

To: San Rafael City Schools
38 Union Street
San Rafael, CA

Email: kpantazes@srcs.org

Attn: Katina Pantazes

Project: Fire Alarm Emergency
Replacement

Siemens BT is pleased to provide the following fire alarm System Proposal for your review.

SCOPE OF WORK:

- Furnish the following
 - New Desigo fire alarm panel to replace existing fire panel
 - New addressable initiating devices as listed below
- Programming of devices and panel software
- Removal and replacement of existing fire alarm and annunciator in existing locations
- Removal and replacement of existing initiating field devices in existing locations
- Fire alarm testing
 - Pre-testing – includes two (2) techs, regular hours
 - Final inspection with School District Rep. – includes two (2) techs, regular hours
- Project management, coordination, and administration
- Engineered shop drawings not included in scope of work

<u>QTY</u>	<u>MODEL</u>	<u>DESCRIPTION</u>
1	DESIGO	Addressable Fire Alarm Control Panel
1	FT2014	Remote LCD System Status Display, No Control/No Menu
47	FDO421	Addressable Smoke Detectors
2	FDT421	Addressable Heat Detectors
49	DB-11	Detector Mounting Base
3	HTRI-D	Addressable Monitoring Modules, Dual for Sprinkler Monitoring
20	HTRI-M	Addressable Monitoring Modules, Mini for Pull Stations
LOT	DEMO	Demolition of Existing Fire Alarm Panel
LOT	INSTALL	Installation of New Fire Alarm Panel and Associated Hardware
LOT	TECH	Software Programming, Pre-Test, and School District Witness Test
LOT	PM	Project Management, Coordination, and Administration
LOT	Tax	Use Tax
LOT	Freight	Regular UPS Ground Freight Fees
LOT	Warranty	1-year Warranty from date of Fire Marshal Acceptance

WARRANTY:

- Labor - one (1) year from acceptance by fire department
- Siemens Equipment - (see paragraph 6 in terms and conditions)

- Non-Siemens equipment supplied by Siemens - warranty provided by equipment manufacture and may vary from manufacture. See specific manufacture for warranty details. Labor not included.

ESTIMATED MILESTONES (from date of signed contract and receipt of CAD):

Drawings completed	2 weeks
Drawings approved by AHJ	1-8 weeks (varies by jurisdiction)
Installation may begin	upon receipt of permit

Total for Above: \$36,517.00

Thank you. We look forward to working with you.

Sincerely,



Kirby Kinhead | Siemens Industry
Cell: (510) 861-9271 | Fax: (855) 559-4772
25821 Industrial Blvd | Hayward, CA 94545
kirby.kinhead@siemens.com | usa.siemens.com/buildingtechnologies

CLARIFICATIONS:

- Repair or replacement of existing wiring if found to be defective, not up to code, or otherwise unusable is not included.
- To guarantee technician availability for your project, a minimum of two week notice to Siemens BT is required for scheduling site work.
- Last minute cancellations of scheduled work will result in a four (4) hour minimum charge.
- All work to be done during normal working hours, Monday thru Friday excluding holidays and weekends except as noted.
- Changes to plans submitted at the time of as-builts, that require re-engineering of system, will result in additional charges.
- This proposal is limited to the equipment and services contained herein. Any variation may be subject to associated costs including any devices required by the authority having jurisdiction and/or fire department.
- This scope of work does not include design build or design assist. Fire alarm equipment quoted is based upon a "CLASS-B" style system.
- Certain existing cable and/or common wire may be re-used wherever possible and Siemens does not warranty or guarantee the condition of said cable and wire. Defective cable found will be replaced as a change order to the scope of work. Additional charges may apply.
- Any issues found that have to do with wiring, ground faults, and/or functionality of the existing system will be addressed separately from this proposal unless a full service contract in place.

- Order acceptance shall be contingent upon approval from Siemens Industry Incorporated corporate offices and your company successfully passing our credit approval process. You are advised that a deposit may be required before the commencement of work.
- Siemens standard insurance coverage provides for \$1M per incident with an Aggregate of \$4M per project maximum. Should the final contract agreement require additional "Per Incident" and/or specific project "Per Project Aggregate" coverage, please add \$3,950.00 for the increased premium costs.
- This Proposal is based upon our standard Terms & Conditions of Sale and is limited to the equipment and services contained herein. Any variation shall be subject to associated costs.
- Payment terms are Net 30 days from Invoice. Any alteration or deviation from the above involving additional costs will be performed only following acceptance by Siemens Building Technologies of purchasers' written order and will become additional cost to purchaser at Siemens Building Technologies' then current charges. This proposal may be withdrawn by Siemens Building Technologies if not accepted within 60 days from the date shown above.

EXCLUSIONS:

- Installation labor, 120 VAC wiring, wire, conduit, terminal cabinets and junction boxes.
- NEMA 12 enclosures.
- Provision of door holders, door holder power, waterflow, tamper and PIV switches and fire smoke dampers, non-synchronized strobes, interface with fan panels, low frequency horns in living units.
- Alphanumeric, graphic and directory annunciators.
- Provision of any additional labor or material not specifically listed above.
- Electrical permits, inspection, witness test, and associated fees
- Supply for Installation of any electrical conduit or back boxes
- Electrical work consisting of conduit and cabling for new devices
- Electrical 120vac connections
- Upgrades to meet AHJ requirements in areas outside scope of work.
- Installation of duct detectors
- Cutting, Patching and Painting of existing surfaces as required for the installation of our work.
- Notification of building tenants that testing will be taking place
- Fire Watch (if needed)
- Replacement of existing equipment
- Repair(s) or replacement of any existing equipment, and/or equipment supplied and installed by others, found to be defective or out of adjustment.
- Overtime labor (Evenings, Weekends, and Holidays) except as noted above in scope of work
- Modifications to the above scope of work that would exceed the proposed quote.
- UL Certification of system
- Central Station Monitoring Fees
- Relocation of existing devices
- Complete 100% fire alarm testing of entire building
- Full time supervision of installation
- Retesting of Fire Alarm due to other trades not complete, and or fire alarm troubles not within scope of work
- Ceiling removal or replacement, patching, and painting
- Performance or Payment bonds
- Working in areas containing hazardous materials

Purchase Agreement

Fire Alarm Proposal

By and Between:

San Rafael City Schools
38 Union Street
San Rafael, CA

Siemens Industry, Inc.
25821 Industrial Boulevard
Hayward, CA

Services shall be provided at the following facility/facilities:

Sun Valley Elementary School
75 Happy Lane
San Rafael, CA

Total Project Value: \$36,517.00

Acceptance of Proposal - The prices, specifications and Terms & Conditions contained herein are hereby accepted. Siemens Building Technologies is authorized to do the work as specified.

Proposal accepted by:

Name: Katina Pantazes
Title: Maintenance and Operations
Phone: 415-485-2445



Signature

8-10-16

Date

Proposal submitted by:

Name: Kirby Kinhead
Title: Sales Executive
Phone: 510-783-6000



Signature

8-7-16

Date

Terms and Conditions of Sale

SOLUTION/MASS NOTIFICATION TERMS AND CONDITIONS (REV. 10/09)

Article 1: General

1.1 (a) The Agreement constitutes the entire, complete and exclusive agreement between the parties relating to the services ("Services") and the equipment, materials, parts, supplies and software (collectively "Product") to be provided by SIEMENS as described in each Work Order (such Services and Product collectively referred to as "Work") and shall supersede and cancel all prior agreements and understandings, written or oral, relating to the subject matter of the Agreement. Neither party may assign the Agreement or any rights or obligations hereunder without the prior written consent of the other, except that either party may assign this Agreement to its affiliates and SIEMENS may grant a security interest in the Agreement; assign proceeds of the Agreement; and/or use subcontractors in performance of the Work.

(b) The terms and conditions of this Agreement shall not be modified or rescinded except in writing, signed by a authorized representative of SIEMENS and representative of Customer. SIEMENS' and Customer's performance under this Agreement is expressly conditioned on the terms of this Agreement, notwithstanding any different or additional terms contained in any writing at any time submitted or to be submitted to SIEMENS by Customer relating to the Work.

(c) The terms and conditions set forth herein shall supersede, govern and control any conflicting terms of the Proposed Solution or the Proposal.

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

1.2 This Agreement shall be governed by and enforced in accordance with the laws of the State of California. Any litigation arising under this Agreement shall be brought in the State or Commonwealth in which the Work is being provided to Customer. The parties waive any right to a jury trial on matters arising out of this Agreement.

Article 2: Work by SIEMENS

2.1 SIEMENS will perform the Work expressly described in a Work Order (including any change orders thereto mutually agreed upon in writing) issued under this Agreement and signed by both parties. The Work shall be performed in a manner consistent with the degree of care and skill ordinarily exercised by reputable companies performing the same or similar work in the same locale acting under similar circumstances and conditions.

2.2 SIEMENS shall perform the Work during its local, normal working hours, unless otherwise agreed in a Work Order.

2.3 SIEMENS is not required to conduct safety or other tests, install or maintain any devices or equipment or make modifications or upgrades to any Product beyond the scope set forth in a Work Order. Any Customer request to change the scope or the nature of the Work must be in the form of a mutually agreed change order, effective only when executed by all parties hereto.

2.4 All reports and drawings specifically prepared for and deliverable to Customer pursuant to a Work Order ("Deliverables") shall become Customer's property upon full payment to SIEMENS. SIEMENS may retain file copies of such Deliverables. All other reports, notes, calculations, data, drawings, estimates, specifications, manuals, other documents and all computer programs, codes and computerized materials prepared by or for SIEMENS are instruments of SIEMENS' work ("Instruments") and shall remain SIEMENS' property. SIEMENS conveys no license to software unless otherwise expressly provided in the Work Order. To the extent specified in the Work Order, Customer, its employees and agents ("Permitted Users") shall have a right to make and retain copies of Instruments except uncompiled code, and to use all Instruments, provided however, the Instruments shall not be used or relied upon by any parties other than Permitted Users, and such use shall be subject to this Agreement and limited to the particular Work and location for which the Instruments were provided. All Deliverables and Instruments provided to Customer are for Permitted Users' use only for the purposes disclosed to SIEMENS, and Customer shall not transfer them to others or use them or permit them to be used for any extension of the Work or any other project or purpose, without SIEMENS' express written consent. Any reuse of Deliverables or Instruments for other work or locations without the written consent of SIEMENS, or use by any party other than Permitted Users, will be at Permitted Users' sole risk and without liability to SIEMENS; and, in addition to any other rights SIEMENS may have, Customer shall indemnify, defend and hold SIEMENS harmless from any claims, losses or damages arising therefrom.

2.5 Customer acknowledges that SIEMENS, in the normal conduct of its business, may use concepts and improved skills and know-how developed while performing other contracts. Customer acknowledges the benefit which may accrue to it though this practice, and accordingly agrees that anything in this Agreement notwithstanding SIEMENS may continue, without payment of a royalty, this practice of using concepts and improved skills and know-how developed while performing this Agreement.

2.6 SIEMENS shall be responsible for any portion of the Work performed by any subcontractor of SIEMENS. SIEMENS shall not have any responsibility, duty or authority to direct, supervise or oversee any employees or contractors of Customer or their work or to provide the means, methods or sequence of their work or to stop their work. SIEMENS' work and/or presence at a site shall not relieve others of their responsibility to Customer or to others. SIEMENS shall not be liable for the failure of Customer's employees, contractors or others to fulfill their responsibilities, and Customer agrees to indemnify, hold harmless and defend SIEMENS against any claims arising out of such failures.

Article 3: Responsibilities of Customer

3.1 Customer, without cost to SIEMENS, shall:

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

(b) Provide or arrange for reasonable access and make all provisions for SIEMENS to enter any site where Work is to be performed;

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

(d) Furnish SIEMENS with all available information pertinent to the Work;

(e) Furnish SIEMENS with all approvals, permits and consents from government authorities and others as may be required for performance of the Work except for those SIEMENS has expressly agreed in writing to obtain;

(f) Maintain the Work site in a safe condition; notify SIEMENS promptly of any site conditions requiring special care; and provide SIEMENS with any available documents describing the quantity, nature, location and extent of such conditions;

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

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

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

(j) Furnish the specified operating environment, including without limitation, suitable, clean, stable, properly conditioned electrical power for the Work; telephone lines, capacity and connectivity as required by the Work; and heat, light, air conditioning and other utilities for the Work.

3.2 Customer acknowledges that the technical and pricing information contained in this Agreement is confidential and proprietary to SIEMENS and

agrees not to disclose it or otherwise make it available to others without SIEMENS' express written consent.

3.3 Customer acknowledges that it is now and shall at all times remain in control of the Work site. Except as expressly provided herein, SIEMENS shall not be responsible for the adequacy of the health, safety or security programs or precautions related to Customer's activities or operations, Customer's other contractors, the work of any other person or entity, or Customer's site conditions. SIEMENS is not responsible for inspecting, observing, reporting or correcting health or safety conditions or deficiencies of Customer or others at Customer's site. So as not to discourage SIEMENS from voluntarily addressing health or safety issues at Customer's site, in the event SIEMENS does address such issues by making observations, reports, suggestions or otherwise, SIEMENS shall not be liable or responsible on account thereof.

3.4 Except as expressly stated in a Work Order, Customer is solely responsible for any removal, replacement or refinishing of the building structure or finishes that may be required to perform or gain access to the Work.

Article 4: Compensation

4.1 SIEMENS shall be compensated for the Work as expressly stated in a Work Order, or if not expressly stated, then at its prevailing rates and shall be reimbursed for costs and expenses (plus reasonable profit and overhead) incurred in performance of the Work. All other services, including but not limited to the following, shall be separately billed or surcharged on a time and materials basis: (a) emergency work performed at CUSTOMER's request, if inspection does not reveal any deficiency covered by the Agreement; (b) work performed other than during SIEMENS' normal working hours; and, (c) work performed on equipment not covered by the Agreement.

4.2 SIEMENS shall invoice Customer as provided in this Agreement (including any modifications in a Work Order), or if not expressly provided, then on a monthly or other progress billing basis. Invoices are due and payable within 25 calendar days of receipt by Customer or as otherwise set forth in a Work Order. If any payment is not received when due, SIEMENS may deem Customer to be in breach hereof and may enforce any remedies available to it hereunder or at law, including without limitation, acceleration of payments and suspension or termination of the Work at any time and without notice, and shall be entitled to compensation for the Work previously performed and for costs reasonably incurred in connection with the suspension or termination. In the event any payment due hereunder is not made when due, the CUSTOMER agrees to pay, on demand, as a late charge, one and one-half percent (1.5%) of the amount of the payment per month, limited by the maximum rate permitted by law, of each overdue amount (including accelerated balances) under the Agreement. Customer shall reimburse SIEMENS for SIEMENS' costs and expenses (including reasonable attorneys' and witnesses' fees) incurred for collection under this Agreement. In the event Customer disputes any portion or all of an invoice, it shall notify SIEMENS in writing of the amount in dispute and the reason for its disagreement within 21 days of receipt of the invoice. The undisputed portion shall be paid when due, and interest on any unpaid portion shall accrue as aforesaid, from the date due until the date of payment, to the extent that such amounts are finally determined to be payable to SIEMENS.

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

Article 5: Changes; Delays; Excused Performance

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

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

Article 6: Warranty, Allocation of Risk

6.1 (a) Except as provided in a Work Order, all Product manufactured by SIEMENS or bearing its nameplate is warranted to be free from defects in material and workmanship arising from normal use and service for one year from the earlier of the date installed by SIEMENS or date of first beneficial use.

(b) Except as provided in a Work Order, labor for all Work under this Agreement is warranted to be free from defects for one year after the earlier of the date the Work is substantially completed or date of first beneficial use.

6.2 (a) The limited warranties set forth above shall be void as to, and shall not apply to, any Work (i) repaired, altered or improperly installed by any person other than SIEMENS or its authorized representative; (ii) subjected to unreasonable or improper use or storage, used beyond rated conditions, operated other than per SIEMENS' or the manufacturer's instructions, or otherwise subjected to improper maintenance, negligence or accident; (iii) damaged because of any use of the Work after Customer has, or should have, knowledge of any defect in the Work; or (iv) Product not manufactured, fabricated and assembled by SIEMENS or not bearing SIEMENS' nameplate. SIEMENS assigns to Customer, without recourse, any and all assignable warranties available from any manufacturer, supplier, or subcontractor of such Product and will assist Customer in enforcement of such assigned warranties.

(b) Any claim under the limited warranty granted above must be made in writing to SIEMENS within thirty (30) days after discovery of the claimed defect. Such limited warranty only extends to Customer and not to any subsequent owner of the Work. Customer's sole and exclusive remedy for any Work not conforming with this limited warranty is limited to, at SIEMENS' option, (i) repair or replacement of defective component(s) of covered Product, or (ii) repurchase of the defective portion of the Work.

(c) SIEMENS shall not be required to repair or replace more than the component(s) of the Work actually found to be defective. SIEMENS' warranty liability shall not exceed the purchase price of such component(s). Repaired or replaced Work will be warranted hereunder only for the remaining portion of the original warranty period.

6.3 THE EXPRESS LIMITED WARRANTIES PROVIDED ABOVE ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, STATUTORY, EXPRESS, OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED. SIEMENS MAKES NO WARRANTY, EXPRESS OR IMPLIED, THAT ANYWORK PROVIDED HEREUNDER WILL PREVENT ANY LOSS, OR WILL IN ALL CASES PROVIDE THE PROTECTION FOR WHICH IT IS INSTALLED OR INTENDED. THE LIMITED EXPRESS WARRANTIES AND REPRESENTATIONS SET FORTH IN THIS AGREEMENT MAY ONLY BE MODIFIED OR SUPPLEMENTED IN A WRITING SIGNED BY A DULY AUTHORIZED CORPORATE OFFICER OF SIEMENS.

6.4 Risk of loss of Product furnished by SIEMENS shall pass to Customer upon delivery to Customer's premises, and Customer shall be responsible for protecting and insuring them against theft and damage. However, until SIEMENS is paid in full, SIEMENS shall retain title for security purposes only and the right to repossess the Product.

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

6.6 Anything herein notwithstanding, in no event shall SIEMENS be responsible under this Agreement for incidental, consequential, punitive, exemplary or special damages, including without limitation lost profits, loss of use and/or lost business opportunities, whether arising in warranty, late or non-delivery of any Work, tort, contract or strict liability, and regardless of whether either party has been advised of the possibility of such damages and, in any event,

SIEMENS' aggregate liability for any and all claims, losses or expenses (including attorneys fees) arising out of this Agreement, or out of any Work furnished under this Agreement, whether based in contract, negligence, strict liability, agency, warranty, trespass, indemnity or any other theory of liability, shall be limited to the lesser of \$1,000,000 or the total compensation received by SIEMENS from Customer under this Agreement. SIEMENS reserves the right to control the defense and settlement of any claim for which SIEMENS has an obligation to indemnify hereunder. The parties acknowledge that the price which SIEMENS has agreed to perform its Work and obligations under this Agreement is calculated based upon the foregoing limitations of liability, and that SIEMENS has expressly relied on, and would not have entered into this Agreement but for such limitations of liability.

6.7 It is understood and agreed by and between the parties that SIEMENS is not an insurer and this Agreement is not intended to be an insurance policy or a substitute for an insurance policy. Insurance, if any, shall be obtained by Customer. Fees are based solely upon the value of the Work, and are unrelated to the value of Customer's property or the property of others on Customer's premises.

Article 7: Hazardous Materials Provisions

7.1 The Work does not include directly or indirectly performing or arranging for the detection, monitoring, handling, storage, removal, transportation, disposal or treatment of Oil or Hazardous Materials. Except as disclosed pursuant to this Article 7.3, Customer represents that, to its best knowledge, there is no asbestos or any other hazardous or toxic materials, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the regulations promulgated thereunder, and other applicable federal, state or local law ("Hazardous Materials"), present at Customer's Sites where the Work is performed. SIEMENS will notify Customer immediately if it discovers or suspects the presence of any Hazardous Material. All Work has been priced and agreed to by SIEMENS in reliance on Customer's representations as set forth in this Article 7.1. The presence of Hazardous Materials constitutes a change in the Work Order whose terms must be agreed upon by SIEMENS before its obligations hereunder will continue.

7.2 Customer shall be solely responsible for testing, abating, encapsulating, removing, remediating or neutralizing such Hazardous Materials, and for the costs thereof. Customer is responsible for the proper disposal of all Hazardous Materials and Oil, including but not limited to ionization smoke detectors, ballasts, mercury bulb thermostats, used oil, contaminated filters, contaminated absorbents, or refrigerants, that at any time are present at the Work site in accordance with all applicable federal, state, and local laws, regulations, and ordinances. Even if an appropriate change order has been entered into pursuant to this Article 7.1 above, SIEMENS shall continue to have the right to stop the Work until the job site is free from Hazardous Materials. In such event, SIEMENS will receive an equitable extension of time to complete the Work, and compensation for delays caused by Hazardous Materials remediation. In no event shall SIEMENS be required or construed to take title, ownership or responsibility for such Oil or Hazardous Materials. Customer shall sign any required waste manifests in conformance with all government regulations, listing Customer as the generator of the waste.

7.3 Customer warrants that, prior to the execution of a Work Order, it shall notify SIEMENS in writing of any and all Hazardous Materials which to Customer's best knowledge are present, potentially present or likely to become present at the Work site and shall provide a copy of any Work site safety policies, including but not limited to lock-out and tag procedures, laboratory procedures, chemical hygiene plan, MSDSs or other items covered or required to be disclosed or maintained by federal, state, or local laws, regulations or ordinances.

7.4 For separate consideration of \$10 and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledge, Customer shall indemnify, defend and hold SIEMENS harmless from and against any damages, losses, costs, liabilities or expenses (including attorneys' fees) arising out of any Oil or Hazardous Materials or from Customer's breach of, or failure to perform its obligations under Articles 7.1, 7.2 and 7.3.

Article 8: Import / Export Indemnity

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

Article 9:

If applicable, the following sections shall apply to Siemens Sygnal - Mass Notification Services: 9.1 CUSTOMER OBLIGATIONS

Contact List. Customer shall be responsible for providing a list containing contact information for Customer's employees, agents, authorized representatives, or other individuals to be used by Siemens and its Service Providers in connection with the provision of Siemens Sygnal (the "Contact List"), and Customer agrees that it shall make all reasonable efforts to ensure that the Contact List contains accurate and complete information, and that the Contact List is updated and maintained on a timely basis (including without limitation conflicts with the National Do Not Call Registry, or similar registry, if any).

(A) **Customer Content/Ownership.** All Customer Content is the property of Customer. "Customer Content" consists of the Contact List and/or any messages, communications, information, data, text, sound, sender or recipient information sent via Siemens Sygnal and any other Customer materials. Customer is solely responsible for the content of all messages sent from Customer's account, and for the accuracy, integrity, completeness, and appropriateness (including offensiveness, indecency, or objectionable nature) of Customer Content. Customer acknowledges that Siemens Sygnal is simply a passive conduit for the distribution and transmission of Customer Content. Under no circumstances shall SIEMENS or any Service Provider be liable in any way for any errors or omissions or for any defamatory, libelous, offensive or otherwise objectionable or unlawful content in any Customer Content, or for any loss or damage of any kind incurred as a result of the use of any Customer Content sent, accessed, posted, or otherwise transmitted via Siemens Sygnal.

(B) **Permission to Use Customer Content.** Customer hereby grants SIEMENS and its Service Providers the right to use Customer Content in connection with Siemens Sygnal, specifically, to communicate with and coordinate individuals on the Contact List and/or to assist with managing the flow of information before, during and after an expected or unexpected situation.

(C) **Unauthorized Use of Siemens Sygnal.** Customer shall promptly inform SIEMENS of any actual or potential unauthorized access to, or use of, Siemens Sygnal of which Customer has knowledge.

(D) **Unlawful or Prohibited Conduct.** Customer agrees and warrants that it shall only use Siemens Sygnal pursuant to these Terms and Conditions and shall not knowingly use Siemens Sygnal in connection with any unlawful or prohibited activity and/or in connection with Customer's transmission or other association with spam or other unsolicited messaging activities. Such activities can cause harm to SIEMENS (and its customer base) by damaging the brand name and reputation of SIEMENS, its customers, and Service Providers. Any such unlawful or prohibited use of Siemens Sygnal shall entitle SIEMENS to suspend and/or terminate this Customer Agreement. As used herein the term "Service Provider(s)" refers to telecommunications carriers and any other third party providers that SIEMENS uses for the delivery of Siemens Sygnal to its subscribers.

(E) **Third Party Factors and Scope of Control.** Customer acknowledges that SIEMENS provision of Siemens Sygnal is dependent on the facilities, networks, connectivity, or any acts and/or omissions of Service Providers ("Third Party Factors"). Customer acknowledges that the performance of Siemens Sygnal may be affected by such Third Party Factors. "Scope of Control" is defined as those areas of functionality and technology, including hardware and software used in the provision of Siemens Sygnal that are under the direct control of a party (excluding Third Party Factors). SIEMENS AND SERVICE PROVIDERS WILL HAVE NO LIABILITY FOR ANY REDUCTION, INTERRUPTION, TERMINATION OR SUSPENSION OF SIEMENS SYGNAL RELATED TO ANY ISSUES OUTSIDE SUCH PARTY'S SCOPE OF CONTROL, INCLUDING BUT NOT LIMITED TO ILLEGAL ACTS OF THIRD PARTIES (INCLUDING BUT NOT LIMITED TO THIRD PARTY FACTORS). Customer shall be liable to SIEMENS for any additional labor or material costs, expenses

or charges arising out of software, technology or communication issues relating to the operation of the Siemens Sygnal system.

(F) Proprietary Rights. Siemens Sygnal and any related software or technology, and all intellectual property rights therein and thereto, is owned by SIEMENS, its licensors or Service Providers, and Customer so acknowledges. Customer shall not modify, reverse engineer, reformat, copy, display, distribute, transmit, publish, license, create derivative works from, transfer, or sell any part of Siemens Sygnal. Customer agrees not to display or use SIEMENS trademarks, services marks, logos, or other intellectual property of SIEMENS without the prior written permission of SIEMENS.

(G) Privacy. Customer acknowledges that the portion of the locations (of SIEMENS or its Service Providers) through which content shall pass and the servers on which content shall be stored may not be segregated or in a separate physical location from servers on which SIEMENS' (or its Service Providers') other customer content is or shall be transmitted or stored.

(H) Export Restrictions; Compliance With Laws. Customer acknowledges that it may be subject to export control laws that may regulate the export and re-export of technology, including the electronic transmission of information to foreign countries and to certain foreign nationals. Customer agrees to abide by these laws and their regulations, and not to use Siemens Sygnal in a method that violates such laws. SIEMENS may refuse to provide Siemens Sygnal if SIEMENS determines that the provision of Siemens Sygnal shall violate any laws.

(I) Taxes. Customer acknowledges and agrees that it shall be responsible for the payment of all taxes, duties, levies, and other similar charges (and any related interest and penalties) (collectively, "taxes"), however designated, levied or imposed by any governmental authority by reason of the sale, performance, license or use of any of the services, equipment or other goods or products covered by this Customer Agreement or as a result or arising out of the existence or operation of this Customer Agreement, including without limitation any goods and services tax.

(J) Text Messages. Under no circumstances shall SIEMENS be liable to Customer, to any individual on the Contact List, or to any other person for any charges that arise from a Customer's or an individual person's receipt of a text message.

9.2 SIEMENS PRACTICES

(A) Siemens Sygnal. Customer acknowledges, as applicable, that either (1) Siemens Sygnal Product is a fully hosted application ; or (2) Siemens Sygnal is part of a combined system that includes a fully hosted application; or (3) Siemens Sygnal is a premised based system only.

(B) Suspension or Discontinuation of Siemens Sygnal. In the event that SIEMENS believes that Customer is abusing Siemens Sygnal, SIEMENS shall notify the Customer of the abuse in writing and shall have the right to immediately suspend Siemens Sygnal Services. If such abuse is not remedied or corrected within thirty (30) days, Siemens shall have the right to terminate Siemens Sygnal Services

(C) Confidentiality of Customer Content. SIEMENS shall not wrongfully or negligently disclose, modify, copy, display, distribute, transfer, provide access to, or sell Customer Content to any third party, other than to government and law enforcement officials when required by law (e.g., in compliance with a subpoena or court order) and to Service Providers in order to provide Siemens Sygnal. SIEMENS shall notify Customer as soon as practicable upon receipt of a subpoena or court or governmental order requiring SIEMENS to disclose confidential Customer Content with the intention of providing Customer with the opportunity to oppose the disclosure. SIEMENS shall never sell, lease, barter or share any identifiable information (names, addresses, and contact device identifiers) from any account and safeguards the privacy of each and every Customer. SIEMENS shall preclude the use or knowing disclosure of the Customer Content within SIEMENS own organization or its Service Providers, except as necessary to perform Siemens Sygnal.

9.3 REPRESENTATIONS; DISCLAIMER; LIMITATIONS OF LIABILITY; INDEMNITY

(A) Mutual Representations and Warranties. Each party represents and warrants that: (i) it has the full corporate right, power and authority to enter into this Customer Agreement, to grant the rights granted hereunder and to fully perform under this Customer Agreement; (ii) the execution of this Customer Agreement by such party, and the performance by such party of its obligations and duties hereunder, do not and will not violate or conflict with any agreement to which such party is a party or by which it is otherwise bound; and (iii) when executed and delivered by such party, this Customer Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

(B) Customer Representations and Warranties: Customer represents and warrants that: (i) it will not make any unauthorized representation or warranty relating to Siemens Sygnal to any user that accesses Siemens Sygnal through Customer or to any third party; (ii) it shall abide by all applicable local, state, national and international laws, treaties, rules and regulations, including those related to data privacy, international communications and the transmission of technical or personal data (collectively, "Laws"), and the terms and conditions of its privacy policy in connection with its use of Siemens Sygnal and its collection of data in the Contact List; (iii) it has the right and authority to provide to SIEMENS and its Service Providers all of the individual information that appears in the Contact List and to authorize SIEMENS and its Service Providers to use such information in connection with SIEMENS provision of Siemens Sygnal; and (iv) it shall abide by the use restrictions with respect to Siemens Sygnal set forth in this Customer Agreement.

(C) Representations and Warranties: SIEMENS represents and warrants that: (i) Siemens Sygnal will conform in all material respects to SIEMENS published user documentation; (ii) all support and training to be performed hereunder in connection with SIEMENS provision of Siemens Sygnal shall be performed in a professional manner consistent with industry standards; (iii) it has put in place commercially reasonable procedures to protect Customer privacy.

(D) Disclaimer. EXCEPT AS OTHERWISE PROVIDED HEREIN, SIEMENS SYGNAL IS PROVIDED "AS IS." EXCEPT AS OTHERWISE PROVIDED HEREIN, SIEMENS DOES NOT MAKE ON BEHALF OF ITSELF OR ITS SERVICE PROVIDERS ANY, AND HEREBY DISCLAIMS ALL, REPRESENTATIONS, CONDITIONS, OR WARRANTIES, ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE ARISING FROM COURSE OF DEALING OR OTHERWISE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, REGARDING SIEMENS SYGNAL OR ANY OTHER MATTER PERTAINING TO THIS CUSTOMER AGREEMENT.

(E) Indemnification. Customer agrees to indemnify, defend, and hold harmless SIEMENS, the Service Providers, and each of its and their officers, directors, owners, employees, agents, or vendors, from and against all third party actions, suits, losses, liabilities, claims, expenses, damages, and costs of every kind and description including reasonable legal fees (collectively, "Losses") arising out of or in connection with (i) a breach of this Customer Agreement by Customer, (ii) Customer's use of Siemens Sygnal (except to the extent of SIEMENS indemnification obligations below), and (iii) a claim that the Customer Content, or any use of such content by SIEMENS or a Service Provider in connection with the performance of Siemens Sygnal, violates a third party's intellectual property, proprietary, or other rights, including, without limitation, the right of publicity and the right of privacy. SIEMENS agrees to indemnify, defend, and hold harmless Customer, its officers, directors, owners, employees, and agents from all Losses arising out of or in connection with (i) a breach of any of its representations or warranties set forth in this Customer Agreement by SIEMENS; or (ii) a claim that Siemens Sygnal violates a third-party's U.S. intellectual property rights, except that SIEMENS will have no liability for any infringement claim if caused in whole or in part by: (a) Customer's use of Siemens Sygnal other than in accordance with applicable documentation or instructions provided or approved by SIEMENS; (b) Customer's unauthorized modification of Siemens Sygnal or any part thereof (c); Customer's use or combination of Siemens Sygnal with software, hardware, system, data, or other materials not supplied by SIEMENS; (d) information supplied by Customer (including Customer Content) to SIEMENS that is used in or with Siemens Sygnal; or (e) Customer's continued use of Siemens Sygnal after Customer was notified of actual or potential infringement from Customer's use of Siemens Sygnal.

(F) Consequential Damages Exclusion; Direct Damages Limitation. UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY (OR SERVICE PROVIDERS LIABLE TO CUSTOMER) OR ANY OTHER PERSON FOR ANY LOST REVENUES, LOST PROFITS, LOSS OF BUSINESS, INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, WHETHER OR NOT FORESEEABLE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, IN NO EVENT SHALL THE COLLECTIVE LIABILITY OF SIEMENS, ITS AFFILIATES, SERVICE PROVIDERS, AND ITS AND THEIR DIRECTORS, OFFICERS, AND EMPLOYEES FOR ANY DAMAGES INCURRED BY CUSTOMER EXCEED THE GREATER OF \$1000 OR 10% OF THE TOTAL FEES ACTUALLY PAID BY CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRIOR TO THE TIME AT WHICH THE DAMAGES AROSE, REGARDLESS OF THE FORM OF ACTION.

9.4 TERM, RENEWAL, AND TERMINATION

(A) Term; Renewal. This Customer Agreement shall begin on the Service Start Date and Terminate on the Service End Date as set forth on the cover page of this Customer Agreement.

(B) Termination on Breach. Notwithstanding the above clause, in the event that either party to this Customer Agreement breaches or fails to perform hereunder, the other party may immediately terminate this Customer Agreement if such breach or failure is not cured within thirty (30) days after delivery of written notice thereof to the party in default.

(C) Termination on Insolvency. Notwithstanding the foregoing cure right, either party may immediately terminate this Customer Agreement, upon thirty (30) days written notice, if the other party becomes insolvent, files a petition of bankruptcy, makes an assignment for the benefit of its creditors, or becomes the subject of proceedings under any law relating to bankruptcy or the relief of debtors.

9.5 IN GENERAL

(A) Assignment. Customer shall not assign any of the rights and obligations hereunder without prior written approval of SIEMENS, except to a corporate affiliate, or successor of all or substantially all of Customer's business. Such approval shall not be unreasonably withheld or delayed.

(B) Force Majeure. Except for obligations to make payments hereunder, neither party shall be responsible for delays or failures of performance resulting from unforeseeable acts beyond the reasonable control of such party.

(C) Governing Law and Jurisdiction. This Customer Agreement shall be governed by the laws of the State of [Illinois] without reference to conflict of laws principles, if any. Customer agrees that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to this Customer Agreement shall be filed within one (1) year after such claim or cause of action arose or be forever barred.

(D) Survival. Disclaimers of warranties, limitations of liability, indemnification obligations, this Section, the rights and obligations to make payments due and owing, and the applicable terms of the Customer Agreement that by their nature are intended to survive shall survive termination of this Customer Agreement for any reason.

(E) Independent Contractor. SIEMENS relationship with Customer shall be that of an independent contractor, and nothing in this Customer Agreement shall be construed to create a partnership, joint venture, principal-agent, or employer-employee relationship.

(F) Third Party Beneficiary. Other than with respect to the disclaimers and limitations of liability and indemnification rights, under no circumstances shall any other person, whether a member of the Contact List, any of Customer's affiliates or customers, or any other person or third parties, be considered a third party beneficiary of this Customer Agreement or otherwise be entitled to any rights or remedies under this Customer Agreement.

(G) Severability. If any term or provision of this Customer Agreement or the application thereof is to any extent held invalid or unenforceable, the remainder of this Customer Agreement shall not be affected thereby, and each term and provision hereof shall be valid and enforced to the fullest extent of the law.

(H) Notice. With the exception of payment notices, all notices given pursuant hereto shall be in writing, delivered personally or sent by registered or certified mail (postage prepaid, return receipt requested) or overnight courier and addressed to the party's address as set forth on the cover page of this Customer Agreement or to such other address as either party may from time to time designate by written notice. Any such notice shall be deemed to be given as of the date it is delivered.