

CS-15-71

CONTRACT APPROVAL FORM

(Contract Management Use only)

CONTRACT TRACKING NO.

CM2275

CONTRACTOR INFORMATION

Name: Emerson Network Power

Address: 610 Executive Campus Drive Westerville, OH 43082
City State Zip

Contractor's Administrator Name: Jeff Quick (Conditioned Air & Power) Title: _____

Tel#: 904-642-3369 Fax: 904-645-0355 Email: jquick@condap.com

CONTRACT INFORMATION

Contract Name: Liebert UPS/Power/Battery Services Contract Value: \$10,072.40

Brief Description: UPS maintenance at radio tower sites.

Contract Dates : From: 10/01/15 to 09/30/16 Status: New Renew Amend# WA/Task Order

How Procured: Sole Source Single Source ITB RFP RFQ Coop. Other _____

If Processing an Amendment:

Contract #: _____ Increase Amount of Existing Contract: _____

New Contract Dates: _____ to _____ TOTAL OR AMENDMENT AMOUNT: _____

15 OCT 19 AM 8:31
RECEIVED
COUNTY MANAGER'S
OFFICE

APPROVALS PURSUANT TO NASSAU COUNTY PURCHASING POLICY, SECTION 6

1. [Signature] 10/13/2015 01252525-546020 MCOMM
Department Head/Signature Date Funding Source/Acct #
2. Charlotte Young 10/19/15
Contract Management Date
3. [Signature] 10-19-15
Office of Management & Budget Date
4. [Signature] 10-19-16
County Attorney (approved as to form only) Date

Comments: _____

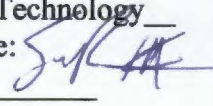
COUNTY MANAGER - FINAL SIGNATURE APPROVAL

[Signature] 11/2/15
Ted Selby Date

RETURN ORIGINAL(S) TO CONTRACT MANAGEMENT FOR DISTRIBUTION AS FOLLOWS:

- Original:** Clerk's Services; Contractor (original or certified copy)
- Copy:** Department
 Office of Management & Budget
 Contract Management
 Clerk Finance

Nassau County Board of County Commissioners
Sole Source/Single Source Certification Form

Vendor Name: Emerson Network Power Department: Information Technology
Address: 610 Execuitive Campus Drive Department Head Signature: 
Westerville, OH 43082
Phone: 904-642-3369 Date: 10/9/2015
Contact Name: Ruth Scott
Account: Cost: \$10,072.40

Description of Commodity
Liebert UPS / Power / Battery
Services _____

Check one (1) of the following two (2) choices:

- X Sole Source: The goods or services can be legally purchased from only one source.
- Single Source: The goods or services can be purchased from multiple sources, but, in order to meet certain functional or performance requirements, there is only one economically feasible source for this purchase.

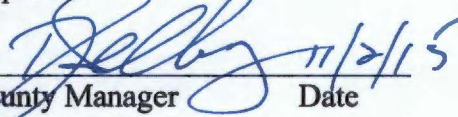
Please check all of the following that apply:

- X Purchase can only be obtained from original manufacturer-not available through distributors.
- X Only authorized area distributor of the original manufacturer.
- X Parts/Equipment are not interchangeable with similar parts of another manufacturer.
- This is the only known source that will meet the specialized needs of this department or perform the intended function.
- This source must be used to meet warranty or service maintenance requirements.
- This source is required for standardization.
- None of the above apply.

Comments/Explanations: (required)

Conditioned Air and Power is the only authorized servicer for Emerson Network Power.

Approval:


County Manager Date



Hal Clark
Vice President, Regional Sales

Data Center Solutions
Liebert Power & Cooling
610 Executive Campus Drive
Westerville, OH 43082

T (614) 841-2784
E hal.clark@emerson.com

October 9, 2015

Guy Riner
Director of Information Technology
Nassau County

Re: Local Customer Support

Dear Mr. Riner:

In order to provide ongoing, in-depth service to our customers, Liebert has developed a comprehensive network of local Representative and factory direct offices throughout the United States. This network provides customer support before, during and after the sale of Liebert products and services.

Conditioned Air & Power, Inc. located at 11243 St. Johns Industrial Parkway South, Suite 7, Jacksonville, Florida 32246, meets our required criteria and is the only authorized Liebert Representative in the geographic area of Northeast Florida including Jacksonville, Tallahassee and Gainesville, Florida.

Please feel free to contact me if additional information is needed.

Sincerely,

A handwritten signature in black ink that reads "Hal S. Clark".

Hal S. Clark
Vice President, Regional Sales
Liebert Power & Cooling
Emerson Network Power

Conditioned Air & Power

11243-7 St. Johns Industrial Pkwy. S.

Jacksonville, FL 32246

PH: (904) 642-3369



Proposal for Service

Conditioned Air & Power | Liebert Services

Oct 8, 2015

NASSAU COUNTY BOARD OF CO
76226 WILLIAM BURGESS BLV
YULEE, FL US, 32097

Oct 8, 2015

NASSAU COUNTY BOARD OF CO
76226 WILLIAM BURGESS BLV
YULEE, FL US, 32097
Q02370014

Dear Guy Riner,

Thank you for your interest in Emerson Network Power, Liebert Services. We are pleased to submit the following proposal for your review and consideration.

As the rate of change and complexity in your data center increases, Emerson Network Power is the dedicated partner that you need to help you achieve your goals.

Please complete all required fields on the signature page and attach your Purchase Order to assist timely order processing. Should you have any questions regarding the proposal, feel free to contact me directly at (904) 642-3369. I look forward to your response and the opportunity to work together to improve your data center investment.

Sincerely,

RUTH SCOTT

11243-7 St. Johns Industrial Pkwy. S.

Jacksonville, FL 32246

PHONE (904) 642-3369

FAX (904) 645-0355

EMAIL RUTH.SCOTT@CONDAP.COM

Order Q02370014

Liebert UPS / Power / Battery Services:

- We are the Original Equipment Manufacturer and the experts on Liebert equipment with access to updates and changes, knowledge of engineering specifications, current issues and how to fix them correctly.
- Our factory trained service force is twice the size of the next largest competitor with over 650 customer engineers and field technicians in the United States alone; everywhere in the US the most knowledgeable engineers and technicians available, will cover you.
- With the most advanced tooling and instrumentation available, each CE has over \$10,000 in gear with him at all times, so any issue can be resolved in the least amount of time possible.
- To make sure we get the right part to the right place at the right time, we have the industry's most sophisticated parts logistics system. No matter where you are in the US we also have a parts warehouse close to serve you.
- Emerson maintains and follows all safety and compliance regulations necessary to keep CE's from harm and protect you, our customers from liability. We care about your safety.

Standard Maintenance Contracts :

Site #: 101577,NASSAU BOARD OF COUNTY

Tag #	Description	Model #	Annual PM Qty.	Coverage Type (Coverage Dates)	Coverage Amount
1359199	NFINITY 4-16	NB20R0612600	1	ESSENTIAL (10/1/2015) - (9/30/2016)	\$1,632.80
1359200	NFIN MBC	NMBHW81	1	ESSENTIAL (10/1/2015) - (9/30/2016)	\$503.75

Site #: 101585,NASSAU BOARD OF COUNTY

Tag #	Description	Model #	Annual PM Qty.	Coverage Type (Coverage Dates)	Coverage Amount
1359217	NFINITY 4-16	NB12S0312600	1	ESSENTIAL (10/1/2015) - (9/30/2016)	\$1,429.35
1359218	NFIN MBC	NMBHW81	1	ESSENTIAL (10/1/2015) - (9/30/2016)	\$503.75

Site #: 101584,NASSAU BOARD OF COUNTY

Tag #	Description	Model #	Annual PM Qty.	Coverage Type (Coverage Dates)	Coverage Amount
1359213	NFINITY 4-16	NB12S0312600	1	ESSENTIAL (10/1/2015) - (9/30/2016)	\$1,429.35
1359214	NFIN MBC	NMBHW81	1	ESSENTIAL (10/1/2015) - (9/30/2016)	\$503.75

Site #: 101578, NASSAU BOARD OF COUNTY

Tag #	Description	Model #	Annual PM Qty.	Coverage Type (Coverage Dates)	Coverage Amount
1359201	NFINITY 4-16	NB12S0312600	1	ESSENTIAL (10/1/2015) - (9/30/2016)	\$1,429.35
1359202	NFIN MBC	NMBHW81	1	ESSENTIAL (10/1/2015) - (9/30/2016)	\$503.75

Standard Maintenance Contracts :

Site #: 101571, NASSAU COUNTY BOARD OF CO

Tag #	Description	Model #	Annual PM Qty.	Coverage Type (Coverage Dates)	Coverage Amount
1359155	NFINITY 4-16	NB20R0612600	1	ESSENTIAL (10/1/2015) - (9/30/2016)	\$1,632.80
1359156	NFIN MBC	NMBHW81	1	ESSENTIAL (10/1/2015) - (9/30/2016)	\$503.75

Total price not including tax: USD \$10,072.40

any tax required must be included in customer purchase order

Payment Terms: Net 30 Days

**UNINTERRUPTIBLE POWER SYSTEMS
INFINITY
SCOPE OF WORK**

ESSENTIAL SERVICE (1)

- Guaranteed 4-hour on-site emergency response, 7 days/week, 24 hours/day, within 150 miles of a Liebert Services' Service city.
- Includes 1-800-LIEBERT Customer Response Center.
- Includes 100% parts coverage (including internal batteries, excluding air filters and proactive full bank capacitor replacement.)
- Includes access to Liebert Customer Services Network On-Line Internet portal.
- Includes one Annual Preventive Maintenance Service scheduled by the customer between 8am-5pm, Monday-Friday (excluding national holidays).
- Parts for KVA/Battery upgrades not included. Labor is included if performed during a scheduled PM.
- Performed by Liebert factory trained Customer Engineers.
- Includes 100% labor and travel coverage 7 days/week, 24 hours/day, within the 48 contiguous states and Hawaii.
- Subject to all Terms & Conditions as noted in the Liebert Services Terms & Conditions.

SERVICE PERFORMED

UPS Full Preventive Maintenance Service

Record the phase to phase input voltages.

Perform a temperature check on all breakers, connections, and associated controls. Repair and/or report all high temperature areas.

Perform a complete visual inspection of the equipment, including sub-assemblies, wiring harnesses, contacts, cables and major components.

Check all nuts, bolts, screws, and connectors for tightness and heat discoloration.

Inspect for broken, brittle, damaged, or heat stressed components and cables.

Clean any foreign material and dust from internal compartments.

Perform a status check of alarm circuits.

Perform an operational test of the system including unit transfer to and from bypass.

Perform an operational test of the system including unit transfer to and from battery.

Install or perform Engineering Field Modifications including firmware revisions as necessary.

Return the system to normal load and verify the output voltage.

Review system performance with customer to address any system questions.

Note1: Preventive Maintenance usually requires a shutdown to ensure electrical connection integrity.

Order Number: Q02370014

Purchase Order must be assigned to:
Emerson Network Power, Liebert Services, Inc.
610 Executive Campus Dr
Westerville OH 43082

Payment remittance address:
Emerson Network Power, Liebert Services, Inc.
PO Box 70474
Chicago, IL 60673

FID# 43-1798453

PO should be e-mailed or faxed with signed proposal to:
Emerson Network Power, Liebert Services, c/o RUTH SCOTT
Attn: RUTH SCOTT
Email: RUTH.SCOTT@CONDAP.COM
Fax: (904) 645-0355

Please complete the following information (All fields are required):

Purchase Order Number: _____ Purchase Order attached: Yes No

If PO **NOT** attached, please specify reason: _____

Invoice Delivery Method: Web Billing (Attach Instructions) Mail Other _____

Accounts Payable Email _____ @ _____

Billing Contact Person: _____ Phone: _____

Email: _____ Fax #: _____

Bill-To Company Name: _____ Bill-To Address: _____

Federal Tax ID # _____ Bill-To City, ST Zip: _____

Tax Exempt: Yes (Attach tax exempt certificate) No

Site Services/IT Contact Person: _____ Phone: _____

**** COVERAGE DETAILS ****

For equipment not currently under a Service Agreement or for equipment for which the warranty has expired in excess of thirty(30) days, parts required to bring equipment back to manufacturers specifications are the responsibility of the Buyer and billable at the time of the first preventive maintenance visit or Service call. All pricing is valid only for Service coverage stated and is subject to change if this Proposal is modified in any way. This Proposal is valid for 45 days from the date of this Proposal unless otherwise noted. By acceptance of this Proposal, Buyer expressly manifests its assent to the Terms and Conditions of this Proposal, and agrees that if any provision of Buyer's Order or other document or communication from Buyer is inconsistent with any provision of these Terms and Conditions, regardless of the order or timing of the exchange of such document or communication, these Terms and Conditions shall prevail.

Signature of this agreement authorizes Seller to invoice for Services mentioned herein and to utilize the provided purchase order number. If a purchase order number is not used, then the Buyer authorizes and guarantees Seller the payment of such invoices by authority of the signature below.

Thank you for your business.

Proposed By:

RUTH SCOTT Date

Accepted By:

 11/2/15

Buyer Signature Required Date

Ted Selby, County Manager 11/02/15
Printed Name Title Phone

SERVICES TERMS AND CONDITIONS

Liebert Services, Inc. is herein referred to as the "Seller" and the customer or person or entity purchasing services ("Services") and parts required for Services ("Parts") from Seller is referred to as the "Buyer." These Services Terms and Conditions, any price list or schedule, quotation, acknowledgment, Seller's scope of work, or invoice from Seller relevant to the provision of Services and all documents incorporated by specific reference herein or therein, constitute the complete and exclusive statement of the terms of this agreement ("Agreement") governing the sale of Services and Parts by Seller to Buyer. Any discrepancies between the terms of the above referenced documents shall be resolved by Seller. Seller's acceptance of Buyer's purchase order is expressly conditional on Buyer's assent to all of the terms of this Agreement, including terms and conditions that are different from or additional to the terms and conditions of Buyer's purchase order. Buyer's acceptance of the Services and Parts will manifest Buyer's assent to the terms of this Agreement. Seller reserves the right in its sole discretion to refuse orders.

1. **PRICES:** Unless otherwise specified in writing by Seller, the price quoted or specified by Seller for the Services shall remain in effect for thirty (30) days after the date of Seller's quotation, Seller's scope of work or acknowledgment of Buyer's order for the Services, whichever occurs first, provided an unconditional authorization from Buyer for the performance of the Services is received and accepted by Seller within such time period. If authorization is not received by Seller within such thirty (30) day period, Seller shall have the right to change the price for the Services. All prices are exclusive of taxes, which are to be borne by Buyer. Unless otherwise specified by Seller, Parts will be furnished at Seller's then prevailing prices.

2. **TAXES:** Any current or future tax or governmental charge (or increase in same) affecting Seller's costs of Services or costs of production, sale, delivery or shipment of Parts, or which Seller is otherwise required to pay or collect in connection with the provision of Services and Parts, shall be for Buyer's account and shall be added to the price or billed to Buyer separately, at Seller's election.

3. **TERMS OF PAYMENT:** Unless otherwise specified by Seller, terms of payment are net 45 days from date of Seller's invoice. Seller shall have the right, among other remedies, either to terminate this Agreement or to suspend further performance under this Agreement and/or other agreements with Buyer in the event Buyer fails to make any payment when due, which other agreements Buyer and Seller hereby amend accordingly. Buyer shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts. If any payment owed to Seller is not paid when due, it shall bear interest, at a rate to be determined by Seller, which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Seller may preserve its interests in payment by enforcing any applicable mechanic's, construction or similar lien rights. Should Buyer's financial responsibility become unsatisfactory to Seller, cash payments or security satisfactory to Seller may be required by Seller for future performance of Services or provision of Parts. If such cash payment or security is not provided, in addition to Seller's other rights and remedies, Seller may discontinue performance of Services and provision of Parts. All purchases paid by credit card shall be charged a 2.0% usage surcharge of the invoice total, for fees paid by Seller to accept credit card transactions.

4. **SHIPMENT AND DELIVERY:** While Seller will use all reasonable commercial efforts to maintain the performance dates acknowledged or quoted by Seller, all performance dates are approximate and not guaranteed. Seller, at its option, shall not be bound to tender delivery of any Parts for which Buyer has not provided shipping instructions and other required information. If the provision of Services or shipment of the Parts is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom. Unless otherwise specified by Seller, for sales of Parts in which the end destination of the Parts is outside of the United States, risk of loss and legal title to the Parts shall transfer to Buyer immediately after the Parts have passed beyond the territorial limits of the United States. For all other shipments, risk of loss and legal title shall pass from Seller to Buyer upon delivery to and receipt by carrier at Seller's shipping point. Notwithstanding the above, risk of loss and legal title to Parts shall transfer to Buyer (i) when delivered by the individual providing the Services, or (ii) at the time Parts are placed in storage due to Buyer's delay or postponement. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Shortages or damages must be identified and signed for at the time of delivery.

5. **LIMITED WARRANTY:** Subject to the limitations of Section 6, Seller warrants that it will perform the Services as described in this Agreement and will exercise all reasonable skill, care and due diligence in the performance of the Services and shall perform the Services in accordance with professional practice. Seller warrants that all Services performed shall be free from faulty workmanship for a period of thirty (30) days from completion of Services. To the extent assignable, Seller assigns to Buyer any warranties that are made by manufacturers and suppliers of Parts. EXCEPT AS SPECIFIED ABOVE, PARTS FURNISHED HEREUNDER ARE FURNISHED AS-IS, WHERE-IS, WITH NO WARRANTY WHATSOEVER. THE WARRANTIES

SET FORTH IN THIS SECTION 5 ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY SELLER WITH RESPECT TO THE SERVICES AND PARTS AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE.

This warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, negligence (other than Seller's), unauthorized modification or alteration, use beyond rated capacity, unsuitable power sources or environmental conditions, improper installation, repair, handling, maintenance or application or any other cause not the fault of Seller. To the extent that Buyer or its agents have supplied specifications, information, representation of operating conditions or other data to Seller that is used in (i) the selection of the Services and/or Parts and (ii) the preparation of Seller's quotation and/or scope of work, and in the event that actual operating conditions or other conditions differ from those represented by Buyer, any warranties or other provisions contained herein that are affected by such conditions shall be null and void.

Buyer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Services or Parts, either alone or in combination with other parts.

6. **LIMITATION OF REMEDY AND LIABILITY:** THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER SHALL BE LIMITED TO, AT SELLER'S SOLE OPTION, EITHER CORRECT PERFORMANCE FOR THAT PORTION OF THE SERVICES FOUND BY SELLER TO BE DEFECTIVE OR REFUND OF THE PRICE PAID FOR SERVICES.

SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND THE REMEDIES OF BUYER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC SERVICES OR PARTS PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION.

BUYER AGREES THAT SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS SHALL NOT EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment.

It is expressly understood that any technical advice furnished by Seller with respect to the use of the Parts and/or Services is given without charge, and Seller assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Buyer's risk.

7. **INSURANCE:** Seller shall maintain the following insurance or self-insurance coverage: **Worker's Compensation** in accordance with the statutory requirements of the state in which the work is performed. **Employer's Liability** with a limit of liability of \$2,000,000 per occurrence for bodily injury by accident or bodily injury by disease. **Commercial General Liability (CGL)** for bodily injury and property damage with a limit of \$2,000,000 per occurrence and aggregate. CGL includes Contractual Liability. CGL does not include Products and Completed Operations coverage, which is self-insured. **Automobile Liability** insurance that covers usage of all owned, non-owned and leased vehicles and which is subject to a combined single limit per occurrence of \$2,000,000. Automobile Liability insurance includes Contractual Liability, but no special endorsements. **Additional information related to the insurance coverage provided by Seller can be found at www.marsh.com/moi?client=0900.**

Buyer expressly acknowledges and agrees that Seller has set its prices and entered into this Agreement in reliance upon the limitations of liability, insurance coverage, and other terms and conditions specified herein, which allocate the risk between Seller and Buyer and form a basis of this bargain between the parties.

8. **EXCUSE OF PERFORMANCE:** Seller shall not be liable for delays in performance or for non-performance due to acts of God; war; epidemic; fire; flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; default of suppliers; or unforeseen circumstances; acts or omissions of Buyer, including, without limitation, those specified in Section 19; or any events or causes beyond Seller's reasonable control. Performance of Services and deliveries of Parts may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer in the event of any of the foregoing, but the

balance of this Agreement shall otherwise remain unaffected as a result of the foregoing. If Seller determines that its ability to supply the total demand for the Services or Parts or to obtain material used directly or indirectly in the manufacture of the Parts is hindered, limited or made impracticable due to causes set forth in the preceding paragraph, Seller may delay performance of Services or allocate its available supply of the Parts among its purchasers on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom.

9. **CANCELLATION:** Buyer may cancel orders only upon reasonable advance written notice and upon payment to Seller for all fees earned through the date of cancellation on a prorated basis. Seller agrees to refund any prepaid fees for services not provided.

10. **CHANGES:** Buyer may request changes or additions to the Services. In the event such changes or additions are accepted by Seller, Seller may revise the price and performance dates. Seller reserves the right to change designs and specifications for the Parts without prior notice to Buyer, except with respect to Parts being made-to-order for Buyer. Seller shall have no obligation to install or make such change in any Parts manufactured prior to the date of such change.

11. **NUCLEAR/MEDICAL:** SERVICES AND PARTS SOLD HEREUNDER ARE NOT FOR USE IN CONNECTION WITH ANY NUCLEAR, MEDICAL, LIFE-SUPPORT AND RELATED APPLICATIONS. Buyer accepts Services and Parts with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchasers or.

12. **ASSIGNMENT:** Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Seller, and any such assignment or delegation, without such consent, shall be void.

13. **INSPECTION:** Buyer shall have ten (10) days from the date of completion of each portion of the Services to inspect the Services, and in the event of any non-conformity, Buyer must give written notice to Seller within said period stating why the Services are not conforming. Failure by Buyer to give such notice constitutes unqualified acceptance of the Services.

14. **BILLABLE SERVICES:** Additional charges will be billed to Buyer at Seller's then prevailing labor rates for any of the following: a) any Services not specified in Seller's quotation, Seller's order acknowledgement, Seller's scope of work, or other documents referenced herein and therein; b) any Services performed at times other than Seller's normal service hours; c) if timely and reasonable site and/or equipment access is denied the Seller service representative; d) if it is necessary, due to local circumstances, to use union labor or hire an outside contractor, Seller Service personnel will provide supervision only and the cost of such union or contract labor will be charged to Buyer; (e) if Service or repair is necessary to return equipment to proper operating condition as a result of other than Seller (i) maintenance, repair, or modification (including, without limitation, changes in specifications or incorporation of attachments or other features), (ii) misuse or neglect, (including, without limitation, failure to maintain facilities and equipment in a reasonable manner), (iii) failure to operate equipment in accordance with applicable specifications, and (iv) catastrophe, accident, or other causes external to equipment; (f) Seller's performance is made more burdensome or costly as a result of Buyer's failure to comply with its obligations herein, or (g) any additional obligations or requirements, including but not limited to those related to insurance requirements, service delivery, building entry or technical training.

15. **DRAWINGS:** Seller's documentation, prints, and drawings ("Documents") (including without limitation, the underlying technology) furnished by Seller to Buyer in connection with this Agreement are the property of Seller and Seller retains all rights, including without limitation, exclusive rights of use, licensing and sale. Notwithstanding the foregoing, Buyer may use the Documents in connection with the Services and Parts.

16. **EXPORT/IMPORT:** Buyer agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States, and the jurisdictions in which the Seller and Buyer are established or from which Services and Parts may be supplied, will apply to their receipt and use. In no event shall Buyer use, transfer, release, import, or export Parts in violation of such applicable laws, regulations, orders or requirements.

17. **NON-SOLICITATION:** Buyer shall not solicit, directly or indirectly, or employ any employee of Seller during the period any Services are being provided to Buyer and for a period of one (1) year after the last provision of Services.

18. **GENERAL PROVISIONS:** These Services Terms and Conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these Services Terms and Conditions. No change, modification, rescission, discharge, abandonment, or waiver of these Services Terms and Conditions shall be binding upon the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement this Agreement shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this Agreement by Seller's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer's assent to any additional or different terms set forth herein. Seller reserves the right to subcontract Services to others. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction.

The validity, performance, and all other matters relating to the interpretation and effect of this Agreement shall be governed by the law of the state of Florida without regard to its conflict of laws principles. No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than two (2) years after the cause of action has accrued. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to this Agreement.

19. **ADDITIONAL SERVICE CONDITIONS:** The Buyer shall furnish to Seller, at no cost, suitable working space, storage space, adequate heat, telephone, light, ventilation, regulated electric power and outlets for testing purposes. The facilities shall be within a reasonable distance from where the Services are to be provided. Seller and its representatives shall have full and free access to the equipment in order to provide the necessary Services. Buyer authorizes Seller to send a service technician or an authorized agent to access any site requested by Buyer to perform Services, including services on different scopes of work and equipment as requested by Buyer. Buyer shall provide the means to shut-off and secure electric power to the equipment and provide safe working conditions. Seller is under no obligation to remove or dispose of Parts or equipment unless specifically agreed upon in Seller's scope of work. Buyer shall immediately inform Seller, in writing, at the time of order placement and thereafter, of any unsafe or hazardous substance or condition at the site, including, but not limited to, the presence of asbestos or asbestos-containing materials, and shall provide Seller with any applicable Material Data Safety Sheets regarding the same. Any losses, costs, damages, claims and expenses incurred by Seller as a result of Buyer's failure to so advise Seller shall be borne by Buyer. Seller, in its sole discretion and without cost or penalty, reserves the right to cancel its performance under this Agreement or any order immediately upon written notice to Buyer following Seller discovery of unsafe or hazardous site substance or condition or any other circumstance altering Seller performance of Services. Buyer shall appoint a representative familiar with the site and the nature of the Services to be performed by Seller to be accessible at all times that Seller personnel are at the site. Seller shall not be liable for any expenses incurred by Buyer in removing, replacing or refurbishing any Buyer equipment or any part of Buyer's building structure that restricts Seller access. Buyer personnel shall cooperate with and provide all necessary assistance to Seller. Seller shall not be liable or responsible for any work performed by Buyer.

20. **INDEMNITY:** Seller shall indemnify and hold Buyer harmless from loss, damage, liability or expense resulting from damage to personal property of a third party, or injuries, including death, to third parties to the extent caused by a negligent act or omission of Seller or a Seller's subcontractors, agents or employees during performance of Services hereunder. Such indemnification shall be reduced to the extent damage or injuries are attributable to others. Seller shall defend Buyer in accordance with and to the extent of the above indemnification, provided that the Seller is: i) promptly notified by Buyer, in writing, of any claims, demands or suits for such damages or injuries; ii) given all reasonable information and assistance by the Buyer; iii) given full control over any resulting negotiation, arbitration or litigation, including the right to choose counsel and settle claims, or Seller's obligations herein shall be deemed waived.