) and Exclusive Remedy:** There are no performance guarantees of the Equipment and/or Services unless specifically set forth in the Siemens proposal. In the event any performance guarantees are provided in the Siemens proposal, Purchaser's sole and exclusive remedy and Siemens' sole and exclusive liability for any failure of the Equipment and/or Services to comply with such performance guarantees under any theory of recovery shall be the liquidated damages specified in such Siemens proposal up to the limit specified therein, which liquidated damages shall only be paid on a "no harm; no foul" basis. The Parties agree that such liquidated are a reasonable determination of the damages that Purchaser would incur as a result of the failure of the Equipment and/or Services to meet the Performance Guarantees and do not constitute a penalty.

I. **Environmental Compliance:** Purchaser recognizes that the performance of Services at the Site may involve the generation of Hazardous Material. Purchaser shall at its expense furnish Siemens with containers for Hazardous Material and shall designate a waste storage facility at the Site where such containers are to be placed by Siemens. Purchaser shall handle, store and dispose of Hazardous Material in accordance with all applicable federal, state and local laws, rules, regulations and ordinances. Purchaser 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 Material which it does not know or have reason to know will be generated in the performance of the Services, and Purchaser shall indemnify and hold Siemens harmless for all pollution and environmental impairment arising from the Purchaser's property, the Equipment or the Services.

J. **Asbestos and Thermal Insulation**

(1) The Purchaser warrants, represents, and certifies that, in any areas which may be accessed by Siemens or its Subsuppliers, 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 the Site:

(a) The Purchaser shall, at Purchaser's expense remove all thermal insulation, sprayed-on surfacing material, and/or ACM, including ACM which may be disturbed during or removal of which is required for the performance of the Services; and

(b) The Purchaser shall ensure that any areas where any activities involving the abatement or removal of thermal insulation, sprayed-on surfacing material or ACM shall be conspicuously identified, posted and isolated, all as required by applicable law.

PURCHASER EXPRESSLY ACKNOWLEDGES AND AGREES THAT SIEMENS IN PERFORMING THE SERVICES AND PERMITTING EMPLOYEES TO ENTER THE WORK AREAS IS RELYING UPON THE COVENANTS, AGREEMENTS, WARRANTIES, CERTIFICATIONS AND REPRESENTATIONS MADE BY PURCHASER ABOVE.

Without limiting its other rights and remedies Siemens shall not be obligated to commence or may stop any work in any Work Areas unless fully satisfied that the Purchaser is in compliance with Paragraph 25.J(1) above and this Paragraph 25.J(2), and shall be entitled to an equitable adjustment in the schedule, price and other provisions of the Agreement affected thereby or otherwise affected by Purchaser's non-compliance.

(3) In no event shall Siemens be obligated to install, disturb, handle, or remove any thermal insulation, sprayed-on surfacing material, or ACM except as specifically agreed in writing by Siemens and only after Siemens has been provided acceptable chemical analyses verifying that the same are not ACM.

(4) Siemens makes no representation that it is licensed to abate ACM. Notwithstanding anything set forth in the Agreement and unless Siemens is provided satisfactory written evidence that such GPW is not ACM, Siemens shall be obligated to handle, remove, or reinstall generator wedges, packing, or high temperature gaskets (such materials herein "GPW") only if such activities are within the scope of the Services and only then to the extent that:

(i) such activities would be classified as Class II or Class III activity under United States Code of Federal Regulations Chapter 29 Section CFR 1926.1101 et seq.;

(ii) such activities do not require a permit, license, or authorization;

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- (iii) such activities are not likely to generate airborne asbestos fibers, and
- (iv) all such GPW is non-friable.

In all other cases, such activities shall be Purchaser's responsibility and Siemens shall be entitled to an equitable adjustment in the schedule, price and other pertinent affected provisions of the Agreement should the same not be performed in a timely manner. The disposal of any GPW or scrap or waste material resulting from its disturbance or removal shall in all cases be the Purchaser's responsibility.

(5) Purchaser shall defend, indemnify and hold Siemens and its Subsuppliers 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 Purchaser's failure to comply with the provisions of this Article 25.J.

K. **Integration:** The Agreement contains the entire agreement and understanding between the parties as to the subject matter of the Agreement, and merges and supersedes all prior or contemporaneous agreements, commitments, representations, writings, and discussions between them. Neither of the parties will be bound by any prior or contemporaneous obligations, conditions, warranties, or representations with respect to the subject matter of the Agreement.

L. **Survival:** The provisions entitled "Intellectual Property," "Additional Conditions Applicable to Nuclear Installations," "Confidential Information," "Limitation of Liability," "Transfer; Ownership and Export Compliance," "Software License," the second Paragraph of "Delivery, Title and Risk of Loss or Damage," and subsection (5) of the provision entitled "Asbestos and Thermal Insulation" shall survive termination, expiration or cancellation of the Agreement.

M. **Site Safety:** Purchaser 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 work. Siemens shall not be obligated to commence or perform work unless Purchaser's site complies with all applicable safety requirements. In the event Purchaser's site safety is non-compliant, Siemens may suspend work until such time as Purchaser corrects the non-compliance. To the extent Siemens incurs additional time and expense as the result of Purchaser's non-compliance, Siemens shall be entitled to an equitable adjustment in the schedule, price and other affected provisions of the Agreement.

N. **Severability:** In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein, unless the deletion of such provision or provisions would result in such a material change so as to cause completion of the transactions contemplated herein to be unreasonable.

26. Limitation on Indemnification by Purchaser.

The following provision shall apply to any obligation of the Purchaser to indemnify Siemens under this Agreement, including, but not limited to, those provisions set forth in Section 12.B, 13.E, 15.D, 22, 25.I, and 25.J.: Purchaser's indemnification obligations under this Agreement shall be in accordance with applicable law, including but not limited to Section 768.28, Florida Statutes (2015)(as may be amended) and the limits set forth therein. Siemens and Purchaser acknowledge and agree that nothing in this Agreement shall be construed as an agreement for the Purchaser to indemnify Siemens for Siemens' negligence, nor as a waiver of sovereign immunity beyond that waiver set forth in Section 768.28, nor as a waiver of any defense set forth in Section 768.28, nor as consent to be sued by third parties.

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