SIEMENS PROJECTS BUSINESS STANDARD TERMS AND CONDITIONS

PREAMBLE

THESE STANDARD TERMS AND CONDITIONS, entered into by and between the entity identified in Siemens' Proposal ("Buyer" or "Customer") and Siemens Canada Limited, a Canadian Corporation, ("Siemens"), are effective as of the Effective Date hereof. These Standard Terms and Conditions incorporate Siemens' Proposal (the "Proposal") and any of Siemens' supplemental terms and conditions (each a "Rider") set forth in Attachment "A," as though Attachment "A" was fully set forth herein.

ARTICLE 1
DEFINITIONS

1.1 Definitions.

As used in this Agreement, the following terms have the meanings set forth below:

"Agreement" has the meaning set forth in Article 19.

"Affiliate" means, as to a specified Person, any other Person that, directly or indirectly, controls or is controlled by or is under common control with the Person in question and, with respect to Siemens or Buyer, is not a competitor of, or in litigation or arbitration with, Siemens or Buyer, as the case may be.

"Applicable Laws" means all applicable laws, including Environmental Laws, treaties, ordinances, rules, regulations and interpretations of any Governmental Authority having jurisdiction over the design, engineering, fabrication, manufacturing, Delivery, assembly, erection, installation, and/or the performance of the Parties' obligations under this Agreement.

"Applicable Permits" means the permits, clearances, licenses, authorizations, consents, filings, exemptions or approvals from or required by any Governmental Authority that are necessary for the performance of the Parties' obligations under this Agreement.

"Asbestos" shall mean and include chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, and any of these minerals that has been chemically treated and/or altered.

"Attachment 'A'" means the business specific terms set forth in Attachment "A" to this Agreement.

"Business Day" means every day other than a Saturday, Sunday or a day on which banks are permitted or required to remain closed in the Territory or Province where the Work is to take place.

"Buyer" means the entity identified in the preamble and signing this Agreement for buyer, including its successors or permitted assigns.

"Buyer Caused Delay" means any delay in Siemens' or its Subcontractors' performance of the Work which is caused by (i) Buyer's or any Buyer Party's failure to timely perform its obligations under this Agreement, or (ii) any other event or cause which is beyond the control or not the responsibility of Siemens or any of its Subcontractors, and is not otherwise a Force Majeure Event.

"Buyer Documents" means all drawings, specifications and other information with respect to the Project and Work to be provided by Buyer in accordance with Buyer's Documents Submission Schedule set forth in Attachment "A."

"Buyer Documents Submission Schedule" means the schedule specified in Attachment "A," identifying the Buyer Documents and the dates by which Buyer shall submit such Buyer Documents to Siemens.

"Buyer Event of Default" has the meaning set forth in Section 14.2.

"Buyer Party" or "Buyer Parties" means Buyer, any Affiliate of Buyer, and any of their respective contractors, subcontractors, employees, laborers, materialmen, agents or representatives which is not a competitor of Siemens.

"Buyer Permits" has the meaning set forth in Section 5.5.

"Contract Price" means the cumulative price payable by Buyer with respect to all Work which Siemens shall perform or provide in connection with this Agreement, as the same is set forth in Section 4.1 of this Agreement.

"Convenience Termination Payment" has the meaning set forth in Section 14.3.

"Default Termination Payment" has the meaning set forth in Section 14.2.

"Delivery," "to Deliver," "Delivering," or "Delivered" means, for each component of any particular Equipment, or initial Spare Parts, being supplied by Siemens to Buyer pursuant to this Agreement, the arrival at the delivery point of such component or to such other location as is mutually agreed by Buyer and Siemens.

"Effective Date" means last date on which this Agreement became fully executed.

"Environmental Laws" means applicable national, [state/provincial], municipal, and local laws as well as all rules, regulations, codes, standards, permits, directives, or ordinances that impose liability or standards of conduct (including disclosure or notification requirements) concerning the protection of human health or the environment, including, without limitation, all laws affecting, controlling, limiting, regulating, pertaining, or relating to the manufacture, possession, presence, use, generation, storage, transportation, detection, monitoring, treatment, Release, disposal, abatement, cleanup, removal, remediation, or handling of Hazardous Materials.

"Equipment" means the installed physical equipment to be provided by Siemens as described in greater detail in the Proposal.

"Final Completion" means that the Work has been completed including all punch list items.

"Final Completion Date" means the date on which Final Completion of Siemens' scope of Work occurs.

"Force Majeure Event" has the meaning set forth in Section 11.2.

"Governmental Authority" means any federal, [state/provincial], local or other governmental, judicial, public or statutory instrumentality, tribunal, agency, authority, body or entity, or any political subdivision thereof, having legal jurisdiction over the matter or Person in question.

"Hazardous Materials" means any material, substance, or waste, that, by reason of its composition or characteristics, is hazardous to human health and/or the environment, including any solid waste or hazardous waste or substance which is regulated by federal or provincial environmental protection laws applicable to the province in which the Project Site is located, as amended, and any other hazardous, toxic or radioactive chemical, waste, byproduct, pollutant, contaminant, compound, product, material or substance, including without limitation, Asbestos, Asbestos containing materials ("ACM"), polychlorinated biphenyls, petroleum (including crude oil or any fraction or byproduct thereof), hydrocarbons, radon, urea, urea formaldehyde, and any other material that is prohibited, controlled, limited or regulated in any manner under any Environmental Laws.

"Import Duties" means any taxes, customs duties, fees, imposts and governmental charges of any kind that are payable upon or in relation to the importation of the components of the Equipment into Canada. Import Duties do not include any property, license, privilege, sales, use, excise, value added, gross receipts (including any business, occupation or similar taxes) and/or transactional taxes now or hereafter applicable to, measured by, or imposed upon or with respect to the transaction, the Equipment, or their sale, their value or their use, or any services (including any Services, as that term may be defined in Attachment "A" (if applicable)) performed in connection therewith imposed by any federal, state or local Governmental Authority in the location where the Work is to be performed.

"Indemnitor" has the meaning set forth in Section 15.1.

"Indemnittee" has the meaning set forth in Section 15.1.

"Intellectual Property Rights" means, with respect to any technology, all related patent rights (including rights in or arising from any pending patent applications), copyrights, rights of use and exploitation in copyrights, neighboring rights, (sui generis) data base rights, inventions, mask works, trade secret rights, trade dress rights, trademark rights, and any other rights analogous to those set forth herein worldwide, and any other proprietary rights relating therein or thereto.

"Lien" means: (a) any mortgage, charge, lien, pledge, hypothecation, title retention arrangement or other security interest, as or in effect as security for the payment of a monetary obligation or the observance of any other obligation; (b) any easement, servitude, restrictive covenant, equity or interest in the nature of an encumbrance, garnishee order, writ of execution, right of set-off, lease, license to use or occupy, or assignment of income; or (c) any agreement to create any of the foregoing or allow any of the foregoing to exist.

"Maintenance Service" shall mean the scheduled and unscheduled maintenance, replacement and repair of components of the Equipment in accordance with the Siemens manuals and revisions thereto, Siemens' technical service bulletins and revisions thereto, and other technical documentation supplied by Siemens to Buyer.

"Notice to Proceed" shall mean the written notice issued by Buyer to Siemens stating that Siemens may begin the Work.

"Outside Notice to Proceed Date" means that date certain identified in the Proposal where Siemens can begin Work and complete the Work in accordance with the Work Schedule.

"Party" or "Parties" means, respectively, Buyer, Siemens or both, as the context requires.

"Patent Cooperation Treaty" means an international patent law treaty, concluded in 1970, that provides a unified procedure for filing patent applications to protect inventions in each of its more than one hundred and forty-five (145) contracting states.

"Person" or "Persons" means any individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, joint venture, government or political subdivision or agency thereof.

"Proposal" means the document that is made part of this Agreement that describes the Work and the pricing applicable to the Project.

"Project" is as identified in the Proposal.

"Project Site" means the particular site designated by Buyer on which the Project shall be located.

"Project Infrastructure" has the meaning specified in Section 5.1.

"Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any Hazardous Materials into the environment, including the abandonment or discard of barrels, containers, and other closed receptacles containing any Hazardous Materials.

"Scope Change" includes where Siemens determines, after receipt of a request for a change, that the change request of Buyer is technically and commercially feasible and requires a change in the scope of Work, Contract Price or the Work Schedule, or (b) Buyer fails to perform its obligations under Article 5 or other provisions of this Agreement and such failure results in increased costs to Siemens or delays Siemens' performance of the Work and/or ability to meet the milestones contained in the Work Schedule, including any guaranteed dates set forth therein, or (c) for any other event set forth in this Agreement for which Siemens has the right to a change in the scope of Work, Contract Price or the Work Schedule; in which case Siemens shall be entitled to a Scope Change Order.

"Scope Change Order" has the meaning set forth in Section 9.2.

"Service and Maintenance Agreement" has the meaning set forth in Section 5.8.

"Siemens**"** means the Siemens entity identified in the preamble and signing this Agreement, including its successors and permitted assigns.

"Siemens Event of Default" has the meaning set forth in Section 14.1.

"Siemens Parties" means Siemens, any Affiliate of Siemens, and any of their respective Subcontractors, employees, laborers, materialmen, agents or representatives, and "Siemens Party" means any of the foregoing.

"Siemens Permits" has the meaning set forth in Section 2.4.

"Spare Parts" means the types and quantities of spare parts for repair of the Work that Buyer is purchasing pursuant to this Agreement.

"Subcontractor(s)" means any Person of any tier supplying material, equipment, labor, goods or services to Siemens in connection with the Work and obligations of Siemens under the Agreement.

"Substantial Completion" or "Substantially Complete" means that the Work, or any identifiable portion thereof, which is sufficiently complete, in accordance with the provisions of this Agreement relating to the Scope of the Work, such that the Buyer will be able to realize from such Work substantially all of the practical benefits intended to be gained therefrom, or otherwise employ the

Work for its intended purpose with only punch list items remaining.

"Termination for Cause" has the meaning set forth in Section 14.1.

"Warranty" or "Warranties" has the meaning set forth in Section 10.1.

"Warranty Period" has the meaning set forth in Section 10.4.

"Work" means Siemens' scope of work with respect to the Equipment, Major Components, Spare Parts and associated Services and other work supplied by or on account of Siemens and its Subcontractors pursuant to its obligations specified in this Agreement and as identified as Siemens' responsibility in the Proposal.

"Work Schedule" means that certain schedule governing Siemens' provision of the Work and Buyer's performance of certain obligations, attached hereto as an exhibit to Attachment "A," as modified and replaced mutually between the Parties.

ARTICLE 2
PERFORMANCE OF THE WORK AND OBLIGATIONS OF SIEMENS

2.1 Work to be Performed by Siemens.

2.1.1 General.
Buyer hereby retains the Smart Infrastructure division of Siemens as an independent contractor, not an agent or employee of Buyer, to perform and provide, or cause to be performed and provided, and Siemens hereby agrees to perform and provide, or cause to be performed or provided, all of the Work specified as being within Siemens' scope of Work, all in accordance with the terms and conditions of this Agreement.

2.1.2 Standard of Care,
The Work shall be conducted in a manner consistent with the degree of care and skill ordinarily exercised by reputable firms performing the same or similar work in the same locale acting under similar circumstances or conditions.

2.1.3 Work Schedule.
Buyer shall issue a Notice to Proceed to Siemens on or prior to the Outside Notice to Proceed Date and Siemens shall conduct the Work in accordance with the Work Schedule set forth in this Agreement.

If at any time prior to issuance of Notice to Proceed, Buyer notifies Siemens in writing that the timing of the Project has changed so that the Work Schedule is no longer accurate, Siemens and Buyer shall negotiate in good faith to undertake a Scope Change Order, amending the Work Schedule and amending the corresponding Outside Notice to Proceed Date, based on the equitable adjustment necessary to overcome any delays and taking into account any prior committed orders that Siemens must fulfill. Any references herein to the Outside Notice to Proceed Date shall be deemed to be the Outside Notice to Proceed Date, as adjusted in accordance with the foregoing. If Buyer has not issued the Notice to Proceed to Siemens by the Outside Notice to Proceed Date, Siemens shall have no obligation to maintain the Work Schedule or abide by any milestone dates set forth therein.

2.2 Scheduling and Monitoring of Milestones.

2.2.1 Generally.
Except to the extent that Siemens is entitled to a Scope Change Order or other relief provided for

in this Agreement, Siemens shall perform its Work in accordance with the Work Schedule. Further, Siemens shall provide periodic reports to Buyer concerning the status of Siemens' activities, including information pertaining to the progress of the Work and any circumstances known at the time of reporting which could be anticipated to cause a material deviation from the Work Schedule.

2.2.2 Timing of Deliveries and Storage.
(a) Siemens may Deliver components of the Equipment up to thirty (30) days earlier than the dates specified therefor on the Work Schedule.

(b) If (i) Buyer requests, in writing, that any component of the Equipment be placed in storage and designates the storage location, or (ii) Buyer fails or is unable to accommodate Delivery of the Equipment at the Project Site, then Siemens shall, following the arrival of the components of such Equipment at the port of import into North America or the completion of the components if the manufacturing/assembly is performed within North America, transport the applicable components of the Equipment to the storage location designated in writing by Buyer, if possible, or to a storage location selected by Siemens if either Buyer has not designated a storage location or transportation to the storage location designated in writing by Buyer is impracticable. Any such storage shall be in accordance with Siemens' maintenance procedures. The Delivery of any components of the Equipment placed into storage in accordance with this provision shall be deemed to have occurred upon arrival onboard carrier of such components of the Equipment into storage. Buyer shall be responsible for all additional costs incurred by Siemens in transporting such components of the Equipment to the storage location, as well as all additional expenses incurred by Siemens as a result of such storage, including, but not limited to, unloading, preparation for and placement into storage, handling, storage costs, inspection, preservation and standstill maintenance (if applicable), taxes, and insurance. Such costs plus ten percent (10%) to cover Siemens' administrative expenses shall be paid by Buyer within thirty (30) days after the date of Siemens' invoice therefor.

(c) Provided that Buyer has timely made each payment when due and provided Siemens at least thirty (30) days prior written notice of its request, Siemens shall arrange for removal of components of the Equipment from the storage location and shall transport such components to the Project Site. Buyer shall be responsible for all costs incurred by Siemens in removing such components of the Equipment from storage and the extra costs of transporting such components of the Equipment to the Project Site. Such costs plus ten percent (10%) to cover Siemens' administrative expenses shall be paid by Buyer within thirty (30) days after the date of Siemens' invoice therefor.

(d) The Work Schedule applicable to any Equipment being held in storage in accordance with Section 2.2.2(b) shall be subject to equitable adjustment in accordance with Article 9. The Work Schedule applicable to any Equipment not placed in storage shall be equitably extended to the extent reasonably required as a result of the storage of the other Equipment.

2.3 Siemens Documents.

Except as otherwise provided in this Agreement, within fifteen (15) days of receipt of any Siemens Document required to be submitted to Buyer for review under this Agreement, Buyer shall notify Siemens of any resulting comments or questions. If Buyer fails to respond within such period, then such drawing or document shall be deemed to have been reviewed and approved by Buyer as submitted. Siemens shall, within fifteen (15) days of Buyer's notification of any comments or questions on any Siemens Document respond to Buyer's comments or questions; provided that Siemens shall not be required to change the design of the Equipment pursuant to such Buyer comments or questions.

2.4 Permits.

Subject to Section 5.5, Siemens shall obtain and maintain the Applicable Permits required to be obtained by Siemens in its name to perform the Work under Applicable Laws (the "Siemens Permits"). If any

Siemens Permit (or application therefor) requires action by Buyer, Buyer shall, upon the request of Siemens, take such action as is reasonably appropriate.

2.5 Siemens' Labor.

Siemens shall be responsible for the conduct and deeds of its labor and its Subcontractor's labor in the performance of the Work under this Agreement. However, Siemens shall not interfere with any members of any police, military or security force in the execution of their duties.

2.6 Safety, Emergencies.

2.6.1 Safety.

Siemens may suspend its performance of the Work at the Project Site, if, in the reasonable opinion of Siemens, based upon industry standards and Siemens' applicable safety programs, conditions at the Project Site for which Siemens is not responsible become unsafe for the continued performance of the Work and such conditions are not rectified by Buyer immediately. Siemens shall resume its performance of the Work promptly after the unsafe conditions are rectified by Buyer. Siemens shall be entitled to a Scope Change Order to compensate Siemens for the increased cost of its performance and/or schedule delay resulting from such suspension of the Work.

2.6.2 Emergencies.

In the event of any emergency endangering persons or property relating to or as a result of the performance of the Work, Siemens and Buyer shall take such action as may be reasonable and necessary to prevent, avoid or reduce the likelihood of injury, damage or loss, and shall, as soon as possible, report any such incidents, including responses thereto, to the other Party

2.7 Hazardous Materials.

The Work does not include, either directly or indirectly, performing or arranging for the detection, monitoring, handling, storage, removal, transportation, disposal, or treatment of Hazardous Materials. Further, Siemens shall not, either itself or through any Siemens Party, bring any Hazardous Materials onto the Project Site or incorporate any Hazardous Material into the Work, other than those Hazardous Materials to be used by Siemens or any Siemens Party in a manner that complies with applicable Environmental Laws. To the extent that the negligent Release of any Hazardous Materials brought onto the Project Site by Siemens or any Siemens Party is caused by Siemens or any Siemens Party while on the Project Site, Siemens shall bear the responsibility and liability for such Release to the extent of its or the Siemens Parties' negligence as set forth herein.

Siemens shall maintain an updated file of the material safety data sheets for all Hazardous Materials either used in connection with performance of Siemens' Work or used by or on behalf of Siemens or any Siemens Party at the Project Site. Siemens shall deliver an update of such file(s) to Buyer as requested in writing by Buyer no more than thirty (30) days after such written request, or more frequently as the Parties may agree in writing.

In the event that Siemens encounters any Hazardous Materials or other hazardous conditions at the Project Site, Siemens shall immediately stop Work in the area affected and report the condition to Buyer. Siemens shall not have any liability arising from pre-existing Hazardous Materials present or howsoever occurring at, on or under the Project Site, or Hazardous Materials that migrate onto or are introduced upon the Project Site by Buyer, any Buyer Party, any contractor of Buyer, or any third party, other than due to the willful misconduct of Siemens or a Siemens Party that directly results in the Release thereof. In no event shall Siemens be required or construed to take title, ownership, or responsibility for such Hazardous Materials. Buyer shall be solely responsible for all such Hazardous Materials and shall comply with applicable Environmental Laws and the terms of Section 5.7 in connection therewith. To the extent that such Hazardous Materials impact Siemens' schedule or cost to complete the Work, Siemens shall be entitled to a Scope Change Order for such impact.

2.8 Clean-up.

As soon as practicable after the achievement of the final milestone for the Project, Siemens shall remove all of its equipment and materials, not constituting deliverables hereunder or part of the Equipment or required for the service and maintenance of the Equipment, from the Project Site and shall, consistent with the provisions of Section 5.7 hereof, collect the waste material and rubbish resulting from the Work for disposal by Buyer.

2.9 Buyer's Right to Inspect; Correction of Defects.

Siemens shall promptly correct any part of the Work that is found during any inspection by Buyer or Buyer's authorized representatives not to be in conformance with the requirements of this Agreement, regardless of the stage of its completion or the time or place of the discovery of such nonconformance, in accordance with, and subject to, the provisions of Article 10.

2.10 No Liens

Except for Buyer's failure to make payments required under this Agreement, including for Scope Changes, to resolve other claims of Siemens within a reasonable time period after learning of such claims, or as permitted pursuant to Section 13.1, Siemens shall not directly or indirectly create, incur, assume or suffer to be created by any Siemens Party any claim, Lien, charge or encumbrance on the Project Site, any Equipment, or any part thereof. Siemens shall promptly pay or discharge, and discharge of record, any such claim, Lien or encumbrance for labor, materials, supplies or other charges which, if unpaid, might be or become a Lien upon the Project Site, any Equipment, or any component thereof. In the event a Subcontractor files a Lien against the Project Site, any Equipment, or any component thereof, Siemens shall, within thirty (30) days of the date of filing thereof, either (i) pay or discharge such claim and have such Lien removed, or (ii) obtain bonds in accordance with Applicable Laws from a reputable surety company sufficient to remove or discharge such claim or Lien. Siemens shall notify Buyer in writing of the assertion of any Lien or encumbrance against the Project Site, any Equipment or any part thereof promptly upon learning of such Lien or encumbrance. Upon the failure of Siemens promptly to pay, discharge, or bond over any Lien or encumbrance as required hereby within thirty (30) days of written notice of the existence thereof from Buyer, Buyer may, but shall not be obligated to, pay, discharge or obtain a bond, or security for such Lien or encumbrance and, upon such payment, discharge, or posting of security therefor, shall be entitled to promptly recover from Siemens the amount thereof together with the actual direct costs incurred by Buyer in connection with such payment or discharge, with such actual direct costs to be substantiated to the reasonable satisfaction of Siemens, or set off such amounts against any sums owed by Buyer pursuant to this Agreement to Siemens.

2.11 Compliance with Real Property Rights.

Siemens shall only be obligated to comply with the real property restrictions specifically identified in this Agreement. In the event that real property rights are identified after the Effective Date hereof and compliance with such real property rights is both technically feasible and commercially practicable, Siemens will comply with such real property rights and shall be entitled to an equitable adjustment in the Contract Price and Siemens' Work Schedule in accordance with Article 9 in connection therewith.

ARTICLE 3
SUBCONTRACTORS

Buyer acknowledges that Siemens intends to have portions of the Work performed by Subcontractors qualified to perform such Work pursuant to written subcontracts between Siemens and such Subcontractors. No contractual relationship shall exist between Buyer and any Subcontractor with respect to the Work. Siemens shall not have any responsibility, duty or authority to direct, supervise or oversee any contractors of Buyer or their work or to provide the means, methods or sequence of their work or to stop their work. Siemens' Work and/or presence at a site shall not relieve Buyer's subcontractors of their responsibility to Buyer or to others. Siemens shall not be liable for the failure of Buyer's contractors or others

to fulfill their responsibilities, and Buyer agrees to indemnify, hold harmless and defend Siemens against any claims arising out of such failures.

ARTICLE 4
CONTRACT PRICE AND PAYMENTS TO SIEMENS

4.1 Contract Price and Payment.

The total Contract Price is as set forth and defined more specifically in the Proposal Buyer shall pay the total Contract Price to Siemens in accordance with the Proposal. Each payment, except for the initial payment, shall be made by wire transfer, pursuant to wire transfer instructions to be provided by Siemens to Buyer, within thirty (30) days from the date of the Siemens invoice therefor or by such other payment method acceptable to Siemens.

The Contract Price is based upon Buyer performing its obligations set forth in this Agreement.

The Contract Price, schedule, warranty and guarantee obligations are based upon unrestricted working hours at, and free access seven (7) days a week, twenty-four (24) hours a day, to the Project Site, including free access to any components requiring assembly by Siemens as part of Siemens' scope of Work.

4.2 Taxes.

The Contract Price does not include any Import Duties levied upon the Equipment or any federal, state, or local (other than net income taxes imposed on Siemens) property, license, privilege, sales, use, excise, value added, gross receipts (including any business, occupation or similar taxes) and/or transactional taxes now or hereafter applicable to, measured by, or imposed upon or with respect to the transaction, the Equipment or their sale, their value or their use, or any Services performed in connection therewith. Buyer agrees to pay or reimburse Siemens for any such Import Duties and any such license, privilege, sales, use, excise, value added, gross receipts (including any business, occupation or similar taxes) and/or transactional taxes, which Siemens or its Subcontractors are required to pay, including any property taxes incurred on inventory purchased by Siemens for the Project which are applicable as a result of any Project delay caused by Buyer.

Should Buyer be exempt from any sales and/or use taxes, it shall provide Siemens with valid exemption documentation upon the Effective Date of the Agreement for the state(s) in which the Delivery of the Equipment shall take place. Siemens shall not collect sales and/or use taxes from Buyer if Siemens is provided such valid exemption documentation for its files.

To the extent that Siemens is required by Applicable Laws to pay or collect from Buyer sales/use, value added or other similar transactional taxes, Siemens shall, at the time of their incurrence, invoice and collect the entire amount of such taxes due from Buyer and remit such amount to the applicable taxing authority as required by Applicable Laws. At the written request of Buyer and provided that a valid exemption certificate is provided to Siemens by Buyer, Siemens shall claim any and all applicable tax exemptions, credits or deductions relating to the Work available to itself or Buyer, including, but not limited to, any sale-for-resale exemption and any manufacturing machinery and/or equipment exemption.

At the written request and expense of Buyer, Siemens agrees to take such action as may be reasonably required to allow the Work, including the Equipment and any other property included within the applicable Project, to qualify for applicable exemption from sales and/or use taxes. In the event that an assessment for any such property, license, privilege, sales, use, excise, value added, gross receipts (including any business, occupation or similar taxes) and/or transactional taxes is levied against Siemens for the Project, Siemens shall promptly notify Buyer and furnish to Buyer a copy of such assessment notification. If Buyer determines that the assessment should be contested and so notifies Siemens in writing and coordinates such contest with the Siemens Tax Department, Buyer may, at Buyer's sole cost and expense, file such documents as are necessary to contest such assessment. Buyer shall coordinate with the Siemens Tax Department, any such contest or other action regarding any such assessment, and Buyer shall pay any

penalties or interest in respect thereof. Siemens shall cooperate with and assist Buyer, at Buyer's expense, in any such contest or other tax assessment proceeding.

Buyer shall remain liable for any such taxes that actually become due and shall indemnify and reimburse Siemens for any costs or expenses incurred by Siemens relating thereto, including the amount of such taxes, and any interest and penalties; provided that Buyer's indemnification and reimbursement obligations shall not cover amounts accrued or incurred by or levied upon Siemens due to Siemens' failure to timely submit exemption certificates properly provided by Buyer to the proper Governmental Authority. Buyer shall not withhold any tax assessment reimbursements from Siemens while Buyer is contesting or otherwise challenging any such tax assessments.

4.3 Disputed Invoices.

If there is any dispute about any amount invoiced by Siemens, the amount not in dispute shall be promptly paid and any disputed amount that is ultimately determined to have been payable shall be paid with interest calculated at the rate of one and one-half percent (1.5%) per month, limited by the maximum rate permitted by Applicable Law. The date of the original invoice on which there was a disputed amount, shall determine the date upon which the disputed amount first became due and payable, irrespective of whether any subsequent invoice is issued or reissued in connection with the resolution and payment of the disputed amount.

4.4 Payment Dates.

Notwithstanding any provision to the contrary in this Article 4, in the event that a payment to be made under this Agreement falls due on any day that is not a Business Day, the payment shall be deemed due on the first (1st) Business Day thereafter.

ARTICLE 5
BUYER'S RESPONSIBILITIES

Siemens' performance is contingent upon Buyer timely fulfilling all of its obligations under this Agreement. These obligations include the Buyer supplying all documents and approvals needed for Siemens to perform, including, but not limited to, technical information and data, drawing and document approvals, and necessary commercial documentation. Siemens may request a Scope Change Order for an equitable adjustment in prices and times for performance, as well as for any additional costs or any delay resulting from the failure of Buyer or Buyer's contractors, successors or assigns to meet these obligations.

At no cost to Siemens, Buyer shall provide the following:

5.1 Project Site.

Buyer shall construct and maintain, subject to Siemens' approval, as applicable: the Project Site, roads and other necessary civil infrastructure, crane hardstandings and equipment lay-down and staging areas, including necessary repair, watering (dust control), dewatering, and snow and ice removal during the performance of the Work (the "Project Infrastructure"). Prior to the commencement of the Work at the Project Site and at any time during the performance of such Work, including during the Warranty Period, Siemens may inspect the Project Site to determine if the Project Site has been constructed in accordance with this Agreement, as it may have been modified by the final approved Project Infrastructure. If Siemens reasonably determines that Project Infrastructure deviates from the final approved Project Infrastructure, Siemens may require Buyer to correct such deviations prior to the commencement of the Work at the Project Site or otherwise suspend the Work at the Project Site until such deviations are corrected by Buyer. All delays in the performance of the Work and costs incurred by Siemens as a result of such suspension shall entitle Siemens to an equitable Scope Change Order in accordance with Section 9.2.

5.2 Security for Equipment at the Project Site.

Buyer shall provide, at its cost, security for all components of the Work, materials, supplies and other equipment required to assemble, erect, install and Commission the Work and any other property owned or leased by Buyer, Siemens or any of its Subcontractors located at the Project Site.

5.3 Storage of Spare Parts.

If purchased pursuant to this Agreement, Buyer shall, until the expiration of the Warranty Period: (i) store the Spare Parts purchased by Buyer and supplied by Siemens under this Agreement in a suitable location at the Project Site at no cost or expense to Siemens, (ii) provide Siemens with reasonable access to such Spare Parts, and (iii) take all commercially reasonable steps to ensure that such Spare Parts are secure, undamaged and available to Siemens when needed.

5.4 Effect of Buyer Delay or Non-performance.

Buyer shall perform those obligations required of Buyer as set forth in this Agreement and in the Proposal. Any delay by Buyer in completing its obligations shall be a Buyer Caused Delay, which shall entitle Siemens to a Scope Change Order pursuant to Article 9. When offloading of the Equipment from Delivery conveyances is in Buyer's scope, if Buyer fails to offload any of the Equipment from the Delivery conveyances within the time provided for in this Agreement, then Buyer shall reimburse Siemens for the applicable demurrage charges resulting therefrom and Siemens shall not be held responsible for any delays in Deliveries, including liquidated damages for late Delivery, resulting from Buyer's failure to timely offload Equipment, including components thereof, and other items supplied by Siemens. Any late payment by Buyer shall accrue interest at one and one-half percent (1.5%) per month, limited by the maximum rate permitted by Applicable Law. Siemens may suspend or terminate this Agreement for Buyer convenience if Buyer fails to pay within thirty (30) days of its receipt of Siemens' invoice.

5.5 Permits, Licenses and Approvals.

Buyer shall obtain and maintain the Applicable Permits, licenses and approvals required to be obtained for the zoning and construction of the Project, including, but not limited to, all building permits, all Project Site permits required for the erection, installation, Commissioning, use and Substantial Completion of the Work, all permits, licenses and approvals necessary to move the construction equipment (including cranes, if applicable) and Delivery conveyances within the Project Site, and all permits, licenses and approvals otherwise necessary for the ownership, operation and maintenance of the Work and the Project (the "Buyer Permits"). Buyer shall promptly provide Siemens with copies of all Buyer Permits whose contents or requirements might impact the performance of the Work. Buyer shall assist Siemens in obtaining required visas, work permits and custom clearance for its or its Subcontractor's personnel and their equipment.

5.6 Project Work Schedule.

For Siemens' information, Buyer shall provide Siemens with a written schedule showing all of the work being performed by or on behalf of Buyer for the Project and shall further provide Siemens with progress reports, in accordance with the agreed reporting schedule of actual progress of the work at the Project Site, showing in detail the progress to date and the then-current scheduling of all major elements of the work to be performed by or on behalf of Buyer for the Project, setting forth the dates by which work not being performed by Siemens, but nonetheless impacting Siemens' Work, are expected to be completed.

5.7 Hazardous Materials.

Prior to any Work being conducted at the Project Site, Buyer shall: (a) identify to Siemens the presence, location and quantity of ACM at the Project Site; and (b) either certify that the work area associated with Siemens' scope of Work is free of ACM or take such action as may be required under Environmental Laws to abate the ACM and, thereafter, certify that the work area associated with Siemens' scope of Work is free of ACM. Siemens makes no representation that it is licensed to abate ACM and shall not be obligated to install, disturb, handle, or remove any ACM.

Further, Buyer represents and warrants that, prior to the execution of this Agreement, Buyer has notified Siemens in writing of any and all Hazardous Materials known to be present on the Project Site and has: (a) expressly identified the nature and location of such Hazardous Materials to Siemens, including the provision of a map identifying the same; and (b) provided a copy of any Project Site policies related to such pre-existing Hazardous Materials, including, without limitation, material safety data sheets, chemical hygiene plans, laboratory procedures, or other items covered or required to be disclosed or maintained pursuant to applicable Environmental Laws.

Buyer shall also be responsible for the handling, storage, and disposal of all regulated Hazardous Materials at its expense. Buyer shall furnish Siemens with appropriate containers for regulated Hazardous Materials and shall designate a waste storage facility at the Project Site where such containers are to be placed by Siemens for removal and disposal by Buyer. Buyer shall handle, store, and dispose of regulated Hazardous Materials in accordance with all Environmental Laws.

In the event that any Hazardous Materials, including ACM, are encountered at the Project Site which are not the responsibility of Siemens under Section 2.9, Siemens shall immediately stop all Work in the affected area and Buyer shall promptly, in accordance with all applicable Environmental Laws and at its sole cost and expense, remove or render harmless, or take other actions as may be necessary to remediate the hazards associated with any such Hazardous Material, including, without limitation, signing and listing Buyer (or the appropriate Buyer Party) as the generator of the Hazardous Materials on any waste manifest that may be required by Environmental Laws. Siemens' Work in the affected area shall not be resumed until Buyer has complied with the foregoing obligations. Further, if the existence and remedying of such Hazardous Materials results in an increase in Siemens' costs and/or impacts Siemens' ability to meet its obligations, guarantees, or the Work Schedule under the Agreement, Siemens shall be entitled to a Scope Change Order in accordance with the applicable provisions of Article 9, increasing the Contract Price and providing an equitable extension of the Work Schedule and other provisions of the Agreement affected thereby or otherwise affected by Buyer's non-compliance, commensurate with the time reasonably required to overcome such delay and added cost, including without limitation, overtime charges for labor and equipment.

5.8 Service and Maintenance Agreement.

Buyer and Siemens may elect to execute a Service and Maintenance Agreement for the Work under which Siemens shall provide the Maintenance Service for the Work ("Service and Maintenance Agreement"). The Maintenance and Service Agreement shall specify the price and payment terms for the services; the location(s) where the services are to be performed; Buyer's requirements; the equipment, materials, components and items of any kind for which Siemens is to provide services under the Service and Maintenance Agreement; and the warranty for the services being provided.

5.9 Transportation Infrastructure and Access.

Buyer is responsible for having all necessary structural modifications, upgrades and/or repairs to public roads and other transportation infrastructure that may be required to permit the transport of the Equipment to the Project Site made and any other deviations from Siemens' requirements corrected prior to the commencement of, and during, the Delivery of the components of the Work to the Project Site. In addition, Buyer shall provide Siemens with all required legal and physical access to the Project Site, including obtaining and maintaining all private rights-of-way and private access rights, including the removal, lowering or raising of power lines and the safe passage over buried wires, cables and pipes.

5.10 Buyer Documents.

Buyer shall submit to Siemens those Buyer Documents set forth in and in accordance with Buyers Documents Submission Schedule set forth as an exhibit to Attachment "A."

5.11 Permanent Facilities.

When Buyer is required pursuant to Attachment "A" to provide a permanent facility, Buyer shall have the permanent Project Site facilities available at least thirty (30) days prior to the date required by the Work Schedule. These permanent facilities shall be substantially similar to the facilities diagrams set forth in this Agreement or an exhibit hereto. The permanent Project Site facilities shall also include the telecommunication requirements and services as specified in the Services and Maintenance Agreement, or if no Services and Maintenance Agreement, in Attachment "A."

5.12 Temporary Facilities.

Buyer shall provide and maintain site electricity, water, sanitary facilities and a construction office, with data connections, phone connections and appropriate clean room.

5.13 Payments

Buyer shall pay all undisputed invoices within thirty (30) days of receipt of invoice from Siemens.

5.14 Single Point of Contact and Notification

Buyer shall designate a contact person with authority to act for the Buyer and respond in emergency situations. Buyer shall notify Siemens as soon as practicable, but in no event more that twenty-four (24) hours, after any change in Project Site conditions, approvals, permits or licenses which affect the Work. If such person cannot be reached, any request for Work received from an employee or agent of Buyer will be deemed authorized by Buyer.

5.15 Export Import Compliance**.**

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

ARTICLE 6
[See Attachment "A" if applicable]

ARTICLE 7
[See Attachment "A" if applicable]

ARTICLE 8
LIMITATION OF LIABILITY

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

SIEMENS' MAXIMUM LIABILITY UNDER THIS AGREEMENT IS THE ACTUAL PURCHASE PRICE RECEIVED BY SIEMENS FOR THE EQUIPMENT THAT GAVE RISE TO THE CLAIM.

BUYER AGREES THAT THE EXCLUSIONS AND LIMITATIONS IN THIS ARTICLE 8 WILL PREVAIL OVER ANY CONFLICTING TERMS AND CONDITIONS IN THIS AGREEMENT AND MUST BE GIVEN FULL FORCE AND EFFECT, WHETHER OR NOT ANY OR ALL SUCH REMEDIES ARE DETERMINED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THESE LIMITATIONS OF LIABILITY ARE EFFECTIVE EVEN IF SIEMENS HAS BEEN ADVISED BY BUYER OF THE POSSIBILITY OF SUCH DAMAGES. THE WAIVERS AND DISCLAIMERS OF LIABILITY, RELEASES FROM LIABILITY AND LIMITATIONS ON LIABILITY EXPRESSED IN THIS ARTICLE 8 EXTEND TO SIEMENS' AFFILIATES (AND THEIR EMPLOYEES), PARTNERS, PRINCIPALS, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, SUPPLIERS OF ANY TIER (AND THEIR EMPLOYEES), AGENTS, AND SUCCESSORS AND ASSIGNS.

ARTICLE 9
CHANGES TO THE WORK

9.1. Siemens shall deliver and/or perform the Work in accordance with the Applicable Laws in effect on the Effective Date.

9.2. No change will be made to the scope of Work unless Buyer and Siemens agree in writing to the change and any resulting price, schedule or other contractual modifications associated therewith ("Scope Change Order"). If any change to any law, rule, regulation, order, code, standard or requirement impacts Siemens' obligations or performance under this Agreement, Siemens may request a Scope Change Order for an equitable adjustment in the price and time of performance.

ARTICLE 10
WARRANTY

10.1. Warranties.

Siemens warrants that: (i) the Equipment is free from defects in material and workmanship; (ii) the Equipment is in compliance with Siemens' specifications that are attached to, or expressly incorporated into this Agreement; and (iii) at the time of delivery, Siemens has title to the Equipment free and clear of liens and encumbrances (collectively, the "Warranties"). The Warranties do not apply to software furnished by Siemens. The sole and exclusive warranties for any software are set forth in the Software License/Warranty Addendum, if applicable.

10.2. Conditions to the Warranties.

The Warranties are conditioned on: (i) no repairs, modifications or alterations being made to the Equipment other than by Siemens or its authorized representatives; (ii) Buyer handling, using, storing, installing, operating and maintaining the Equipment in compliance with any parameters or instructions in any specifications attached to, or incorporated into this Agreement; (iii) compliance with all generally accepted industry standards; (iv) Buyer discontinuing use of the Equipment after it has, or should have had, knowledge of any defect; (v) Buyer providing prompt written notice of any warranty claims within the Warranty Period described below; (vi) at Siemens' discretion, Buyer either removing and shipping the Equipment or non-conforming part thereof to Siemens, at Buyer's expense, or granting Siemens reasonable access to the Equipment to assess the warranty claims; (vii) Equipment not having been subjected to accident (including force majeure), alteration, abuse or misuse; (viii) Buyer not being in default of any payment obligation and (viii) Buyer allowing Siemens the opportunity to review the operating and maintenance records relating to the Equipment and the facility its incorporated into, if applicable.

10.3. Exclusions from Warranty Coverage.

The Warranties do not apply to any equipment not provided by Siemens under this Agreement.

Any Equipment that is described as being experimental, developmental, prototype, or pilot is specifically excluded from the Warranties and is provided to Buyer "as is" with no warranties of any kind. Normal wear and tear is excluded, including any expendable items that comprise part of the Equipment (such as fuses, light bulbs and lamps). Siemens does not warrant or guarantee that any Equipment will be secure from cyber threats, hacking or similar malicious activity. Equipment that is networked, connected to the internet, or otherwise connected to computers or other devices must be appropriately protected by Buyer and/or end user against unauthorized access.

10.4. Warranty Period.

Buyer must provide written notice of any claims for breach of Warranties by the earlier of twelve (12) months from initial operation of the Equipment or eighteen (18) months from shipment ("Warranty Period"). Additionally, absent written notice within the Warranty Period, any use or possession of the Equipment after expiration of the Warranty Period is conclusive evidence that the Warranties have been satisfied.

10.5 Remedies.

Buyer's sole and exclusive remedies for breach of the Warranties are limited, at Siemens' discretion, to repair or replacement of the Equipment, or its non-conforming parts, within a reasonable time period, or refund of all or part of the purchase price applicable to the non-conforming part. The warranty on repaired or replaced parts is limited to the remainder of the original Warranty Period. Unless Siemens agrees otherwise in writing, Buyer will be responsible for any costs associated with: (i) gaining access to the Equipment; (ii) removal, disassembly, replacement, installation, or reinstallation of any equipment, materials or structures to permit Siemens to perform its warranty obligations; (iii) transportation to and from the Siemens factory or repair facility; and (iv) damage to equipment components or parts resulting in whole or in part from non-compliance by the Buyer with Section 10.2 hereof or from their deteriorated condition. All exchanged Equipment replaced under this Warranty will become the property of Siemens.

10.6 Transferability.

The Warranties are only transferable during the Warranty Period and only to the Equipment's initial end-user.

10.7 THE WARRANTIES IN THIS ARTICLE 10 ARE SIEMENS' SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO THE LIMITS OF LIABILITY IN ARTICLE 8 ABOVE. SIEMENS MAKES NO OTHER WARRANTIES OR PERFORMANCE GUARANTEES, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES AND CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE.

ARTICLE 11
DELAYS; EXCUSED PERFORMANCE

11.1 Change in Law and Buyer Caused Delay.

As the Work is performed, conditions may change or circumstances outside Siemens' reasonable control (including changes of Applicable Law) may develop which would require Siemens to expend additional costs, effort or time to complete the Work, in which case Siemens will notify Buyer and an equitable adjustment will be made to Siemens' Contract Price and Work Schedule pursuant to Article 9. In the event conditions or circumstances require the Work to be suspended or terminated, Siemens shall be compensated for Work performed and for costs reasonably incurred in connection with the suspension or termination.

11.2 Force Majeure.

If Siemens' performance is delayed by any cause beyond its reasonable control (regardless of whether the cause was foreseeable), including without limitation acts of God, strikes, labor shortage or disturbance, fire, accident, war or civil disturbance, delays of carriers, cyber-attacks, terrorist attacks, failure of normal sources of supply, or acts or inaction of government ("Force Majeure Event"), Siemens' time of performance will be extended by a period equal to the length of the delay plus any consequences of the delay and Siemens will get its reasonable costs for such extension of time pursuant to Article 9. Siemens will notify Buyer within a reasonable time after becoming aware of any such delay.

ARTICLE 12

INSURANCE

12.1 Siemens' Insurance Coverage.

(a) Siemens shall maintain in full force and effect the following insurance coverage and limits specified below commencing ten (10) days after Buyer's issuance of a Notice to Proceed and continuing until the Final Completion Date. Siemens shall provide Buyer applicable insurance certificates of such coverage prior to the shipment of any Equipment to the Project Site or the commencement of any Work at the Project Site. The required limits of insurance may be satisfied with any combination of primary and excess coverage.

(b) Siemens or Siemens' insurance carrier shall endeavor to provide Buyer with thirty (30) Days' prior Notice of cancellation, termination or material alteration of any insurance coverage set forth in this Article 12. In addition, Siemens' insurance shall be maintained with insurance companies having an A.M. Best rating of "A-" or better and a financial size category of "VII" or higher (or a comparable rating by any other rating entity reasonably acceptable to Buyer and evidenced by Buyer's written confirmation, which acceptance shall not be unreasonably withheld). Siemens shall provide Buyer applicable insurance certificates of such coverage prior to Siemens' or its Subcontractor's commencement of any Work at the Project Site.

(c) Siemens has the responsibility and obligation to procure and maintain the following insurance policies:

(i) Workers' Compensation Insurance in accordance with Applicable Laws and regulations applicable to the jurisdiction in which the Work is performed;

(ii) Employer's Liability Insurance with a limit of One Million Dollars ($1,000,000) per accident, per employee for occupational disease, and in the aggregate for occupational disease;

(iii) Commercial General Liability Insurance with coverage written for bodily injury and broad form property damage on an "occurrence" basis with a limit of Five Million Dollars ($5,000,000) per occurrence and Five Million Dollars ($5,000,000) aggregate. This policy shall include blanket contractual coverage, railroad protective liability coverage, and coverage for premises, operations, explosion, collapse and underground (XCU) hazards, and products/completed operations. Siemens shall name Buyer as an additional insured to the extent bodily injury (including death) or third party property damage results from the negligent acts or omissions of Siemens or Siemens' Subcontractors and require that this policy contain a "separation of insureds" clause.

12.2 Subcontractor's Insurance Coverage.

Siemens shall require its Subcontractors performing Work at the Project Site to maintain the types, coverage and limits of insurance which are reasonable in accordance with prudent industry practice and commensurate with the Work to be performed by such Subcontractor.

12.3 Buyer's Insurance Coverage.

Buyer shall maintain in full force and effect the insurance coverage and limits specified below from the date of Siemens' or its Subcontractor's commencement of Work at the Project Site and continuing until the end of the Warranty Period. Buyer or Buyer's insurance carrier shall endeavor to provide Siemens with thirty (30) Days' prior Notice of cancellation, termination or material alteration of any insurance coverage set forth in this Article 12. In addition, Buyer's Insurance shall be maintained with insurance companies having an A.M. Best rating of "A- " or better and a financial size category of "VII" or higher (or a comparable rating by any other rating entity reasonably acceptable to Siemens and evidenced by Siemens' written confirmation, which acceptance shall not be unreasonably withheld). Buyer shall provide Siemens applicable insurance certificates of such coverage prior to Siemens' or its Subcontractor's commencement of any Work at the Project Site. The required limits of insurance may be satisfied with any combination of primary and excess coverage.

(a) Workers' Compensation Insurance in accordance with Applicable Laws and regulations applicable to the jurisdiction in which the Work is performed.

(b) Employer's Liability Insurance with a limit of One Million Dollars ($1,000,000) per accident, per employee for occupational disease, and in the aggregate for occupational disease;

(c) Commercial General Liability Insurance with a limit of Five Million Dollars ($5,000,000) per occurrence and Five Million Dollars ($5,000,000) annual aggregate. This policy shall include blanket contractual coverage, railroad protective liability coverage, and coverage for premises, operations, explosion, collapse and underground (XCU) hazards, and products/completed operations. Buyer shall name Siemens and its Affiliates as additional insureds to the extent bodily injury (including death) or third party property damage results from the negligent acts or omissions of Buyer or Buyer's subcontractors. This policy shall contain a "separation of insureds" clause.

(d) Builders' Risk Insurance coverage protecting all property and Equipment intended to be incorporated into the Work, in the course of construction and commissioning defined in the Work, on an "all-risk," replacement cost basis, with appropriate coverage sub-limits which are customary or otherwise required by the insurers, upon commencement of Work at the Project Site and continuing coverage and limits until the Final Completion Date. Buyer shall name Siemens, its Affiliates and Subcontractors as additional insureds. The Builders' Risk Insurance policy will include:

    (i) property coverage for the Work at the Project Site, which insurance shall be written on a LEG 2/96 basis or better and include coverage for removal of debris and shall insure the buildings, structures, boiler and machinery, equipment, facilities, fixtures, rolling stock, electronic equipment and media and other properties constituting a part of the Work (whether above or below the surface of the ground) in an amount equal to the total constructed value; and

    (ii) off-Project Site (local staging area) coverage for such property to insure values at risk, with appropriate sub-limits which are customary or otherwise required by the insurers; and

The Builder's Risk Insurance policy shall also provide that it is primary without right of contribution from any other insurance that might otherwise be available to an insured Party prior to the Final Completion Date.

(e) Operating property insurance coverage protecting all property of Buyer at the Project Site (including Equipment supplied as part of the Work), on a primary, all-risk, replacement cost basis, commencing at the Final Completion Date. The operating property insurance policy shall be written on a LEG 2/96 basis or better and include coverage for removal of debris and shall insure the buildings, structures, boiler and machinery, equipment, facilities, fixtures, rolling stock, electronic equipment and media and other property of Buyer at the Project Site (whether above or below the surface of the ground) in an amount equal to the

total constructed value. Buyer shall name Siemens, its Affiliates and Subcontractors as additional insureds.

12.4 Waiver of Rights. In regard to insurance maintained by either Party, including any property insurance, each such Party hereby waives, for itself and its insurers, all rights of recovery and subrogation which may arise against the other Party and its Affiliates as a result of a payment made by an insurer.

12 .5 Cooperation Between the Parties.

(a) Each Party agrees to provide the other Party reasonable cooperation and assistance in the procurement of any property insurance required by the Agreement or otherwise to be procured in connection with the Work.

(b) Siemens agrees to provide such reasonable assistance and documentation as Buyer may request in connection with claims Buyer may make under its property insurance policies purchased in connection with the facility for damage or events that occur after the Effective Date and prior to the expiration of the Warranty Period. Such assistance will be provided under the responsibility, and at the cost, of Buyer.

(c) Notwithstanding Article 12.5(a) and Article 12.5(b), neither Party shall be required to provide confidential or proprietary information to a third party. If the disclosing Party agrees to provide such information, the third party shall first be required to execute a confidentiality agreement with the disclosing Party in a form reasonably acceptable to the disclosing Party.

ARTICLE 13
TITLE AND RISK OF LOSS

13.1 Title to Equipment.

Siemens warrants that (i) legal title to and ownership of the Equipment (excluding, however, the Intellectual Property Rights) shall upon Delivery be free and clear of any and all Liens, claims, security interests or other encumbrances; and (ii) such Intellectual Property Rights shall be free and clear of any and all Liens, claims, security interests or other encumbrances that would in any way interfere with Buyer's use thereof that is permitted by this Agreement. Except as set forth in the next sentence, title to each component or Spare Part of the Equipment shall pass to Buyer on Delivery of such component or of such Spare Part and title to all Services performed by Siemens at the Project Site shall pass to Buyer upon performance thereof by Siemens, subject only to any Lien of Siemens that may arise under Applicable Laws that is not otherwise prohibited hereunder. Notwithstanding the foregoing or any other provision of this Agreement, the Intellectual Property Rights are not sold to Buyer and title thereto shall not be transferred to Buyer; rather, Siemens shall retain sole and exclusive title to the Intellectual Property Rights, and grants to Buyer a license to use the Intellectual Property Rights in accordance with the terms and conditions set forth in Section 13.2 and Article 18 of this Agreement.

13.2 Title to Copies of Drawings.

Title to copies of drawings which are required to be provided to Buyer hereunder which are owned by Siemens shall be automatically transferred to Buyer when such copies of the drawings are provided to the Buyer by Siemens. However, title to the underlying Intellectual Property Rights contained in such drawings shall not be transferred to Buyer; rather, title to such Intellectual Property Rights shall be retained solely by Siemens or its licensor, and Siemens hereby grants Buyer, subject to the terms and conditions of this Agreement and timely payment of all undisputed amounts due hereunder, an irrevocable, royalty-free, non-exclusive license, subject to Buyer's ongoing compliance with this Section 13.2 and the confidentiality provisions of this Agreement, which authorizes Buyer to use and reproduce such drawings for the purpose of completing assembly, erection, Mechanical Completion and installation of the Equipment, or constructing, operating, maintaining and repairing the Equipment supplied under this Agreement; provided that (i) such drawings shall not be used to manufacture similar equipment (ii) any third parties who are

permitted to access such drawings shall obtain such access solely for the authorized purposes in connection with the Project, and shall first agree to abide by the license and confidentiality restrictions set forth in this Section 13.2 and in Article 18. Any permitted Buyer or assignee shall acquire such license subject to the same terms and restrictions as stated in this Section 13.2. Buyer may retain the necessary number of copies of all such documents solely for purposes of construction, operation, maintenance and repair of the Units. Any costs to register such licenses in the location where the Project is being performed shall be paid by Buyer. Buyer and its permitted assignees shall not use the Intellectual Property Rights referred to in this Section 13.2 for any purpose other than as expressly authorized herein.

13.3 Risk of Loss.

Irrespective of the passage of title as provided in Section 13.1, and except for loss or damage due to uninsurable events for which Buyer shall be responsible, Siemens shall bear the risk of loss and damage with respect to the Equipment, components of the Equipment, Spare Parts and all other materials, equipment and components to be supplied by Siemens, or that are within the care, custody and control of Siemens, wherever located, that have been or will be incorporated into the Work or Services, until Delivery of such Equipment, Spare Parts, other materials, equipment and components supplied by Siemens, Work or Services. Upon Delivery, risk of loss and damage pursuant to this Section 13.3 shall transfer to Buyer and Buyer shall assume full and exclusive custody and control of such components of the Unit and Spare Parts, other materials, equipment and components supplied by Siemens, and of all Work and Services; provided that Buyer's assumption of risk of loss and damage shall not obviate Siemens' obligations to correct any Warranty non-conformances in accordance with Article 10.

ARTICLE 14
DEFAULT, TERMINATION AND SUSPENSION

14.1 Siemens Defaults.

The occurrence of any one or more of the following events shall constitute an event of default by Siemens hereunder (each, a "Siemens Event of Default"):

(a) Siemens makes a general assignment for the benefit of its creditors, is generally unable to pay its debts as they become due, or becomes the subject of any voluntary or involuntary bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding under any Applicable Laws and, in the case of any such involuntary proceeding, instituted against Siemens but not by Siemens, that is not dismissed or stayed within forty-five (45) days after it is commenced;

(b) Siemens fails to make prompt payments required to be made by Siemens to Buyer under this Agreement, which failure continues for thirty (30) days after receipt of written notice of such non-payment from Buyer;

(c) Siemens has made a material misrepresentation under the Agreement that is likely to have a material adverse effect on its ability to perform its obligations hereunder and such representation is not made true within thirty (30) days after receipt of written notice thereof from Buyer; or

(d) Siemens is otherwise in material default of any provision of this Agreement or has materially failed to perform its obligations under this Agreement; provided that if such material default of this Agreement or material failure to perform this Agreement can be cured within a commercially reasonable timeframe, Siemens shall be permitted such period of time within which to accomplish such cure, so long as Siemens commences such cure efforts within thirty (30) days after written notice from Buyer and thereafter diligently proceeds to complete such cure within such time period.

Upon the occurrence and during the continuation of any Siemens Event of Default hereunder, Buyer, in addition to its right to pursue any other remedy given under the Agreement, shall have the right to terminate this Agreement upon not less than five (5) days prior written notice to Siemens (a "Termination for Cause"); A Termination for Cause shall be effective upon the sixth day following delivery of Buyer's notice with

respect thereto. Subject to the provisions of Section 14.5.2, in the event of a termination by Buyer under this Section 14.1, Buyer may employ any other Person, other than employees of Siemens or its Affiliates, to complete the Work by whatever reasonable method that Buyer may deem necessary. Buyer shall, within a reasonable period of time after the Work is finally completed by the work of one or more replacement suppliers and contractors, determine the total cost (including such other contractors' fees) to Buyer for completing the Work, including all sums previously paid or then owed to Siemens pursuant to the Agreement. In contracting with such replacement suppliers and contractors, Buyer shall, to the extent practicable, cause the Work to be completed in accordance with this Agreement and shall employ reasonable efforts to mitigate the costs incurred in connection with completion of the Work. If the sum of the Contract Price and the maximum liquidated damages assessed are less than the sum of (i) the direct costs incurred by Buyer to complete the Work, (ii) all other direct damages suffered by Buyer as a result of the Siemens Event of Default, and (iii) all amounts previously paid to Siemens pursuant to this Agreement, Siemens shall, subject to and not to exceed the limitations upon Siemens' liability set forth in Article 8, pay to Buyer within thirty (30) days following receipt of an original invoice therefor the amount of such difference. Any amount owed by Buyer to Siemens for the level of completion of the Work achieved by Siemens prior to Buyer's termination under this Section 14.1 shall be retained by Buyer until after completion of the Work and applied by Buyer to pay any amounts and damages owed by Siemens pursuant to this Section 14.1. Any excess shall be remitted to Siemens within thirty (30) days after the Work is finally completed. If the Agreement is terminated by Buyer pursuant to this Section 14.1, then Siemens' remaining warranty and performance guarantee obligations shall also automatically terminate. For the avoidance of doubt, Buyer understands and agrees that if Buyer terminates this Agreement pursuant to this Section 14.1, the foregoing is Buyer's exclusive remedy for such termination.

If termination occurs under this Section 14.1 prior to Delivery of the Work, then within thirty (30) days from the effective date of such termination, Buyer shall either (a) return to Siemens any of Siemens' confidential information which had been in Buyer's possession (excluding this Agreement) or (b) certify in writing to Siemens that all of Siemens' confidential information which had been in Buyer's possession has been destroyed.

14.2 Buyer Default.

The occurrence of any one or more of the following events shall constitute an event of default by Buyer hereunder (each, a "Buyer Event of Default"):

(a) Buyer's failure to pay to Siemens any required payment, which failure continues for ten (10) days after receipt of written notice of the failure to make the payment has been received by Buyer from Siemens;

(b) Buyer makes a general assignment for the benefit of its creditors, is generally unable to pay its debts as they become due, or becomes the subject of any voluntary or involuntary bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding under any Applicable Laws and, in the case of any such involuntary proceeding, instituted against Buyer but not by Buyer, that is not dismissed or stayed within forty-five (45) days after it is commenced;

(c) Buyer has made a material misrepresentation under the Agreement that is likely to have a material adverse effect on its ability to perform its obligations hereunder and such representation is not made true within fifteen (15) Business Days after receipt of written notice thereof from Siemens;

(d) Any of the financing parties terminates it financing arrangements with Buyer or any Buyer Affiliate for the Project; or

(e) Buyer is otherwise in material default of any provision of this Agreement or has materially failed to perform its obligations under this Agreement; provided that if such material default of this Agreement or material failure to perform this Agreement can be cured within a commercially reasonable timeframe, Buyer shall be permitted such period of time within which to accomplish such cure, so long as Buyer commences such cure efforts within fifteen (15) days after notice from

Siemens and thereafter diligently proceeds to complete such cure within such time period.

Upon the occurrence and during the continuation of a Buyer Event of Default, Siemens, in addition to its right to pursue any other remedy given under the Agreement, shall have the right to terminate this Agreement upon not less than five (5) days prior written notice to Buyer. In the event of such termination by Siemens, Siemens shall be entitled to either (a) payment of the sum set forth in the termination payment schedule if applicable or (b) the Contract Price less any savings, and any additional cost and expenses incurred by Siemens due to such termination (the "Default Termination Payment"). Siemens shall submit an invoice to Buyer for the Default Termination Payment, including supporting documentation for the damages and other amounts due and owing to Siemens prior to the termination and the costs incurred by Siemens in effectuating the termination, and Buyer shall pay such invoice by wire transfer within thirty (30) days after the date of such invoice. All payments of the Contract Price made by Buyer and received by Siemens prior to the effective date of termination shall be credited toward the Default Termination Payment. Without limiting Siemens' other rights herein, Siemens may, in lieu of such termination, suspend its performance of the Work after such five (5) day period. In such event, Buyer shall be responsible for all costs incurred by Siemens as a result of such suspension plus reasonable profit thereon. If the Agreement is terminated by Siemens pursuant to this Section 14.2, then Siemens' remaining warranty and performance guarantee obligations shall also automatically terminate.

Within thirty (30) days from the effective date of such termination, Buyer shall either (a) return to Siemens any of Siemens' confidential information which had been in Buyer's possession (excluding this Agreement) or (b) certify to Siemens that all of Siemens' confidential information which had been in Buyer's possession has been destroyed.

14.3 Termination for Buyer's Convenience.

In addition to any other termination rights available to Buyer under this Agreement, Buyer shall have the right to terminate the Delivery of Work in the event that Buyer terminates the construction of the Project due to the economic unfeasibility of the Project for Buyer upon fifteen (15) days prior written notice to Siemens. Buyer shall pay Siemens either (a) the sum set forth in the termination payment schedule if applicable or (b) that portion of the Contract Price reflecting the amount of Work performed, man hours expended and materials acquired at the date of termination. These charges will also include the 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 suppliers and Subcontractors, and any applicable cost allocated in contemplation of performance (the "Convenience Termination Payment"). All payments of the Contract Price made by Buyer and received by Siemens prior to the date of termination shall be credited toward the Convenience Termination Payment. Siemens shall submit an invoice to Buyer for the Convenience Termination Payment and Buyer shall pay such invoice by wire transfer within thirty (30) days after the date of such invoice. If the Agreement is terminated by Buyer pursuant to this Section 14.3, then Siemens' remaining warranty and performance guarantee obligations shall also automatically terminate.

Within thirty (30) days from the effective date of such termination, Buyer shall either (a) return to Siemens any of Siemens' confidential information which had been in Buyer's possession (excluding this Agreement) or (b) certify to Siemens that all of Siemens' confidential information which had been in Buyer's possession has been destroyed.

14.4 Termination Due to Force Majeure Event.

If Siemens is entirely prevented from performing the Work for a time period of one hundred eighty (180) aggregate days as a result of the occurrence of a Force Majeure Event suffered by Siemens, then either Party may terminate this Agreement with respect to the Work that has not been erected by the effective date of such termination at no cost or penalty, other than Buyer's obligation to pay Siemens either (a) the sum set forth in the termination payment schedule if applicable or (b) that portion of the Contract Price reflecting the amount of work performed, man hours expended and materials acquired at the date of termination. These charges will also include the 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 suppliers, and any applicable cost allocated in contemplation of performance; provided, however, that nothing in this Section 14.4 shall relieve or excuse either Party from its obligations under Article 11 in respect of the occurrence of a Force Majeure Event. If the Agreement is terminated pursuant to this Section 14.4, then Siemens' remaining warranty and performance guarantee obligations shall also automatically terminate.

Within thirty (30) days from the effective date of such termination, Buyer shall either (a) return to Siemens any of Siemens' confidential information which had been in Buyer's possession (excluding this Agreement) or (b) certify to Siemens that all of Siemens' confidential information which had been in Buyer's possession has been destroyed.

14.5 Actions Required Following Termination.

14.5.1 Discontinuation of Work.
Upon termination of this Agreement, Siemens shall promptly discontinue the Work and take such steps as are reasonably necessary to preserve and protect any Work completed and in progress at the Project Site, and then remove its personnel and equipment from the Project Site, and for a termination for a Siemens Event of Default, Buyer shall be entitled to take exclusive possession of the Work Delivered or en route to the Project Site; provided, however, that if the cause of the termination is other than due to a Siemens Event of Default, Buyer shall pay on Siemens' demand made from time to time all amounts reasonably requested by Siemens to cover Siemens' costs incurred in performing Siemens' obligations pursuant to this Section 14.5.1.

14.5.2 Cancellation and Transfer of Subcontracts and Other Rights.
Upon termination of this Agreement by Buyer pursuant to Section 14.1, if requested by Buyer, Siemens shall use reasonable efforts to (a) deliver and assign to Buyer any and all Subcontracts made by Siemens in performance of the Work and provide to Buyer (without charge) all rights, if any, it has obtained from Subcontractors to use patented or proprietary materials in completing, operating and maintaining the Work. Except as provided herein, no action taken by Buyer or Siemens after the termination of this Agreement shall prejudice any other rights or remedies of Buyer or Siemens provided by this Agreement upon such termination.

ARTICLE 15
INDEMNITIES

15.1 Mutual Indemnity.

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

Indemnitee shall provide the Indemnitor with prompt written notice of and shall not acknowledge any third party claims covered by this Article 15. Indemnitor has the unrestricted right to select and hire counsel and the exclusive right to conduct the legal defense and/or settle the claim on the Indemnitee's behalf. The Indemnitee shall not make any admission(s) which might be prejudicial to the Indemnitor and shall not enter into a settlement without the express permission of the Indemnitor.

15.2 Buyer's Environmental Release and Indemnity.

Buyer, on behalf of itself, all Buyer Parties, and the predecessors and successors in interest, insurers, and assigns of each of them, shall defend, release, indemnify and hold harmless Siemens, all Siemens Parties,

and the successors and assigns of each of them (each, an Indemnitee under this Section 15.2) from and against any and all liability arising under Environmental Laws or as a result of any Hazardous Materials at or any environmental condition of the Project Site, except to the extent for which Siemens is responsible under Section 2.7, including, without limitation, fines and penalties, reasonable fees for attorneys, consultants or other professionals, and the costs of reporting, investigation, monitoring, containment, cleanup, storage, disposal, transportation and any other remedial actions arising under applicable Environmental Laws that are incurred by any Indemnitee hereunder for and as a result of: (i) death or bodily injury to any person, (ii) destruction or damage to any property, (iii) contamination of or adverse effects on the environment, including a Release of any kind, (iv) any violation by Buyer or any Buyer Party of Environmental Laws, and/or (v) a breach by Buyer or any Buyer Party of any legal duty arising under applicable Environmental Laws or any obligations under the environmental provisions of this Agreement. This release and indemnity shall survive the termination or expiration of this Agreement and shall be construed as broadly as possible under applicable Environmental Laws.

ARTICLE 16
REPRESENTATIONS

16.1 Siemens Representations.

Siemens represents that on the Effective Date:

16.1.1 Organization.
It is a corporation duly organized, validly existing and in good standing under the laws of Canada and is qualified to do business in the jurisdictions in which the nature of the business conducted by it as pertains to or has bearing upon its performance of this Agreement makes such qualification necessary and where failure to so qualify would have a material adverse effect on its ability to perform this Agreement.

16.1.2 No Violation of Law; Litigation.
It is not in violation of any Applicable Laws or judgment entered by any Governmental Authority which violations, individually or in the aggregate, would materially and adversely affect its performance of any of its obligations under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Governmental Authority now pending or (to the best knowledge of Siemens) threatened against Siemens which, if adversely determined, could reasonably be expected to have a material adverse effect on the ability of Siemens to perform under this Agreement.

16.1.3 Permits.
It is or will be prior to performing any Work on the Project Site the holder of the governmental consents, Siemens Permits or other authorizations required in Siemens' name to permit it to perform the Work and operate or conduct its business now and as contemplated by this Agreement.

16.1.4 No Breach.
None of the execution and delivery of this Agreement, the consummation of the transactions herein contemplated or compliance with the terms and provisions hereof and thereof shall conflict with or result in a breach of, or require any consent under, the charter or by-laws of Siemens, or any Applicable Laws or regulation, order, writ, injunction or decree of any court, or any agreement or instrument to which Siemens is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.

16.1.5 Corporate Action.
It has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by Siemens of this Agreement have been duly authorized by all necessary action on its part; and this

Agreement has been duly and validly executed and delivered by Siemens and constitutes the legal, valid and binding obligation of Siemens enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

16.2 Buyer's Representations

Buyer represents that on the Effective Date:

16.2.1 Organization.
It is a as identified in the Proposal and is duly organized, validly existing and in good standing under the laws of the Territory or Province identified in the Proposal, and is qualified to do business in all jurisdictions in which the nature of the business conducted by it as pertains to or has bearing upon its performance of this Agreement makes such qualification necessary and where failure to so qualify would have a material adverse effect on its ability to perform this Agreement.

16.2.2 No Violation of Law; Litigation.
It is not in violation of any Applicable Laws or judgment entered by any Governmental Authority which violations, individually or in the aggregate, would materially and adversely affect its performance of any of its obligations under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any Governmental Authority now pending or (to the best knowledge of Buyer) threatened against Buyer which, if adversely determined, could reasonably be expected to have a material adverse effect on the ability of Buyer to perform under this Agreement.

16.2.3 No Breach.
None of the execution and delivery of this Agreement, the consummation of the transactions herein contemplated or compliance with the terms and provisions hereof and thereof shall conflict with or result in a breach of, or require any consent under, the governing documents of Buyer, or any Applicable Laws or regulation, order, writ, injunction or decree of any court, or any agreement or instrument to which Buyer is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.

16.2.4 Corporate Action.
It has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by Buyer of this Agreement have been duly authorized by all necessary action on its part; and this Agreement has been duly and validly executed and delivered by Buyer and constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

16.2.5 Permits.
It is or will be prior to the commencement of performance of any Work by Siemens on the Project Site the holder of all governmental consents, Buyer Permits or other authorizations required to permit it to undertake and operate its business and the Project as contemplated by this Agreement.

16.2.6 Nuclear.
Unless expressly authorized in writing by Siemens, the Equipment must not be used in or in connection with a nuclear facility or application. If Buyer uses any Equipment in connection with any nuclear facility or activity, it does so at its own risk and Buyer will indemnify, defend

and hold Siemens harmless, and waives and will require its insurers to waive all right of recovery against Siemens for any damage, loss, destruction, injury or death resulting from a "nuclear incident," as defined in the Atomic Energy Act of 1954, as amended, whether or not due to Siemens' negligence. Siemens' consent to Buyer's use of the Equipment in connection with any nuclear facility or application will be subject to additional terms and conditions that Siemens deems necessary to protect its interests.

ARTICLE 17
PATENT AND COPYRIGHT INFRINGEMENT

Siemens will, at its option and expense, defend or settle any suit or proceeding brought against Buyer based on an allegation that any Equipment or use thereof for its intended purpose constitutes an infringement of any Patent Cooperation Treaty country member's patent or misappropriation of a third party's trade secret or copyright in the country where the Equipment is delivered by Siemens. Buyer will promptly give Siemens written notice of the suit or proceeding and the authority, information, and assistance needed to defend the claims. Buyer shall not acknowledge any such third party proceedings defined under this Article 17. Siemens shall have the full and exclusive authority to defend and settle such claim(s) and will pay the damages and costs awarded in any suit or proceeding so defended. Buyer shall not make any admission(s) which might be prejudicial to Siemens and shall not enter into a settlement without Siemens' consent. Siemens is not responsible for any settlement made without its prior written consent. If the Equipment, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement or its use by Buyer is enjoined, Siemens will, at its option and expense, either: (i) procure for Buyer the right to continue using said Equipment; (ii) replace it with substantially equivalent non-infringing Equipment; or (iii) modify the Equipment so it is non-infringing.

Siemens will have no duty or obligation under this Article 17 if the Equipment is: (i) supplied according to Buyer's design or instructions and compliance therewith has caused Siemens to deviate from its normal course of performance; (ii) modified by Buyer or its contractors after delivery; or (iii) combined by Buyer or its contractors with devices, methods, systems or processes not furnished hereunder and by reason of said design, instruction, modification, or combination a suit is brought against Buyer. In addition, if by reason of such design, instruction, modification or combination, a suit or proceeding is brought against Siemens, Buyer must protect Siemens in the same manner and to the same extent that Siemens has agreed to protect Buyer under this Article 17.

THIS ARTICLE 17 IS AN EXCLUSIVE STATEMENT OF SIEMENS' DUTIES AND BUYER'S REMEDIES RELATING TO PATENTS, TRADE SECRETS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY INFRINGEMENT THEREOF.

ARTICLE 18
CONFIDENTIALITY

(a) Both during and after the term of this Agreement, the parties will: (i) treat as confidential all information obtained from the disclosing party, (ii) use such confidential information for its intended purpose only, and (iii) all information compiled or generated by the disclosing party under this Agreement for the receiving party, including but not limited to business information, manufacturing schedule information, technical data, drawings, flow charts, program listings, software, plans and projections. Neither party may disclose or refer to the work to be performed under this Agreement in any manner that identifies the other party without advance written permission. However, Siemens has the right to share confidential information with its Affiliates and subcontractors, provided those recipients are subject to the same confidentiality obligations set forth herein.

(b) Nothing in this Agreement requires a party to treat as confidential any information which: (i) is or becomes generally known to the public, without the fault of the receiving party; (ii) is disclosed to the receiving party, without obligation of confidentiality, by a third party having the right to make such disclosure; (iii) was previously known to the receiving party, without obligation of confidentiality, which fact can be demonstrated by means of documents which are in the possession of the receiving party upon the date of

this Agreement; (iv) was independently developed by receiving party or its representatives, as evidenced by written records, without the use of discloser's confidential information; or (v) is required to be disclosed by law, except to the extent eligible for special treatment under an appropriate protective order, provided that the party required to disclose by law will promptly advise the originating party of any requirement to make such disclosure to allow the originating party the opportunity to obtain a protective order and assist the originating party in so doing.

ARTICLE 19
MISCELLANEOUS PROVISIONS

19.1 Entire Agreement.

This agreement, including Attachment "A" and all Exhibits thereto (the "Agreement") contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior and/or contemporaneous agreements and commitments with respect thereto. There are no other understandings, oral or written, nor other terms or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement. Any modification to the Agreement must be in writing and executed by both Parties.

19.2 Applicable Law and Jurisdiction.

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

19.3 Notice.

All notices, reports, demands, claims, elections, requests and other official communications required or permitted by this Agreement or by law to be served upon or given to a Party by the other Party shall be in writing signed by the Party giving such notice and shall be deemed duly served, given to and received by the other Party when delivered by first class registered or certified mail, return receipt requested, postage prepaid, or by a nationally recognized courier, in each case addressed to those respective representatives of each Party as identified in the Proposal.

The Parties, by like notice in writing, may designate, from time to time, another address, addressee or office to which notices shall be delivered pursuant to this Agreement, which change of address shall become effective five (5) Business Days after delivery of such Notice.

19.4 No Rights in Third Parties.

Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties and shall not imply or create any rights on the part of, or obligations to, any other Person, except as specifically provided herein with respect to Subcontractors.

19.5 Compliance with Laws.

The Parties agree to comply with all Applicable Laws, including but not limited to those relating to the manufacture, purchase, resale, exportation, transfer, assignment or use of the Equipment.

19.6 Conflicting Provisions.

In the event of any inconsistencies in this Agreement, the following order of precedence in the interpretation hereof or resolution of such conflict hereunder shall prevail:

(1) Duly authorized and executed Scope Change Orders and written amendments to the Agreement executed by both Parties, with the latest ones having precedence over the earlier ones;
(2) This Agreement including Attachment "A" as equal priority; and
(3) The Exhibits to this Agreement or Attachment "A."

Any differing or additional terms and conditions in any purchase order, invoice, sales order acknowledgement or other document are of no force and effect unless specifically accepted in writing by the Parties. Siemens' failure to object to any such additional, different or conflicting terms does not operate as a waiver of the terms of this Agreement.

19.7 Right of Waiver.

Each Party, in its sole discretion, shall have the right, but shall have no obligation, to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time; provided, however, that such waiver is in writing. Any failure of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the pendency of this Agreement shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision.

19.8 No Partnership Created.

Nothing contained in this Agreement shall be construed as constituting a joint venture or partnership between Siemens and Buyer.

19.9 Captions; Shortened Names for Convenience.

The captions contained in this Agreement are for convenience of reference only and in no way define, describe, extend or limit the scope of intent of this Agreement or the intent of any provision contained herein. Similarly, the references to "Buyer" and "Siemens" in this Agreement are shorthand used for convenience only.

19.10 Counterparts and Facsimile Execution.

This Agreement may be signed in any number of counterparts and each counterpart shall represent a fully executed original as if signed by both Parties, with all such counterparts together constituting but one and the same instrument. Facsimile or electronic pdf signatures of the Parties shall be deemed to constitute original signatures, and executed facsimile copies hereof shall be deemed to constitute duplicate originals.

19.11 Joint Effort.

Preparation of the Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other. Each Party represents that it has obtained the professional advice (including legal, tax and accounting advice on Applicable Laws and regulations) as it has deemed appropriate or convenient.

19.12 Appendixes.

All appendixes, attachments, or exhibits referenced in this Agreement shall be incorporated into this Agreement by such reference and shall be deemed to be an integral part of this Agreement.

19.13 Rules of Interpretation.

In the interpretation of the Agreement, unless the context specifically otherwise requires, the following rules shall apply:

(a) words importing persons shall include firms and corporations and vice versa;

(b) words importing the singular shall include the plural and vice versa;

(c) the headings to the Articles or Sections are for convenience only and do not affect the interpretation of the Agreement; and

(d) all references to documents or other instruments include all amendments and replacements thereof and supplements thereto, to the extent such amendments, replacements and supplements have been incorporated into the Agreement by means of a Scope Change Order.

19.14 Communications.

Unless otherwise specified, wherever provision is made for the giving or issue of any notification, instruction, consent, approval, certificate or determination by any person, such communication shall be made in the form of a notice. The word "notify" and “notification” shall be construed accordingly.

19.15 Hiring.

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

19.16 Non-waiver of Default.

Each shipment made hereunder shall be considered a separate transaction. In the event of any default by Buyer, Siemens may decline to make further shipments. If Siemens elects to continue to make shipments, Siemens’ actions shall not constitute a waiver of any default by Buyer or in any way affect Siemens’ legal remedies for any such default. Any waiver of Siemens to require strict compliance with the provisions of this contract shall be in writing and any failure of Siemens to require such strict compliance shall not be deemed a waiver of Siemens’ right to insist upon strict compliance thereafter.

19.17 Non-Waiver.

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

19.18 Modification of Terms.

This Agreement may only be modified by a written instrument signed by authorized representatives of both parties.

19.19 Assignment.

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

19.20 Severability.

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

19.21 Survival.

The articles titled "Patent and Copyright Infringement," "Limitation of Liability," "Confidentiality," "Title and Risk of Loss," "Indemnitees," "Export / Import Compliance," and "Nuclear" survive termination, expiration or cancellation of this Agreement.