

RESOLUTION NO. 2021-136

**A RESOLUTION AUTHORIZING THE EXECUTION OF
A LONG TERM MAINTENANCE CONTRACT WITH
SIEMENS ENERGY, HOUSTON, TEXAS, FOR
PROPRIETARY MAINTENANCE AND REPAIR TO
CLAYVILLE AND UNIT 11 GENERATING STATIONS IN
ACCORDANCE WITH N.J.S.A. 40A:11-5(1)(i)**

WHEREAS, the City of Vineland has previously entered into a 5 year Long Term Service Agreement with Siemens Energy, Inc. Houston TX.(Siemens) for parts, repairs and repair project management to the Unit 11 and Clayville Generating Stations which Agreement is expiring March 31, 2021 ; and

WHEREAS, all services provided for repair and maintenance to Unit 11 and/or Clayville generators are proprietary in nature and solely to be provided by Siemens's, the manufacturer of the units and therefore are exempt from public bidding in accordance with N.J.S.A. 40A:11-5(1)(i) as an extraordinary and unspcifiable service.; and

WHEREAS, Siemens has provided a proposal for a new 5 year Long Term Service Agreement to commence April 1, 2021 and end March 31, 2026 at a cost in the amount of \$2,723,590.00, a copy which is attached hereto and made a part hereof; and

WHEREAS, the Director of the Vineland Municipal Electric Utility is recommending the City enter into the Long Term Service Agreement to assure the expeditious repairs to the generating engines as necessary as well as to provide required maintenance to the units; and

WHEREAS, N.J.S.A. 52:15C-10a requires a contracting unit to provide notice to the State Comptroller no later than 20 business days after the award of a contract involving consideration or an expenditure of more than \$2,000,000.00 but less than \$10,000,000.00; and

WHEREAS, the availability of funds for payment to Siemens in accordance with the Contract have been certified by the Chief Financial Officer; and

NOW THEREFORE BE IT RESOLVED, by the Council of the City of Vineland that the Mayor and Clerk are authorized to execute a 5 year Long Term Maintenance Contract with Siemens Energy, Houston, Texas, for proprietary maintenance and repairs to Clayville and Unit 11 Generating Stations in the amount of \$2,723,590.00.

BE IT FURTHER RESOLVED that a copy of this Resolution and contract proposal be forwarded to the State Comptroller no later than 20 business days after the adoption of this Resolution.

Adopted:

President of Council

ATTEST:

City Clerk

**REQUEST FOR RESOLUTION FOR CONTRACT AWARDS
UNDER 40A:11-5 EXCEPTIONS
(PROFESSIONAL SERVICES, EUS, SOFTWARE MAINTENANCE, ETC)**

3/8/2021

(DATE)

1. Service (detailed description): Siemens Maintenance Contract for Unit 11 & Clayville
Generating Stations (Long Term Service Agreement) *Subject to Legal Review

2. Amount to be Awarded: \$ 2,723,590.00 (5 Year Contract)

- Encumber Total Award
 Encumber by Supplemental Release

3. Amount Budgeted: \$ 408,538.50

4. Budgeted: By Ordinance No. _____
Or Grant: Title & Year _____ *Split charges 50/50

5. **Account Number to be Charged: 1-05-55-502-9001-53348 (*E553X-*E553C)

6. Contract Period: April 1st 2021 thru March 31st 2026 ---(5 year contract)

7. Date To Be Awarded: March 23, 2021

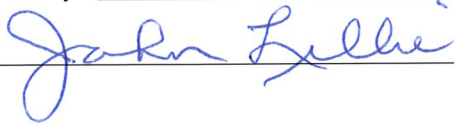
8. Recommended Vendor and Address: Siemens Energy Inc. 1200 West Sam Houston
Parkway North, Houston TX 77043

9. Justification for Vendor Recommendation:(attach additional information for Council review)

*please see attached cost breakdown for Siemens Long Term Service Agreement

- Non-Fair & Open (Pay-to-Play documents required)
 Fair & Open: How was RFP advertised? _____

10. Evaluation Performed by: S August, T Dunmore, P Kudless

11. Approved by: 

12. Attachments:

- Awarding Proposal
 Other: Cost Breakdown

- **Send copies to:**
Purchasing Division
Business Administration

**** If more than one account #, provide break down**

Siemens Long Term Service Agreement
Cost Breakdown revised 3/8/2021

5 Year Contract Term Total Cost	\$	2,723,590.00
Budget Year Cost Breakdown		
2021: April 1st - December 31st	\$	408,538.50
2022: January 1st - December 31st	\$	544,718.00
2023: January 1st - December 31st	\$	544,718.00
2024: January 1st - December 31st	\$	544,718.00
2025: January 1st - December 31st	\$	544,718.00
2026: January 1st - March 31st	\$	136,179.50

*Subject to Annual Escalation per Attachment C Section 3

MAINTENANCE CONTRACT

between

Vineland Municipal Electric Utility

and

Siemens Energy, Inc.

2021 Renewal

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MAINTENANCE CONTRACT

BETWEEN

Vineland Municipal Electric Utility, a company incorporated in _____ with business address at 640 E. Wood Street, Vineland, New Jersey 08360 (“the **Customer**”);

AND

Siemens Energy, Inc., a Delaware corporation, with business address at 4400 Alafaya Trail, Orlando, Florida, 32826 (“the **Contractor**”).

The Customer and the Contractor are also each referred to as a “**Party**”, and together referred to as “**Parties**”.

WHEREAS

1. The Customer is the owner and/or operator of the Covered Equipment.
2. The Customer wishes the Contractor to provide the Services in relation to the Covered Equipment.
3. The Contractor is willing to supply those Services in accordance with the terms and conditions of this Contract.

NOW IT IS HEREBY AGREED as follows:

1. INTERPRETATION

1.1 In this Contract, unless the context otherwise requires:

“**Annual Maintenance Charge**” shall mean the Maintenance Charge payable in a Year as calculated at the start of that Year, excluding any escalation which may be applicable in that Year.

“**Change Order**” shall have the meaning defined in Clause 2.2.

“**Contractor’s Associate**” shall mean any directly or indirectly owned subsidiary of Siemens AG.

“**Contractor IPR**” means all Intellectual Property Rights subsisting in the any of the following supplied by the Contractor under the Contract: (i) Spare Parts; (ii) Services; and (iii) software, designs, drawings and technical information. Contractor IPR does not include any Customer Materials incorporated in (i); (ii) or (iii).

“**Core Engine**” shall mean as defined in Attachment A.

“**Corrective Maintenance**” shall mean all activities (except for Routine Maintenance and Preventive Maintenance) to correct a failure, fault, operating abnormality or defect in, or malfunction of, the Covered Equipment; and the repair,

modification or replacement (at the Contractor's option) of damaged or worn parts in order to restore the Covered Equipment to operable condition.

"Covered Equipment" shall mean the equipment listed in Attachment A

"Customer Materials" means all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Contractor under the Contract but does not include Downloaded Data.

"Downloaded Data" means all data and data signals transmitted to the Contractor via the Covered Equipment's human-machine interface(s), condition monitoring system(s) and the data transmission software in the control system of the Covered Equipment. Downloaded Data includes data and data signals provided manually to the Contractor by the Customer.

"Effective Date" shall have the meaning defined in Clause 17.1.

"Inspection" shall mean the visual or metallurgical examination, measurement and/or testing of parts or assemblies to establish suitability for further use.

"Intellectual Property Rights" means copyright, patents, rights in inventions (whether or not patentable or reduced to practice), utility models, trade marks, service marks, trade names, business names, domain names, design rights, rights in get-up, rights in goodwill, rights in computer software, database rights, rights in data, semiconductor chip topography rights, mask works, rights in confidential information (including know-how and trade secrets) and all intellectual property rights of whatever nature and, in each case: (i) whether registered or unregistered; (ii) including any applications and rights to apply to claim priority to protect or register such rights, and priority rights; (iii) including all divisionals, continuations, continuations-in-part, reissues, extensions, re-examinations and renewals of such rights or applications; (iv) whether vested, contingent or future; and (v) wherever existing.

"Isolation" shall mean the disconnection of the Covered Equipment from its outside supplies including, but not limited to, all AC/DC electrical supplies, gas/liquid fuel supplies, fire and gas suppression equipment and any other ancillary systems that might in any way preclude a safe system of work.

"Lease Engine" shall mean a gas generator provided by the Contractor as a temporary replacement for the Customer's gas generator and/or power turbine as described in Attachment B3.

"Maintenance Charges" shall mean the charges payable by the Customer to the Contractor under this Contract for the performance of the Services as specified in Clause 10 and Attachment C.

"Maintenance Consumables" shall mean Spare Parts that are used during the re-assembly of the Covered Equipment, including, but not limited to, gaskets, locking washers and O-rings.

"Maintenance Plan & Scope of Work" shall be as described in Attachment B.

"Mobilize" shall mean the identification of personnel and preparation for personnel's departure.

"OEM Contract" shall mean the contract under which the Covered Equipment was supplied.

"Operational Consumables" shall mean such parts as are commonly required to be used by the Customer and/or operator in the day-to-day operation of the Covered Equipment including, but not limited to, filter elements and associated joints and seals for fuel, lubricating oil, hydraulic oil and air filter systems, cleaning fluids for the gas turbine compressor, grease, fuses, lamps, shear pins, fire extinguishant, and jointing compounds.

"Preventive Maintenance" shall mean scheduled maintenance activities according to the Maintenance Plan & Scope of Work as described in Attachment B.

"Replacement Parts" shall mean Spare Parts as defined in Attachment B that are required to carry out the Preventive Maintenance activities according to the Maintenance Plan & Scope of Work.

"Routine Maintenance" shall mean the regular day-to-day maintenance activities to be carried out by the Customer or its subcontractors in accordance with the recommendations of the manufacturer and/or supplier of the Covered Equipment, as more particularly described in the Package Operation and Maintenance Manual for the Covered Equipment, and in line with industry practice which do not constitute Preventive Maintenance or Corrective Maintenance.

"Services" shall mean the services to be provided by the Contractor under this Contract.

"Site" shall mean the location of the Covered Equipment specified in Attachment A.

"Spare Parts" shall mean any new or refurbished component parts, assemblies and sub-assemblies supplied by the Contractor under the Contract, including Lease Engine Units.

"Start Date" shall mean April 1, 2021.

"Term" shall have the meaning defined in Clause 17.2.

"Year" shall mean the period of 365 days (or 366 days in the case of a leap year) from the Start Date and each succeeding 365-day (or 366-day in the case of a leap year) period.

1.2 The following Attachments, together with this document, form this **"Contract"**:

Attachment A1	Covered Equipment
Attachment A2	Operating Assumptions and OEM Specifications
Attachment B1	Maintenance Plan and Scope of Work
Attachment B2	Personnel Requirements
Attachment B3	Unscheduled Lease Club Services
Attachment B4	Remote Diagnostics Services (RDS)

Attachment B5	Contractor's and Customer's Obligations
Attachment C	Prices and Terms of Payment
Attachment D	HSE
Attachment E	Tax Certificate

A reference in this Contract to a "Clause" shall mean a reference to a clause in this document. A reference in this Contract to a "Section" or "Sub-section" shall mean a reference to a section or sub-section in an Attachment.

- 1.3 Except where otherwise expressed in the Contract, in the case of conflict between any provision of this document and any provisions of the Attachments to it, the former shall prevail.
- 1.4 The relationship between the Parties established by this Contract is that of independent contractors. Nothing herein shall be construed to create or give rise to any partnership, joint venture or agency relationship between the Parties. At no time during the performance of this Contract shall the Contractor or its employees and other representatives be considered to be the employees or agents of the Customer, nor shall the Customer's employees, agents or subcontractors be considered to be the employees or agents of the Contractor, even if assigned to receive training from the Contractor or to assist the Contractor in the performance of the Services.
- 1.5 In accordance with the terms and conditions of the Contract, the Contractor shall perform the Services and supply the Spare Parts, in both instances as set out in Attachment B, and the Customer shall pay the Maintenance Charges.

2. SCOPE OF THE CONTRACTOR'S SERVICES

- 2.1 During the Term the Contractor shall, in relation to the Covered Equipment only (unless otherwise agreed pursuant to Clause 2.2), provide the Customer with the Services specified in the Contract.
- 2.2 Without prejudice to Clause 7.6, either Party may request changes to the scope of the Services and, if the Parties have agreed on any resulting changes to price, scope of work, schedule and other pertinent provisions of the Contract, all such agreements shall be recorded in writing ("**Change Order**"). If the Contractor agrees to supply goods or services that are outside of the original scope of the Contract, the terms and conditions of the Contract shall apply to such supplies unless otherwise agreed in writing. The Contractor shall have no obligation to perform Services other than on the Covered Equipment and the Contractor shall not be required to proceed with any changes to the scope of Services unless a Change Order has been signed on behalf of the Parties.
- 2.3 The Services to be provided under this Contract are complementary to, and do not replace, any obligations of the Contractor or other suppliers of the Covered Equipment to repair or replace defective items of Covered Equipment as may be provided for in the OEM Contract.
- 2.4 If any part of the Covered Equipment is removed from Site for investigation or repair by the Contractor pursuant to its obligations under this Contract then, to and from Site, the Contractor shall be responsible for transportation and insurance but Clause

10.3 shall apply in respect of all customs duties and other taxes (and the costs of obtaining customs clearance shall be for the Customer).

3. ATTENDANCE AT SITE

3.1 The Services shall be carried out by suitably qualified representatives of the Contractor attending at the Site, when necessary, at such times as are agreed between the Contractor and the Customer.

3.2 Contractor shall bear the costs of subsistence, overnight accommodation and transport of its representatives to and from the Site.

3.3 The Customer shall ensure that the Contractor has full and free access, during visits to Site, to the Covered Equipment and to any records of the Covered Equipment's use kept by the Customer.

4. HEALTH, SAFETY, SECURITY & ENVIRONMENTAL PROCEDURES ("HSSE")

4.1 The Customer shall implement HSSE controls at least equivalent to those required by applicable laws and the Contractor's HSSE rules as amended from time to time set out in Attachment D / (details of which shall be provided by the Contractor prior to the start of any Services which require the Contractor's attendance at Site and following any material change to the Contractor's HSSE rules). In the event of conflict between HSSE controls required by applicable laws and those required by the Contractor's HSSE rules, the Customer shall implement whichever controls provide a safer working environment.

4.2 If so requested by the Contractor the Customer shall, within 30 days of receipt, complete and return to the Contractor a HSSE questionnaire issued by the Contractor in relation to the Site and safe working practices. Where reasonably practicable, the Customer shall complete and return the Contractor's HSSE questionnaire at least 14 days prior to the Contractor's attendance at Site.

4.3 Prior to commencing any Services at Site, the Contractor may visit and inspect the Site to ensure that a safe working environment is being maintained.

4.4 Prior to the Contractor's personnel commencing any Services at Site, the Customer shall deliver to those personnel Site-specific HSSE induction training. All training and information on Site shall be given in English or, if the Contractor agrees, the local language. The Customer shall also deliver Site-specific HSSE induction training to other contractors with whom the Contractor is expected to share the Site.

4.5 Hazardous Substances

4.5.1 The Customer confirms that the Site and the items to be serviced, including parts that are to be sent to, reworked or serviced at the Contractor's premises are, and shall remain, free from hazardous substances dangerous to health.

4.5.2 The Customer shall notify the Contractor as soon as the Customer becomes aware of any hazardous substances affecting the Site or Services. The Customer shall also permit the Contractor to measure, at the Contractor's cost, concentrations of hazardous substances.

- 4.5.3 The Customer shall measure and dispose of hazardous substances and decontaminate the Site before the Contractor attends Site to perform Services.
- 4.5.4 Notwithstanding Clauses 4.5.1, 4.5.2 and 4.5.3, if the Contractor reasonably suspects there is a danger of exposure to any hazardous substance, or in the Contractor's reasonable opinion the Customer is not complying with its obligations under this Contract and/or at law to provide a safe system of work, the Contractor shall be entitled to suspend performance of its obligations under the Contract until the danger is eliminated and certified to be within prescribed limits, and/or (as the case may be) the breach is remedied. The Customer shall pay for the waiting time of the Contractor's personnel at the Contractor's standard rates of charge prevailing at the time (details of such rates are available upon request) and all other costs or expenses incurred in connection with such suspension.
- 4.5.5 At the end of each visit to Site by a Contractor's representative, the representative and the Customer shall complete and sign a visit record and, afterwards, each Party shall be entitled to a copy of it.
- 4.6 Except to the extent that the Contractor expressly permits or to the extent the Customer's personnel are actively engaged in the performance of Services, the Customer shall not allow any person who is not a representative of the Contractor to attend, observe or record any performance of Services by the Contractor. The Contractor shall be entitled to suspend performance of its obligations under the Contract if the Customer is in breach of this Clause 4.6.

5. SPARE PARTS

- 5.1 Each Spare Part supplied under this Contract shall be delivered CIP Site INCOTERMS 2020.
- 5.2 The Customer shall allow the Contractor to have reasonable access to Spare Parts supplied under this Contract, for the purposes of inspection, protection or removal.
- 5.3 Except as otherwise set out in this Contract, title to Spare Parts shall pass to the Customer upon their incorporation by the Contractor into the Covered Equipment. Except where otherwise agreed in writing by the Parties, all components and parts of the Covered Equipment that are permanently removed during the performance of Services shall be delivered by the Customer to the Contractor Ex-Works Site INCOTERMS 2020 (except that the Customer shall load the item(s) onto the means of transport provided by the Contractor) and become the property of the Contractor from the time of that delivery.

If the Customer intends to assert that any Spare Part, or part of the Covered Equipment, has failed or become defective it shall allow the Contractor to inspect such items in their as-found condition.

- 5.4 The Contractor shall have the right to remove Spare Parts at any time: (i) for use in the repair of the Covered Equipment; (ii) if the Customer fails to store them in accordance with its obligations under the Contract; (iii) if the Contractor deems that they are not required at Site; (iv) on expiry or termination of the Contract; and (v) for any other reason.

6. [RESERVED]

7. OPERATION OF THE COVERED EQUIPMENT

- 7.1 The day-to-day operation of the Covered Equipment shall be the responsibility of the Customer. The Contractor shall not be required to operate the Covered Equipment, and the Contractor's representatives are not authorised to do so on its behalf, except for the purposes of recommissioning or (with the consent of the Customer) to change settings in the Covered Equipment.
- 7.2 The Customer shall be responsible for obtaining and maintaining all permits, licences and authorisations necessary for the operation of the Covered Equipment and for ensuring that it complies with all safety and other applicable laws and regulations.
- 7.3 The Customer shall operate the Covered Equipment with only suitably trained and competent personnel as set out in Attachment B and in accordance with the instructions and recommendations of the manufacturers and such advice as may be provided by the Contractor from time to time.
- 7.4 The Customer or its subcontractors which are not original equipment manufacturers of gas turbines shall carry out Routine Maintenance on the Covered Equipment and shall correct minor faults promptly, and will inform the Contractor of any such activity within 2 days.
- 7.5 Other than as stated in Clause 7.4, the Customer shall not allow any person other than a representative of the Contractor to repair, replace or remove any part of the Core Engine, all software incorporated into the Covered Equipment (except the Generator Panel), the Fuel Gas System – On Skid, and the Distillate Fuel System – On Skid without the Contractor's prior written approval.
- 7.6 In the event of any alteration to the Covered Equipment or to the conditions of its use, the Customer shall advise the Contractor promptly in writing. The Contractor shall advise the Customer promptly in writing if the Contractor is unable to provide Services due to obsolescence of any part of the Covered Equipment (excluding the Core Engine) and the obsolete part of the Covered Equipment will be excluded from the Services provided under this Contract.
- If such alteration or obsolescence materially affects the cost to the Contractor of providing the Services under the Contract, the Parties shall agree an appropriate revision to the Maintenance Charges and other consequential amendments to the terms of this Contract. If an agreement on such revisions is not reached within 90 days of a request from a Party to agree such a revision, then either Party may terminate this Contract by not less than 90 days' notice in writing and Clauses 18.2, 18.3 and 18.6 shall apply.
- 7.7 The Customer shall shut down the Covered Equipment upon the request of the Contractor when, in the Contractor's opinion, continued operation would constitute a risk of substantial damage to the Covered Equipment or a risk of injury to personnel.

7.8 The Customer shall be responsible for ensuring that all fuels, air, lubricants, water and/or steam used in the operation of the Covered Equipment comply with the manufacturer's specifications applicable at any time. Failure to comply with such specifications shall be deemed improper operation under Clause 9.2 (f).

8. RECORDS AND REPORTS

8.1 The Customer shall monitor the operation of the Covered Equipment and shall, within 5 days after the end of each calendar month, provide in writing to the Contractor the numbers of operating hours and starts achieved during that prior calendar month.

8.2 If the Customer observes any of the following in relation to the Covered Equipment, it shall report such matters promptly to the Contractor: changes in operating condition, operating abnormalities, unplanned shutdowns, faults, defects and malfunctions. Such reports shall be made in writing by email or other means of transmission approved by the Contractor. Oral reporting shall be deemed to comply with this requirement provided that it is confirmed in writing within 48 hours of the oral report.

8.3 The Customer shall, at its expense, maintain data relating to the operation and maintenance of the Covered Equipment and provide the Contractor with reasonable access to such data upon request.

8.4 After each visit by the Contractor's representatives to the Site the Contractor shall, within 4 weeks, provide to the Customer a written report on the visit, including the reasons for the visit, the observations made by the Contractor and the actions taken or to be taken.

9. CUSTOMER'S RESPONSIBILITIES

9.1 The Customer shall fulfil its responsibilities as set out in the Contract so as to enable the Contractor to perform the Services.

9.2 The Services agreed to be provided by the Contractor in return for the Maintenance Charges do not include the correction or repair of the Covered Equipment or the provision or installation of Spare Parts required as a result of:

- (a) misuse of, neglect of, or damage caused to, the Covered Equipment by the Customer or any third party (except the Contractor's subcontractor); or
- (b) use of parts which have not been supplied by the Contractor or a Contractor's Associate or repairs or modifications to the Covered Equipment which have been made without the Contractor's approval; or
- (c) failure or delay on the part of the Customer to comply with any of its obligations, or fulfil any of its responsibilities, as set out in the Contract; or
- (d) damage resulting from operating personnel ignoring alarms or safety devices related to the Covered Equipment, plant or systems, or rendering them ineffective; or

- (e) damage resulting from foreign objects (not being part of the Covered Equipment itself) entering, or impacting part of, the Covered Equipment; or
- (f) damage resulting from failure, malfunction or improper operation of plant or systems (which are not themselves the Covered Equipment); or
- (g) defect or damages in the Covered Equipment arising prior to the Effective Date; or
- (h) accidents or force majeure events as referred to in Clause 16.

If the Contractor is delayed by, or carries out work in, the circumstances referred to in this Clause 9.2, the Customer shall pay the Contractor's additional charges for labour, associated expenses and Spare Parts provided at the Contractor's standard rates of charge and prices prevailing at the time (copies of which are available on request).

- 9.3 In the circumstances referred to in Clause 9.2 and in any other circumstances where the Contractor considers that it is necessary to carry out work or provide Spare Parts which are not included within the scope of the Services to be provided by the Contractor at its own expense under this Contract, the Contractor will inform the Customer as soon as possible and provide the Customer with an estimate of its charges for carrying out the work and providing the Spare Parts required. Without prejudice to Clause 2.2, where such work is carried out or Spare Parts provided by the Contractor at the request, or with the consent, of the Customer, the terms and conditions of this Contract shall apply thereto. The Contractor shall have no liability to the Customer for any loss or damage that arises as a result of the Customer omitting to have necessary work carried out.

10. PRICE, PAYMENT AND TAXATION

- 10.1 The Customer shall pay the Maintenance Charges to the Contractor in accordance with Attachment C.
- 10.2 Neither Party has any liability under this Contract to pay any taxes levied on the other's profits or for any permanent establishment created by the other.
- 10.3 Except as specifically provided elsewhere in this Contract, any duty, withholding tax, or other form of tax, whether incurred or expected to be incurred by either Party or by any subcontractor, either in relation to any payment to the Contractor or performance by Contractor of any of its rights or obligations arising under the Contract, and that is levied on either Party or on a subcontractor, either outside the country of the Contractor or outside of the country of any subcontractor, is not included in the Maintenance Charges and shall be for the account of the Customer.

Any such duty, withholding tax, other form of tax (and any interest or penalty thereon in respect of late payment) shall be paid by the Customer directly to the appropriate authorities or, where the Contractor elects to pay the same, the Customer shall promptly compensate the Contractor for the full amount of any such payment made.

- 10.4 Where the Contractor is registered for VAT or similar sales taxes, or liable to register for VAT or similar sales taxes as a result of the supplies arising under the Contract,

the amount of any VAT or similar sales taxes due shall be added to the Maintenance Charges and paid by the Customer.

- 10.5 If, following the Effective Date, changes to any laws, orders, regulations, decrees, standards or conventions increase the cost of performing, or amount of time required by the Contractor for performance of, the Contractor's obligations, the Contractor shall be entitled (at its election) to a commensurate (i) increase in the Maintenance Charges and time for performance; and/or (ii) adjustment of the scope under this Contract; and/or (iii) adjustment of the terms of this Contract.
- 10.6 If any payment to be made by the Customer under this Contract is not made when due, the Contractor shall be entitled (without prejudice to other rights and remedies which it may have) upon notice in writing to the Customer to suspend performance of its obligations under this Contract until such time as the full amounts due have been paid.
- 10.7 In the event of a suspension under Clauses 4.5.4 or 10.7, the costs reasonably and properly incurred by the Contractor as a result of the suspension shall be added to the Maintenance Charges and paid by the Customer within 30 days of the invoice date.

11. DELIVERIES AND LIQUIDATED DAMAGES

- 11.1 Except as set forth in Attachment B3, any shipping, delivery, and installation dates are estimated dates only. Contractor is not liable for any loss or expense incurred by Customer or Customer's customers if Contractor fails to meet its delivery schedule.
- 11.2 The Contractor's liability to pay liquidated damages under this Contract shall not, under any circumstances, exceed in the aggregate during any one Year a sum equal to 10% of the Annual Maintenance Charge applicable during that Year.
- 11.3 Where this Contract applies to more than one unit of Covered Equipment, liquidated damages shall be calculated on the Annual Maintenance Charge pro-rata for the unit in relation to which the delay or other deficiency in performance occurred. All liquidated damages expressed to be payable by the Contractor under this Contract for delays or other deficiencies in performance shall be the Customer's sole and exclusive remedy and the Contractor's sole liability for such delays or deficiencies.

12. CONTRACTOR'S WARRANTY

- 12.1 The Contractor undertakes that the Services performed by it under this Contract shall be carried out with reasonable skill and care and that any Spare Parts delivered by the Contractor under this Contract shall, under Proper Use, be free from defects in material and workmanship. "**Proper Use**" means operation and maintenance of the Covered Equipment in accordance with the Contractor's advice and good engineering practice. In this Clause 12, "**Deficient Services**" shall refer to Services not performed with reasonable skill and care and "**Deficiency**" and "**Deficiencies**" shall be construed accordingly.
- 12.2 The Contractor's obligation arising out of the undertaking in Clause 12.1 shall be limited to carrying out additional Services at the Contractor's expense to remedy

Deficient Services or, as the case may be, making good by repair or replacement at the Contractor's option and expense (but subject to Attachment B5 Section 2 "Customer Obligations"), any defect in material or workmanship in Spare Parts delivered by the Contractor under this Contract, and is subject to the following:

- (a) the Contractor's obligation shall be limited to remedying such Deficiencies and defects that appear before the expiry of a period of 12 months after performance of the Deficient Services or, as the case may be, incorporation into the Covered Equipment of the Spare Parts in which the defect arose;
- (b) in the circumstances referred to in Clause 12.2 (a), the Contractor's obligation to remedy defects in Spare Parts incorporated into the Covered Equipment by the Contractor to remedy an earlier defect in Spare Parts shall end 24 months after the incorporation into the Covered Equipment of the originally defective Spare Parts. Notwithstanding the foregoing sentence, the warranty period for a Spare Part delivered by the Contractor and stored by the Customer shall, in any event, expire 24 months after delivery of that Spare Part;
- (c) in the circumstances referred to in Clause 12.2 (a), the Contractor's obligation to remedy Deficient Services shall end 24 months after performance of the original Deficient Services.

12.3 Upon the expiry or termination of this Contract (howsoever occasioned) but subject to Clause 13.3, the Contractor's obligations under this Clause 12 to remedy Deficiencies and defects shall cease and the Contractor shall have no other liability of any kind in respect of Deficiencies and defects.

12.4 The Contractor's obligations and liabilities under this Clause 12 shall not extend to Deficiencies or defects arising in any of the circumstances referred to in Clause 9.2.

12.5 The Contractor's obligation under this Clause 12 is subject to the Contractor being given prompt notice by the Customer of the appearance of the Deficiency or defect and a reasonable opportunity to investigate and rectify it.

12.6 The undertaking and obligations of the Contractor under this Clause 12 are in place of and exclude all other warranties and conditions, whether oral, written, statutory, express or implied.

The Contractor's liabilities and the Customer's remedies in respect of Deficiencies and defects in the Services and any damage to the Covered Equipment resulting therefrom whether arising from breach of contract or warranty, tort (including negligence in any form) or otherwise are exclusively as stated in this Clause 12 and Clause 13.

13. LIMITATION OF LIABILITY

13.1 The Party alleging a breach of contract or a right to be indemnified shall take all reasonable measures to mitigate its loss if it can do so without unreasonable inconvenience or cost.

- 13.2 This Contract sets out the entire liability of the Contractor to the Customer (including any liability for the acts and omissions of its employees, agents, sub-contractors and suppliers) in respect of any:
- (a) breach of this Contract; and
 - (b) representation, statement or tortious act or omission (including negligence in any form) arising out of this Contract.
- 13.3 Nothing in this Contract shall limit or exclude the liability of the Contractor for:
- (a) fraud or fraudulent misrepresentation;
 - (b) death or personal injury, resulting from negligence; or
 - (c) any other liability that cannot be excluded or limited under the law stated in Clause 20.1.
- 13.4.1 Subject to Clauses 13.3 and 13.4.2 and without prejudice to Clause 10, under no circumstances shall the Contractor have any liability to the Customer by way of indemnity, breach of contract or of statute, tort (including negligence in any form) or any other legal theory whatsoever and howsoever arising under, out of, or in connection with, the Contract or the Customer's contracts with third parties for:
- (i) loss of profit, loss of power, cost of purchased or replacement power, loss of use or interruption of operations, loss of production (including loss of hydrocarbons), loss of contracts, loss of revenue or anticipated revenue, loss of interest, loss of savings or anticipated savings, loss of opportunity, damages arising out of the Customer's third party contracts, loss of information and/or data or the cost of capital (in each instance set out in Clause 13.4.1(i), whether the losses are direct or indirect); or
 - (ii) special, indirect or consequential loss, damage, costs or expenses not excluded by Clause 13.4.1(i).
- 13.4.2 Clause 13.4.1 shall not exclude: (i) the payment or deduction of liquidated damages as set out in the Contract; (ii) damages payable by the Contractor for breach of Clause 19; (iii) any right of the Customer to receive interest on any judgment awarded against, or overdue payments from, the Contractor; or (iv) any payments by the Contractor arising out of termination as set out in Clause 18.4.
- 13.5 Under no circumstances (except as provided in Clauses 13.3 and 13.6) shall the liability of the Contractor to the Customer arising under, out of, or in connection with this Contract, whether by way of indemnity, breach of contract or of statute, tort (including negligence in any form) or any other legal theory exceed:
- (i) in any Year, the lesser of (a) the Annual Maintenance Charges applicable at the time of the breach; or (b) five million US Dollars (\$5,000,000); and
 - (ii) in aggregate under the Contract the total Maintenance Charges payable under the Contract

In this Clause 13.5, "**time of the breach**" means the time of a breach of contract, tortious duty, statutory duty or other event giving rise to a cause of action.

13.6 Indemnity

13.6.1 For the purposes of Clause 13.6: "Contractor Group" shall mean the Contractor, its sub-contractors (of any tier), its and their affiliates, its and their respective directors, officers and employees but shall not include any member of the Customer Group; and "Customer Group" shall mean the Customer, its subcontractors (of any tier), its co-venturers, its and their respective affiliates including any financiers, lenders or banks, end users or ultimate owners of the Spare Parts and Services, and its and their respective directors, officers and employees, but shall not include any member of the Contractor Group; and in both cases, employees includes agency personnel.

13.6.2 The Contractor shall be responsible for and shall save, indemnify, defend and hold harmless the Customer Group from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:

- (a) loss of or damage to property of the Contractor Group whether owned, hired, leased or otherwise provided by the Contractor Group arising from, relating to or in connection with the performance or non performance of the Contract but excepting the responsibilities assumed by the Customer in Clause 13.6.3(d); and
- (b) personal injury including death or disease to any person employed by the Contractor Group arising from, relating to or in connection with the performance or non-performance of the Contract; and
- (c) personal injury including death or disease or loss of or damage to the property of any entity or person which is not a member of the Customer or Contractor Groups to the extent that such injury, loss or damage is caused by the negligence or breach of duty (statutory or otherwise) of the Contractor Group but excepting the responsibilities assumed by the Customer in Clause 13.6.3(d).

Notwithstanding the foregoing, Customer shall be liable for damage to or loss of Lease Engine(s) and property owned by Contractor Group and leased to Customer in accordance with the Contract whilst under its care, custody and control on Customer's Site.

13.6.3 The Customer shall be responsible for and shall save, indemnify, defend and hold harmless the Contractor Group from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:

- (a) loss of or damage to property of the Customer Group whether owned, hired, leased or otherwise provided by the Customer Group which is located at the worksite; and
- (b) personal injury including death or disease to any person employed by the Customer Group arising from, relating to or in connection with the performance or non-performance of the Contract; and
- (c) personal injury including death and disease or loss of or damage to the property of any entity or person which is not a member of the Customer or Contractor Groups to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (statutory or otherwise) of any entity of the Customer Group;
- (d) pollution or release of substances capable of causing harm to living organisms or interference with ecological systems, howsoever caused and whether or not

resulting from the negligence of any person, including, but not limited to, loss of or damage to any reservoir or product formation, injury to, destruction of, or loss or impairment of any property right in or to oil, gas or other mineral substance or water, loss of or damage to any well or hole or any liability arising out of or in connection with (including, but not limited to, the control, disposal and removal of) any liquid or non-liquid pollutant or waste material of whatsoever nature that is or has been discharged, seeped, spilled, blown-out, cratered or leaked from any underground reservoir and from loss of or emissions of crude oil, fuel, lubricants or the like from any of Customer's or Contractor's equipment, facilities or reservoirs including, but not limited to, any installations, pipelines or equipment on, at or adjacent to any offshore installation. This indemnity is not intended to include claims for personal injury or death.

Notwithstanding the foregoing, Contractor shall remain liable for damage to or loss of parts of Covered Equipment while under Contractor's care, custody and control within Contractor's premises to the extent that Contractor shall make good such damage to or loss of parts of Covered Equipment by repair, replacement or modification at the Contractor's option and cost, and to the extent that such damage is caused by the negligence of the Contractor, its employees, agents, subcontractors or suppliers. The Contractor's obligations to repair, replace or modify shall be limited to one million US Dollars (\$1,000,000) per occurrence and five million US Dollars(\$5,000,000) in aggregate.

- 13.6.4 All exclusions and indemnities given under this Clause 13.6 shall apply irrespective of cause (except the cases set forth in clauses 13.6.2c and 13.6.3c or where explicitly mentioned) and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the indemnified party or any other entity and irrespective of any claim in indemnity, tort (including negligence), contract, statutory duty or otherwise.
- 13.7 In this Clause 13, the Contractor contracts also on behalf of its employees, agents, subcontractors and suppliers who shall have no greater liability in relation to the Contract than the Contractor.
- 13.8 If the Customer is not or shall not be the sole end user or ultimate owner of the Covered Equipment or beneficiary of the Services or is procuring them for any joint venture, the Customer shall ensure by contract with the end user or ultimate owner or participants in the joint venture that the Contractor is authorised to perform the Services on the terms of this Contract and is given the benefit of the indemnity, exclusions and limitations of liability in this Clause 13 by all such users, owners or participants (which shall apply as if the user, owner or participant were the Customer) and shall indemnify the Contractor against claims by them to the extent that the Contractor would not be liable therefor to the Customer under this Contract if the claim had been made by the Customer.
- 13.9 Unless a right of enforcement is expressly granted (including, but not limited to, the grant under Clause 13.7), no term of this Contract confers a benefit on any third party. Any right of enforcement expressly granted shall be enforced under the provisions set out in Clause 20.

- 13.10 In any event, the Contractor's liabilities under this Contract shall expire at the end of the warranty obligations in Clause 12, save for any claims that the Customer has accrued and made at such point and claims for personal injury and death.

14. INTELLECTUAL PROPERTY RIGHTS

- 14.1 The Contractor shall indemnify the Customer against all damages and costs awarded against the Customer for infringement of any Intellectual Property Rights granted or registered prior to the Effective Date in the country of destination of the Spare Parts specified in the Contract (or, if no destination is specified, in the country of the Contractor) if such damages and costs result from the use or supply of the Spare Parts. The indemnity in this Clause 14.1 shall not apply to any infringement that is due to the association or combination of the Spare Parts with any other article, apparatus or device or to any goods or parts thereof made to designs supplied by the Customer.
- 14.2 The indemnity in Clause 14.1 is conditional on the Customer giving the Contractor prompt written notice of any claim for infringement, the Customer permitting the Contractor (at the Contractor's expense) to conduct on the Customer's behalf any litigation or negotiations in respect thereof and the Customer not admitting the validity of, compromising or settling such a claim, without the Contractor's written consent. This Clause 14 sets out the Contractor's entire liability for Intellectual Property Right infringement.

15. ASSIGNMENT AND SUBCONTRACTING

- 15.1 The whole, or any part, of this Contract may be transferred, assigned or subcontracted at any time by the Contractor to a Contractor's Associate or to any entity that acquires all, or a substantial part, of the business and/or assets relating to the business of the Contractor.
- 15.2 The Contractor may subcontract the whole, or any part, of this Contract at any time to any third party.
- 15.3 If the Contractor subcontracts its obligations in accordance with this Contract, it shall remain responsible for the performance of those obligations by its subcontractor in every way as if the activities of the subcontractor were being carried out by the Contractor itself.
- 15.4 Except as set out in this Clause 15, neither Party shall be entitled to transfer, assign or subcontract the whole, or any part, of this Contract without the prior written consent of the other Party.

16. FORCE MAJEURE

- 16.1 If performance of any obligation under the Contract (other than an obligation of the Customer to make payment) is prevented, restricted, hindered or delayed by any act of God, act or omission of government and/or non-issue of licences, war (declared or not), hostilities, rebellion, revolution, insurrection, insurgency, military or usurped power, civil war, (whether war is declared or not), riot, commotion, disorder or industrial dispute at either Party's premises or elsewhere, failure or delay in source of supply of materials or equipment, epidemic (including COVID-19), fire,

flood, hurricane, tornado, earthquake, explosion, accident or breakdown of essential machinery or equipment or by any cause (whether similar or not to any of the preceding events) beyond the reasonable control of the Party whose performance is affected, then that Party shall be excused from and shall not be liable for non-performance to the extent of that prevention, restriction, hindrance or delay and the time for performance shall be extended accordingly. The Contractor shall be entitled to receive reimbursement as a result of a force majeure event claimed by either Party (i) for labour, at the Contractor's standard field service rates prevailing at the time of the force majeure event (such rates are hereby deemed incorporated into the Contract); (ii) for Spare Parts, at the Contractor's standard list price prevailing at the time of the force majeure event (such list prices are hereby deemed incorporated into the Contract); and (iii) for other items, at cost to the Contractor, plus a margin of 15%.

- 16.2 If performance is prevented, restricted, hindered or delayed for more than 4 months by any cause referred to in Clause 16.1 and the Parties have not agreed upon a revised basis for continuing the Services, then either Party may, after that period and while the cause of the non-performance still exists, terminate the Contract by not less than 30 days' notice in writing to the other Party, in which event the provisions of Clauses 18.2, 18.3 and 18.6 shall apply.

17. EFFECTIVE DATE AND TERM

- 17.1 This Contract shall become effective on April 1, 2021 ("Effective Date").
- 17.2 The Contract shall, unless terminated earlier pursuant to Clause 18, continue in effect for a period of five (5) Years after the Start Date ("**Term**").

18. TERMINATION

- 18.1.1 A Party (the "**Initiating Party**") may terminate this Contract with immediate effect by giving written notice to the other Party (the "**Breaching Party**"):
- (a) if the Breaching Party shall become dissolved or enter into liquidation (whether voluntary or compulsory) or become subject to, or submit to, any law for the relief of insolvent debtors or if a receiver, administrator or similar official shall be appointed in respect of all or any substantial part of its assets;
 - (b) if the Breaching Party:
 - (i) fails to pay any amount due under this Contract on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
 - (ii) subject to Clauses 11 and 18.1.2 (a), commits an irremediable Material Breach of this Contract;
 - (iii) commits a remediable Material Breach of a material obligation under this Contract (other than a case provided for by Clause 18.1.2 (a)) and fails to remedy the breach within 60 days starting on the day after receipt of written notice from the Initiating Party giving full details of the breach and requiring the Breaching Party to remedy the breach and

stating that a failure to remedy the breach may give rise to termination under Clause 18.1.

- 18.1.2 (a) In the event of delay by the Contractor in meeting any dates for delivery or other performance of the Services, the Customer shall have no right to terminate under Clause 18.1.1 (b).
- (b) For the purposes of Clauses 18.1.1 (b) (ii) and (iii):
- (i) a breach is remediable if the Breaching Party can comply with the obligation within the 60 day period; and
- (ii) "**Material Breach**" means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit that the Initiating Party would otherwise derive from a substantial portion of this Contract over the Term. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.
- 18.2 If the Contract is terminated and the value of the Services performed or the goods delivered to the Site under the Contract are higher than the value of the Maintenance Charges paid prior to termination, the Customer shall pay to the Contractor within thirty days of such termination an amount equal to the difference, such amount to be calculated in accordance with the Contractor's standard rates of charge prevailing at that time.
- 18.3 Upon the expiry or termination of this Contract (howsoever occasioned):
- (a) subject to Clause 18.7, the obligations of the Contractor to provide the Services shall cease; and
- (b) any Spare Parts or tools belonging to the Contractor shall be returned to the Contractor unless the Parties agree in writing that they are purchased by the Customer; and
- (c) the Customer shall pay to the Contractor any outstanding balance of Maintenance Charges accrued up to the date of expiry or termination and the outstanding balance of any other charges payable for Services performed or goods delivered to it up to that date.
- 18.4 If this Contract is terminated by the Customer under Clause 18.1, the Contractor shall refund to the Customer a proportion of the quarterly Maintenance Charge paid to it in respect of the quarter during which the termination occurs pro rata to the number of days remaining in such quarter after the date of termination. If the Contractor is in breach of, and the Customer terminates, this Contract under Clause 18.1.1 (b), the Customer shall be entitled to reimbursement of its costs reasonably and properly incurred to remedy that breach, limited to 20% of the Annual Maintenance Charge as at the time of termination.
- 18.5 Without prejudice to Clauses 18.2 and 18.3 (c), if the Contractor terminates this Contract under Clause 18.1, the Customer shall promptly pay to the Contractor following submission of the Contractor's invoice, all reasonable subcontractor

termination costs, and any other cost or liability or damages reasonably incurred by the Contractor (including, but not limited, to the cost of removal or return of items or the repatriation of representatives).

18.6 The expiry or termination of this Contract (howsoever occasioned) shall not affect or prejudice any provision of this Contract that is expressly or by implication provided to come into effect or continue in effect after such expiry or termination. In particular, the provisions of Clauses 1.1, 1.2, 1.3, 10.2, 10.3, 10.4, 10.6, 11.2, 11.3, 12.2, 12.3, 12.6, 13, 14, 18.2, 18.3, 18.4, 18.5, 18.6, 19, 20 and 21 shall continue in effect in accordance with their terms. The Customer's rights to terminate this Contract are exclusively set forth in this Contract.

19. OWNERSHIP AND CONFIDENTIALITY OF INFORMATION

19.1.1 In relation to the Contractor IPR and the Downloaded Data:

(a) (i) the Contractor and its licensors shall retain ownership of all Intellectual Property Rights in the Contractor IPR; and (ii) all Intellectual Property Rights in the Downloaded Data shall vest in the Contractor;

(b) from the Effective Date of the Contract and for so long as the Covered Equipment is operated by the Customer, the Contractor grants to the Customer, or shall procure the grant to the Customer of, a fully paid-up, worldwide, non-exclusive, non-transferable, royalty-free licence to use the Contractor IPR and any Downloaded Data in the Customer's possession for the operation and Routine Maintenance of the Covered Equipment;

(c) the licence in Clause 19.1.1 (b) may not be sub-licensed by the Customer except if the Customer is not the sole owner of the Covered Equipment. In such instance, subject to the Contractor's written consent, the licence may be sub-licensed by the Customer to the ultimate owner, or co-owner(s) on substantially the same terms. Any such sub-licence shall not be sub-licensable, shall not exceed the rights granted in the licence and shall confer a right of direct enforcement in favour of the Contractor subject to the provisions of Clause 20 (except that references to 'Customer' in that clause shall be deemed references to the sub-licensee). Unless otherwise agreed by the Contractor, the sub-licence shall not survive the licence; and

(d) any developments or improvements made by the Contractor of the Intellectual Property Rights in the Contractor IPR or Downloaded Data shall vest in the Contractor.

19.1.2 In relation to the Customer Materials:

(a) the Customer and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials;

(b) from the Effective Date of the Contract, the Customer grants (or shall procure the grant) to the Contractor, the Contractor's Associates, and its and their sub-contractors and agents, a perpetual, fully paid-up, irrevocable, worldwide, non-exclusive, royalty-free licence to copy and use the Customer Materials for the purpose of performing the Contract; and

(c) any developments or improvements made by the Customer of the Intellectual Property Rights in the Customer Materials shall vest in the Customer.

19.2 Subject to Clauses 19.1.1 and 19.1.2

- (a) (i) technical and commercial information disclosed by one Party to the other under, or in connection with, this Contract; and (ii) the terms, but not the existence, of this Contract, (together "**Confidential Information**") shall be kept confidential by the receiving Party and shall not be copied, modified or disclosed by the receiving Party;
- (b) the Customer shall not use the Contractor's Confidential Information other than for the operation and Routine Maintenance of the Covered Equipment; and
- (c) the Contractor, the Contractor's Associates and its, and their, sub-contractors and agents shall not use the Customer's Confidential Information other than for the purposes of performing the Contract and improving, developing, supporting, maintaining, repairing and troubleshooting its products.

19.3 Except to the extent that such restrictions are unenforceable under the law set out in Clause 20.1, the Customer shall not, and shall not use the Contractor's Confidential Information to reverse engineer Spare Parts or the Covered Equipment.

19.4 The Customer warrants that it is legally entitled to transmit the Downloaded Data to the Contractor.

20. LAW AND ARBITRATION

20.1 This Contract shall be governed by and construed in accordance with the laws of the State of New Jersey (except its conflict of laws rules). The United Nations Convention on Contracts for the International Sale of Goods signed in Vienna in 1980 shall not apply to this Contract.

20.2 If any dispute arises under, out of, or in connection with this Contract (including any dispute as to its validity, meaning, effect or termination), the Parties shall attempt to come to a reasonable settlement of the matter but should such dispute not be settled within six weeks of the original written notification of dispute the Parties shall consider attempting to settle it, but not be obliged to attempt to settle it, by alternative dispute resolution (including mediation). An attempt at settlement shall be deemed to have failed as soon as one of the Parties so notifies the other. If an attempt at settlement has failed, any litigation shall be in the Federal District Court for the District of New Jersey. The Parties consent to the jurisdiction of the District of New Jersey and waive their right to a jury trial.

20.3 Notwithstanding the foregoing, nothing in this Clause 20 shall prevent the Contractor from obtaining any injunction, order for specific performance or similar relief in any competent court.

20.4 The Contractor shall not be obligated to perform this Contract to the extent that such performance is prevented, hindered, restricted or delayed by any impediments arising out of any national or international foreign trade or customs requirements or any embargoes or other sanctions, in each case whether or not foreseeable by the Contractor. If the Contractor's performance is prevented, hindered, restricted or

delayed for more than four months by any cause referred to in Clause 20.4 and the Parties have not agreed in writing a revised basis for continuing the Contract at the end of that four-month period, then either Party may after that period, and while the cause of the non-performance still exists, terminate the Contract by not less than 30 days' notice in writing to the other Party (in which event Clauses 18.2, 18.3 and 18.6 above shall apply).

- 20.5 If the Customer transfers goods (hardware and/or software and/or technology as well as corresponding documentation, regardless of the mode of provision) delivered by the Contractor or works and services (including all kinds of technical support) performed by the Contractor to a third party the Customer shall comply with all applicable national and international (re-)export control regulations. In any event of such transfer of goods, works and services the Customer shall comply with the (re-)export control regulations of the Federal Republic of Germany, of the European Union and of the United States of America, as applicable.
- 20.5.1 Prior to any transfer of goods, works and services provided by the Contractor to a third party the Customer shall, in particular, check and guarantee by appropriate measures that:
- (a) there will be no infringement of an embargo imposed by the European Union, by the United States of America and/or by the United Nations by such transfer, by brokering of contracts concerning those goods, works and services or by provision of other economic resources in connection with those goods, works and services, also considering the limitations of domestic business and prohibitions of by-passing those embargos;
 - (b) such goods, works and services are not intended for use in connection with armaments, nuclear technology or weapons, if and to the extent such use is subject to prohibition or authorization, unless required authorization is provided; and
 - (c) the regulations of all applicable Sanctioned Party Lists of the European Union and the United States of America concerning the trading with entities, persons and organizations listed therein are considered.
- 20.5.2 If required to enable authorities or the Contractor to conduct export control checks, the Customer, upon request by the Contractor, shall promptly provide the Contractor with all information pertaining to the particular end customer, the particular destination and the particular intended use of goods, works and services provided by the Contractor, as well as any export control restrictions existing.
- 20.5.3 The Customer shall indemnify and hold harmless the Contractor from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any non-compliance with export control regulations by the Customer, and the Customer shall compensate the Contractor for all losses and expenses resulting thereof.

21. ENTIRE AGREEMENT

- 21.1 This Contract contains the entire understanding and agreement between the Parties in connection with the subject matter of this Contract and supersedes all earlier and

other agreements and understandings between them and all earlier representations by any Party about such subject matter. Each Party warrants that there is no representation, warranty, promise, term, condition, obligation or statement upon which it has relied in entering into this Contract and which is not expressly set out in this Contract. Any prior representations, warranties, statements and assurances that are not expressly set out in this Contract will not be of any effect. If a Party has given any representation, warranty, promise or statement then (except to the extent that it has been set out in this Contract) the Party to whom it is given waives any rights or remedies which it may have in respect of it.

21.2 If any provision (or part of a provision) of this Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

21.3 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties.

22. NOTICES

22.1 Any notice which either Party is required or permitted or wishes to give or make to the other Party pursuant to this Contract shall be in writing in the English language and shall be effected by:

(a) delivery by hand; or

(b) sending it by prepaid first class mail or airmail to such other Party, addressed as set out in Clause 22.2.

22.2 The Parties' respective addresses for the purposes of Clause 22.1 (b) are as follows:

Customer:

[insert full company name]

[insert full business address]

Attention:

[insert job title]

Contractor:

Siemens Energy, Inc.

1202 West Sam Houston Parkway North

Houston, TX 77043, USA

Attention: Stephen Chilcote, Head of AGT LTP Management, RNA

Telephone: (713) 346-1768 or (281) 827-6309

Email : stephen.chilcote@siemens.com

Contractor:

Siemens Energy, Inc.

4400 Alafaya Trail

Orlando, FL 32826-2399

Attention: David Lawrence, Head Long-Term Programs

Telephone: (407) 736-6594
Mobile: (407) 701-2036
Email: davidlawrence@siemens.com

- 22.3 A Party may change the address to which notices are to be addressed by serving a notice on the other Party in accordance with Clause 22.
- 22.4 Notices sent by mail shall be deemed to be delivered five days after posting as determined by the date of the postmark.
- 22.5 The provisions of this Clause 22 do not apply to communications which are not notices or to the service of any proceedings or other documents in any legal action, arbitration or other method of dispute resolution.

IN WITNESS WHEREOF this Contract has been executed by the duly authorised representatives of the Parties as follows:

FOR

Siemens Energy, Inc.

Signed:.....

Name:.....

Title:.....

Date:.....

Signed:.....

Name:.....

Title:.....

Date:.....

FOR

Vineland Municipal Electric Utility

Signed:.....

Name:.....

Title:.....

Date:.....