

**Addendum
To
Maintenance Agreement**

MARGIE R. IBARRA
COUNTY CLERK
FILED
2019 APR 17 AM 9:19
WEBB COUNTY, TEXAS
BY VZ DEPUTY

Quote Number 20094669
An Agreement made on this March 8, 2019
Between:

County of Webb ("Purchaser")
For the Webb County Sheriff
Department
Webb County Courthouse
1000 Houston
Laredo, Texas 78040

AND

Smiths Detection ("Company")
2201 Lakeside Blvd
Edgewood Maryland 21040

Now therefore, the parties agree to modify, delete and/or include the following terms and conditions in the above referenced Smith Detection Service Quotation with US Terms and Conditions of Service 2013. The following provisions and covenants supersede prior negotiations, representations or agreements, either written or oral, and where there is a conflict between the provisions of this addendum and the provision set forth in the Service Agreement between Webb County, Texas and Smith Detection ("Company") or an or any other Contract Documents, the provision set forth herein shall superseded and have full force and effect and become part of the above referenced contract for all intent an purposes.

Smith Detection Service Quotation with
US Terms and Conditions of Service 2013

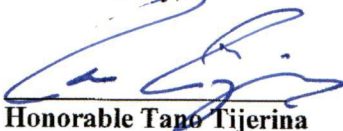
1. This addendum to the above-referenced Smith Detection Service Quotation with US Terms and Conditions of Service 2013 is made and entered into by and between Webb County a body corporate politic under the laws of the State of Texas and Smiths Detection.
2. For the purpose of this Addendum, Standard form Maintenance Agreement document referenced above ("Smiths Detection Service Quotation and US Terms and Conditions of Service 2013) will be referred to generally as the "Service Agreement."
3. This Service Agreement shall be for a term of 12 months commencing March 8, 2019 and ending March 7, 2020. Any term provision to the contrary in the standard form Service Agreement, including to but not limited to any automatic renewal provision, is hereby deleted.
4. Purchaser has the right to assign its rights under this Agreement with thirty (30) day written to or consent to Company. Company shall have the right to assign its interest in this agreement upon thirty (30) day written notice to Purchaser.

5. Purchaser intends to remit to Company all payments for the full term of the lease if funds are legally available. In the event Purchaser is not granted an appropriation of funds at any time during the term for the funds and funds are not otherwise available to Purchaser to pay Company payments due and to become due under this Agreement, and there is no legal procedure or available funds by or with payment can be made to Company, and the non-appropriation did not result from a failure to act or omission of Purchaser, Purchaser shall have the right to terminate this Agreement on the last day of the fiscal period for which appropriations were received without penalty or expense to Purchaser, except as to the portion of the payments for which funds shall have been appropriated and budgeted. At least thirty (30) days prior to the end of Purchaser fiscal period, Purchaser's auditor or legal counsel shall certify in writing that (1) funds have not been appropriated for the fiscal period and (2) such non-appropriation did not result from any failure to act or omission by Purchaser. If Purchaser terminates this Agreement because of non-appropriation of funds, Purchaser shall not purchase services performing the same function as, or functions taking the place of those performed by the equipment and/or service provided.
6. Purchaser agrees to be charged as stated in the Service Quotation; however, all references to any remedial payments or any additional charges, including but not limited to all references wherever found to collection of expenses, attorney fees, and court costs are hereby deleted in the Service Agreement.
7. Company and Purchaser agree that under the Constitution and laws of the State of Texas, Purchaser cannot enter into an Agreement whereby Purchaser agrees to indemnify or hold harmless Company; therefore, all references of any kind to indemnifying or saving harmless for any reason whatsoever are hereby deleted from the Service Agreement.
8. In the event of a dispute, breach, or suit brought against the Purchaser or Company with regards to this maintenance agreement including the terms and conditions and this addendum then jurisdiction and venue shall be located in Webb County, Texas. The laws of the State of Texas shall control the terms of this agreement.

EXECUTED THIS 8th DAY OF April, 2019

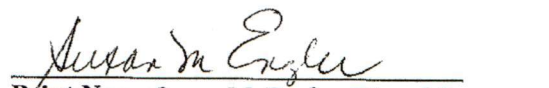
AGREED:

Webb County,



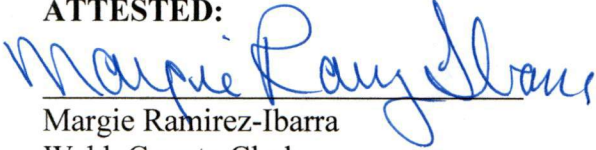
Honorable Tano Tijerina

AGREED TO BY:



Susan M. Engler
Print Name Susan M. Engler, Dir. of Contracts
Authorized Agent for
Smiths Detection
2201 Lakeside Blvd
Edgewood Maryland 21040

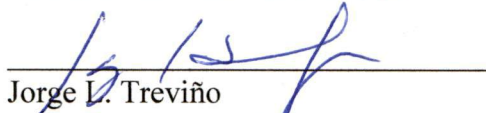
ATTESTED:



Margie Ramirez-Ibarra
Webb County Clerk



APPROVED AS TO FORM:



Jorge L. Treviño
Assistant General Counsel
Civil Legal Division *

*The General Counsel, Civil Legal Division's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).

**Passed and approved by the Webb County Commissioners Court
On April 8, 2019; item no. 7a.**

A one year (March 8, 2019 through March 7, 2020) Maintenance Agreement between Smiths Detection and Webb County (Webb County Sheriff's Department) for the maintenance of Two (2) X-ray machines Model Number HI-SCAN 6040ds (Serial Numbers 83400 and 83399) located at the Webb County Justice Building.

Service Quotation

smiths detection

bringing technology to life

Smiths Detection
 2202 Lakeside Blvd
 Edgewood Maryland 21040
 USA
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Valid from Date Sold to No. Sold to name Sold to address Phone No. Fax No. Email	12-11-2018 Valid to 03-30-2019 12-11-2018 311907 WEBB COUNTY PURCHASING 1110 WASHINGTON ST. LAREDO Texas 78040 USA PURCHASINGINVOICES@WEBBCOUNTYTX.G	Quotation No. Customer Reference Date Smiths Contact Person Phone No. Fax No. Email	20094669 12-11-2018 KATIE JOYNES 410-612-2541 katie.joynes@smiths-detection.com
Ship to No. Ship to name Ship to address Phone No. Fax No. Email	627716 WEBB COUNTY JUSTICE CENTER 1110 VICTORIA ST LAREDO Texas 78042 USA 956-523-4374 CCAMARILLO@WEBBCOUNTYTX.GOV	Terms of Delivery Payment Terms Contact Person	FOB edgewood Z009 Net 30 Camarillo C.
Equipment Material Serial No. Quantity	 1	Planned Service Warranty Service Contract	- - -

Item No.	Material Information		Qty	UoM	Unit Price	Total Unit Price	Curr
10	Material No.	6040-1PMCM	2.000	EA	4387.00	8774.00	USD
	Material Description	ON-SITE w/PMI 36 HR RESPONSE TIME					

Total Unit Price	8774.00
Grand Total	8774.00

The grand total price of our quotation does not include pricing for alternatives and/or options

Service Quotation

smiths detection

bringing technology to life

Smiths Detection
 2202 Lakeside Blvd
 Edgewood Maryland 21040
 USA
 T -

Valid from	12-11-2018 Valid to 03-30-2019	Quotation No	20094669
Date	12-11-2018	Customer Reference No.	
Sold to No.	311907	Customer Reference Date	12-11-2018
Sold to name	WEBB COUNTY PURCHASING	RMA No.	
Sold to address	1110 WASHINGTON ST. LAREDO Texas 78040 USA		
Equipment		Planned Service	-
Material		Warranty Details	
Serial No.			-
Quantity	1	Contract Details	-

Additional Remarks	<p>On-site Service Agreement</p> <p>Serial Numbers: 83400 83399</p> <p>Contract Dates: March 8, 2019- March 7, 2020</p> <p>ON-SITE SERVICE AGREEMENT On-Site Service Coverage # 8:00 a.m. # 5:00 p.m., Monday # Friday excluding holidays Typical Response Time: within 36 hours Includes all Labor, Travel Time and Travel Expenses Includes all Replacement Parts required Reachbackm-ReachbackIDtm # 24 hour by 7 day Call Center Support One Annual Preventive Maintenance check. Complete operational and calibration procedure performed Valued Customer Status # 15% Discount on Instructor Led Training</p>
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Standard Terms and Conditions	<p>This Sale is subject to Smiths Detection Terms and Conditions of Sale. All other terms and conditions are hereby expressly rejected.</p> <p>Smiths Detection terms and conditions are available on our website: http://www.smithsdetection.com/US_terms_conditions.php Where applicable, this sale is contingent on Smiths obtaining the required export licenses and end user certificates.</p>
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Customer acknowledge (sign):

Date:

US TERMS AND CONDITIONS OF SERVICE

1. DEFINITIONS

- (a) "Company" means Smiths Detection Inc., 2202 Lakeside Boulevard, Edgewood, MD 21040, USA.
- (b) "Equipment" means all components, spare parts, goods, equipment, or materials of any kind, which have been supplied by the Company under a Company Purchase Order.
- (c) "liability whatsoever" shall include, without prejudice to the generality of the expression, liability in tort and in contract, including liability for consequential loss (including loss of revenue or profit) or damage of any kind howsoever caused or arising.
- (d) "ICC Incoterms" means the International Chamber of Commerce's Incoterms as published from time to time and "Ex Works" and "FCA" shall have the meanings given them by ICC Incoterms from time to time save where such meanings are inconsistent with the terms hereof.
- (e) "Losses" means losses, claims, causes of action, suits, damages, liabilities, expenses (including, without limitation, fees and disbursements of legal counsel and expenses of litigation) or other obligations.
- (f) "Operator" means the operator or user of Equipment.
- (g) "Order" shall mean the agreement between the Company and the Purchaser (individually "Party" and collectively "the Parties") for the sale and purchase of the Equipment/Services, referencing the Terms and Conditions of Sale and any other contemporaneous writing, signed by both Parties.
- (h) "Purchaser" means the company, firm or individual who has bought, or agreed to buy, the Equipment and/or Services.
- (i) "Purchaser Delays" means any delay by Purchaser in performing any contractual obligations or any other circumstances for which Purchaser is responsible, including, without limitation, delays to attend testing (if required), take delivery, arrange shipment or import licences, or be available for Company technicians attendance at Purchaser's locations.
- (j) "Quotation" means the quotation addressed to the Purchaser by the Company.
- (k) "Service Agreement" means the agreement between the Parties for the sale and purchase of the Services, referencing the Terms and Conditions of Service herein and any other contemporaneous writing, signed by both Parties.
- (l) "Services" means all services, including maintenance and installation services, and operator training where applicable, provided under the Service Agreement.

2. GENERAL

- (a) The Quotation does not constitute an offer to supply any Equipment or Services and no contract exists unless and until there has been an acceptance by the Company in writing of the Service Agreement.
- (b) The acceptance of the Service Agreement whether or not based on a Quotation from the Company shall, unless otherwise specifically agreed by the Company in writing, be deemed to be subject to the terms and conditions herein contained which shall apply to the exclusion of any other provisions contained in any other document issued by the Purchaser at any time before or after this contract and, in particular, but without prejudice to the generality of the foregoing, contained in any order by the Purchaser.
- (c) Unless otherwise stated in writing all descriptions, specifications, drawings and particulars of weights and dimensions submitted by the Company or otherwise contained in the Company's handbooks, manuals, catalogues, brochures, price lists and other published matter are approximate only and none of these form part of any contract or gives rise to any independent or collateral liability upon the part of the Company being intended merely to present a general idea of the Equipment as described therein.
- (d) The performance figures in respect of the Equipment included in the Company's specifications, product brochures and other published matter are indicative only and based on results obtained by the Company representative testing. The Company accordingly represents only that the Equipment met or demonstrated those performance standards or characteristics which are specifically attributed thereto in such specifications made available by the Company to the Purchaser and the Company gives no warranty that the Equipment will be suitable for any particular use to which the Purchaser may put them or how they will perform in such use or application.
- (e) The Purchaser shall ensure that any of its employees, agents or representatives or other person to whom the Purchaser shall provide the Equipment shall receive a copy of any operator manual in respect of the Equipment which is available from the Company.

3. PRICE

- (a) The price of the Services is current as of the date of the Quotation and valid for a period of 90 days thereafter, unless stated to the contrary by the Company in writing.
- (b) The Services shall be those specified in the Service Agreement as confirmed by the Company's acceptance in writing and the Company reserves the right to increase the price if the Purchaser requests an alteration to the Service Agreement or requests any modification to the Equipment.
- (c) Unless otherwise agreed in writing the price for the Services excludes VAT and all applicable taxes and duties the cost of which shall be determined as at the date of the invoice and shall be payable by the Purchaser.
- (d) The cost of any special packaging shall be determined at the date of invoice and shall be payable by the Purchaser.
- (e) The Purchaser shall not be entitled to make any deduction from the price of the Services in respect of any set-off or counter-claim unless both the

validity and the amount thereof have been expressly admitted by the Company in writing.

4. PAYMENT

- (a) The Purchaser shall, except where other payment arrangements are specifically agreed in writing, make full payment in US Dollars for the Services not later than 30 days after the date of the invoice relating thereto or, if earlier, on the day which a receiver of the Purchaser's undertaking is appointed or upon which any act is done or event occurs which is related to the insolvency of the Purchaser. If payment for the Equipment is not made when due the Company may charge interest thereon at the rate of one and a half per cent (1.5%) per month or the maximum rate allowable by law. Time of payment shall be of the essence.
- (b) Any failure to pay the price or any part thereof and other moneys payable by the Purchaser hereunder when due will also entitle the Company to refuse to provide the Services under this contract or under any other contract with the Purchaser and without incurring any liability whatsoever to the Purchaser for any delay.
- (c) The Company shall, in the event of the Purchaser being insolvent or failing to pay the Service price due under any other contract with the Company, be entitled to a general lien on all goods of the Purchaser in the Company's possession for the unpaid price of the Equipment sold and delivered to the Purchaser by the Company under this or any other contract. In the case of repairs or overhauls performed pursuant to this Service Agreement, the Purchaser hereby grants to the Company a perfected security interest in all Equipment retained in possession of the Company upon which any repair or overhaul services have been performed by the Company. To the extent that the Company maintains possession of Equipment under repair, the Purchaser agrees that the Company is a secured creditor of the Purchaser and has all the rights of a secured creditor. Any such liens or security interests granted herein may not be subordinated by the Purchaser.
- (d) No defect in the Services shall operate to interfere with the terms of payment.
- (e) The Company reserves the right to change the terms of payment whenever it reasonably appears that Purchaser's financial condition requires such changes, and may demand assurance of the Purchaser's ability to pay whenever it reasonably appears that such ability is in doubt. Such demand shall be in writing and the Company may, upon making such demand, stop production and/or suspend shipments hereunder without any liability whatsoever to the Purchaser.

5. DELIVERY

- (a) Unless otherwise agreed in writing and to the extent applicable: (i) all shipments of Equipment made by The Company shall be Ex-Works Company's Designated Facility (INCOTERMS 2010); (ii) notwithstanding the foregoing, all shipments exported outside of the United States shall be FCA Company's Designated Facility (INCOTERMS 2010).
- (b) Unless otherwise stated in writing any time or date for the delivery shall run from the date communicated to the Purchaser.
- (c) Delivery and the Purchaser's acceptance of the Equipment shall be deemed to have taken place at the earliest point in time at which risk passes to the Purchaser under the ICC Incoterms. Signature of any delivery note by any agent, employee or representative of the Purchaser or by any independent carrier shall be conclusive proof of the delivery and the Purchaser's acceptance of the Equipment. Notwithstanding such delivery, the Company shall have a general and particular lien over the Equipment for all claims by the Company against the Purchaser and all monies owing by the Purchaser to the Company howsoever arising.
- (d) Without prejudice to any rights of the Company hereunder, if the Purchaser shall fail to give on or before the agreed date of delivery all instructions reasonably required by the Company and all necessary documents, licences, consents and authorities (which the Purchaser is obliged under these terms and conditions or by law to obtain) for forwarding the Equipment or if there is any other Purchaser Delay, the Purchaser shall pay to the Company all storage and insurance costs and any other out of pocket expenses incurred arising from such delay.
- (e) The Purchaser shall be obliged to take delivery of the Equipment and/or Services when they are delivered or tendered for delivery. Where the Purchaser refuses or is unable (for any reason) to accept delivery of the Equipment and/or Services or if there is any other Purchaser Delay, the Company shall have the right (without prejudice to its other rights) to invoice the Purchaser in respect thereof (payment to be made within 30 days of the invoice date) and the Equipment and/or Services shall be deemed Delivered. The Company shall be entitled to invoice the Purchaser for the reasonable costs of re-delivery, storage and all other handling costs arising directly or indirectly therefrom and the Purchaser shall make payment to the Company within 30 days of the invoice date.
- (f) Purchaser Delays shall be considered excusable delays for the Company and result in a corresponding automatic extension of any agreed upon time for the performance of the Company's obligations under this Service Agreement. The Company shall not be liable to the Purchaser under any circumstances whatsoever for any penalty, damage or loss resulting directly or indirectly from any Purchaser Delays.
- (g) Unless otherwise stated in writing the Company shall be entitled to make partial deliveries by instalments and (where the Company has agreed to be responsible for delivery of the Equipment to the Purchaser) to determine the route and manner of delivery of the Equipment and shall be deemed to have the Purchaser's authority to make such contract with any carrier as the Company may deem reasonable. If the route involves

sea transit the Company shall not be obliged to give the Purchaser any notice.

- (h) Where delivery of the Equipment is made in instalments, each instalment shall be construed as constituting a separate agreement to which all the provisions of these conditions shall (with any necessary alterations) apply.
- (i) Time shall not be of the essence for delivery.
- (j) In the event of any delay in delivery or installation whether attributable to cause outside the Company's control or not the Company shall be under no liability whatsoever to the Purchaser.

6. TERMS OF SERVICE

- (a) The Company shall not be required to provide Services in the event of any of the following: moving of the Equipment; damage to the Equipment caused by external sources or Force Majeure; Buyer's negligence or abuse; special modifications including, without limitation, tunnel extensions, connect of units to custom or non-Company-provided Baggage Handling System, or UPS; damage to equipment which has been dropped, bumped, or abused by Buyer; or for any damage caused by Buyer other than ordinary use. System Regeneration requirements, where applicable, are not included in this agreement.
- (b) All Services shall be performed between the hours of 8:00 a.m. and 5:00 p.m., local time, Monday through Friday, exclusive of the Company's published holidays, unless work outside these hours is approved in advance by Smiths or where the customer will be responsible for payment at the then-current Company billable rates.
- (c) Unless otherwise specified in a given Service Agreement, the prices specified are for equipment coverage for 12 months.
- (d) Equipment not currently covered by a Company Services Agreement must be inspected by an authorized Company Services representative and must be deemed in good working condition prior to inclusion in a Services Agreement. Inspection fees may apply. The Company will only offer coverage to units in good working order. The Company reserves the right to refuse coverage of any Equipment for any reason.
- (e) When required, replacement parts may be new or refurbished. Replacement parts carry a standard Company warranty for 90 days from installation, or for the remainder of the coverage of the Service Agreement, whichever is longer.
- (f) Service Agreements which priced at the Multi-System or Multi-Year discount shall revert to the full, non-discounted price in the event of an authorized cancellation or other interruption of the Agreement.
- (g) Cancellation. If this Service Agreement is cancelled by the customer, without cause, a 25% cancellation fee will be charged; the Purchaser must provide at least 30 days prior written notice to the Company to cancel this Service Agreement without cause. If no Services have been provided, the Company will provide a prorated refund from the cancellation notification date and will not be subject to the 25% cancellation fee. If service has been provided, the greater of the following amounts shall be charged to the Purchaser: (i) The prorated amount of the contract or; (ii) The value of all service rendered to include all parts, labor, travel and expenses during contract term. The prices for parts and labor are calculated using Company standard time and material rates; prices for travel and expenses will be calculated at cost. A 25% cancellation fee shall apply in the event of cancellation under Sections 6(g)(i) and (ii), respectively. This cancellation policy only applies to prepaid services and does not apply to fixed rate or flat fee repairs.
- (h) Any on-site vendor, certification, regulatory authority, or other applicable fees shall be borne by Buyer.
- (i) This Service Agreement does not cover Equipment that has been highly contaminated by foreign substances. Equipment returned to the Company for repair is assumed to be free of contamination. If the Company has any reason to believe that any Equipment is contaminated, it is the Purchaser's responsibility to have the product decontaminated prior to returning the product to Smiths. The Purchaser shall be fully and solely liable to the Company in the event of any damages or illness caused by the Purchaser's failure to abide by this Section 6(i) and shall indemnify and hold the Company harmless accordingly, consistent with the terms of Section 8 herein.
- (j) Buyer agrees to ensure the safe and timely return of any loaned Equipment provided under this agreement. The loaned Equipment must be returned to the Company within two days after Customer's receipt of the repaired equipment or immediately upon request from the Company. Buyer shall be charged current pricing in effect for Products not received at the Company's designated facility within 30 days of the agreed return date. Buyer shall be responsible for any damage or loss to the Equipment, normal wear and tear excepted. The Equipment must be returned to the Company in the proper packaging to avoid damage during shipping.

7. LIMITATION OF LIABILITY

- (a) The Purchaser is relying on its own skill and judgement in relation to the Services supplied under this contract and the Company accepts no liability whatsoever for any knowledge it or its employees, agents or representatives may possess as to the purpose for which the Services are provided.

(b) The Purchaser acknowledges and agrees that:

- (i) The Equipment is intended to be used as security screening equipment, in order to assist in the detection of illegal and/or hazardous materials;
 - (ii) The degree of success with which the Equipment will fulfill their intended use is dependent on numerous factors, including without limitation the sophistication of efforts to conceal illegal and/or hazardous materials, the chemical identity and quantity of such materials, the skill, diligence and qualifications of the Operator (where applicable) and environmental conditions; and
 - (iii) No security screening equipment is capable of detecting every threat, and neither the Purchaser nor the Operator has any expectation that the Equipment are capable of detecting, or that they will detect, all illegal and/or hazardous materials (this being the case whether the Equipment are operated with or without Operator supervision, and regardless of the degree of diligence with which services of the Company, if any, are or have been performed).
- (c) The Company makes no guaranty or warranty as to the results that will be achieved through the use of the Equipment and it is agreed that the sole responsibility for such results shall be borne by Purchaser.
 - (d) **The remedies provided in Clause 7 above shall be the Purchaser's sole remedy under the Terms of Service and all further remedies are hereby expressly excluded.**
 - (e) **Neither the Company nor any of its affiliates shall be under any liability whatsoever to the Purchaser for indirect or consequential loss (including, but without limitation, loss of profit, loss of revenue, loss of goodwill, special, consequential, incidental, exemplary or other damages, including damages resulting from substitute procurement, loss of use, loss of data, loss of savings, loss of business, failure or delay in performance, even if the Company or its affiliates have been advised of the possibility of any such damages and whether or not arising out of any liability of the Purchaser to any other person) and all conditions, warranties or other terms whether express or implied, statutory or otherwise, inconsistent with the provisions of this Section, are hereby expressly excluded.**
 - (f) **The aggregate liability of the Company and its affiliates taken together in respect of the direct consequences and, in the event that the Company is not entitled (for any reason) to rely on the provisions of paragraph (d) above, the indirect consequences (including but without limitation loss of profit, revenue or goodwill and whether or not arising out of any liability of the Purchaser to any other person) resulting from any breach of contract, breach of a duty of care, statutory duty, product liability or otherwise howsoever suffered shall be limited to the lesser of: (i) the amount of the Service Agreement to which the Equipment relate or (ii) US\$500,000, and all conditions, warranties or other terms whether express or implied, statutory or otherwise, inconsistent with provisions of this Section are hereby expressly excluded.**
 - (g) All, if any, statements, recommendations and advice given by the Company or the Company's servants or agents to the Purchaser or its servants or agents as to any matter relating to the Services are given without responsibility and shall not give rise to any liability whatsoever on the part of the Company and the Purchaser hereby represents and warrants to the Company that no representation has been made to it by or on behalf of the Company that has in any way induced the Purchaser to enter into the contract with the Company.
 - (h) Should these Conditions apply to a consumer transaction the Purchaser's statutory rights shall not be affected by this Section 8.

8. INDEMNITY

To the fullest extent permitted by applicable law, the Purchaser shall defend, indemnify, and hold harmless the Company and its affiliates from and against any and all Losses and threatened Losses to the extent they result from or in connection with the use and/or operation of Equipment by Purchaser or Operator, including but not limited to any of the following: (i) the death or bodily injury of any agent, employee, customer, business invitee, or business visitor or other person, and the damage, loss, or destruction of any real or tangible personal property; (ii) any action taken by or on behalf of Purchaser and/or Operator in the performance of this Agreement that causes the Company or its affiliates to be obligated to indemnify, defend, and/or hold harmless any third party; (iii) any claim, demand, charge, action, cause of action, or other proceeding resulting from an act or omission of the Purchaser, its employees, agents, or subcontractors acting in its or their capacity as an employer or potential employer with respect to the claimant; and (iv) any claim by the Purchaser or the Operator, whether based on warranty or other contract breach, negligence or other tort, for matters disclaimed in subsection 8(d) above. The Purchaser shall fully indemnify and completely hold harmless the Company and its affiliates as provided above, whether or not negligence or other fault of the Company or any of its affiliates contributed to, or is claimed or alleged to have contributed to, the claim, action, damage, loss, cost, liability or expense. Nothing in subsection 8(g) or this Section 9 shall exclude or limit the liability of the Company or its affiliates, or require the Purchaser to defend, indemnify or hold harmless the Company or its affiliates, in circumstances where the Losses claimed are alleged to have resulted from (i) willful misconduct or gross negligence of the Company and/or its affiliates, (ii) any fraud or fraudulent conduct on the part of the Supplier the Company and/or its affiliates, or (iii) any other liability that cannot be excluded by law, and where (in each case) such fault on the part of the Company

and/or its affiliates or liability is adjudicated to be the cause of the Losses.

9. COMPLIANCE WITH APPLICABLE LAW

The Purchaser shall comply with all applicable laws, treaties, regulations and codes of practice including, without limitation, the laws of the United States, and shall be solely liable for obtaining and maintaining any licenses, permits, or approvals that may be required for the purchase and operation of the Equipment.

10. EXPORT AND IMPORT CONTROLS

- (a) In the case of exports direct to Purchaser's designated location, all import duties, charges and assessments shall be paid by the Purchaser and the obtaining of any necessary import licences in respect of the Equipment shall be the sole responsibility of the Purchaser and the Company shall be under no liability whatsoever to the Purchaser in respect of goods exported without the necessary import licences. The number and expiry date of any import licence shall be furnished to the Company with the shipping instructions at least one month prior to the delivery date. If the import licence expires before the Equipment has been made available the Purchaser shall be responsible for its renewal. The Company shall not be liable for any expense or loss caused by a Purchaser Delay in obtaining such licence or the renewal thereof.
- (b) When the export of the goods from the United States is subject to control, the contract will be conditional on the grant of an export licence. Applications for this licence will be made by the Company only when the Company is responsible for shipment. In all other cases the Company may assist the Purchaser in the procurement of such licence, but without being under any legal liability to do so.
- (c) The sale, resale or other disposition of the Equipment and any related technology or documentation are subject to the export control laws, regulations and orders of the United States and may be subject to the export and/or import control laws and regulations of other countries. The Purchaser agrees to comply with such laws, regulations and orders and shall not permit its employees, distributors, customers, brokers, freight forwarders, and/or agents to export or re-export any of the Equipment or any technology to any foreign person without complying with the applicable laws. To the fullest extent permitted by applicable law, the Purchaser shall defend, indemnify, and hold harmless the Company and its affiliates from and against any and all Losses and threatened Losses to the extent they result from a breach of this Section 11.

11. INTELLECTUAL PROPERTY RIGHTS

In the event of any claim being made or action being brought or threatened in respect of infringement of patents, copyright, trade marks, trade names, registered designs or any other intellectual property rights in respect of the Equipment or Services, the Purchaser will make no admission in respect thereof and will notify the Company thereof forthwith and the Company shall be entitled to conduct all negotiations and take all necessary proceedings to dispute the same in its own name and in the name of the Purchaser and the conduct of all proceedings and negotiations shall be completely at the discretion of the Company. In such event the Purchaser will execute all such documents and do all such things and render all such assistance to the Company as the Company shall require and the Purchaser shall indemnify the Company against all costs, expenses, loss or damage incurred by the Company in respect of any claim being made or action brought or threatened as a result of work done in relation to the Equipment by the Company in accordance with the Purchaser's specification or by the use to which the Equipment are put by the Purchaser.

12. SUB-CONTRACTS

The Company reserves the right to sub-contract the performance of the contract or any part thereof.

13. ASSIGNMENT

The Purchaser shall not assign or transfer or purport to assign or transfer any contract to which these Conditions apply or the benefit thereof to any other person whatsoever without the consent of the Company.

14. CONFIDENTIALITY

- (a) The Parties agree that in the course of performance of the contract to which these Conditions apply, it may be necessary and desirable for them to exchange confidential information. For example, all Services, updates, repairs, replacements, fixes, modifications, and other changes to the Equipment shall be considered the Company's proprietary information. To accomplish this confidentiality, the parties agree as follows: Purchaser shall not disclose confidential information of the Company to any person outside its employ, except when authorized by the Company. Purchaser shall use the same level of care in preserving the confidential nature of the confidential information as it uses to protect its own confidential information but not less than reasonable care.
- (b) **PROPRIETARY INFORMATION STATEMENT:** The Quotation contains information confidential and proprietary to the Company. No part of this information may be reproduced or transmitted in any form without the prior written permission of the Company. The Quotation supersedes all previous quotations and is valid for 90 days from date of issue, unless otherwise stated.

15. GOVERNING LAW

The Service Agreement and these Terms and Conditions of Sale shall be governed by and construed in accordance with the laws of New York State without reference to its conflicts or choice of laws provisions. Any legal action shall be brought in the exclusive venue of the federal and state courts of New York State in Manhattan, New York, NY. The Company and the Purchaser hereby irrevocably waive the right to a jury trial to the extent permissible by law. **THIS SERVICE AGREEMENT SHALL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.** Notwithstanding the foregoing, the federal laws of the United States of America shall be the governing laws, to the extent appropriate, with respect to issues involving patent, copyright, or trademark.

16. CHANGES AND TERMINATION

- (a) Company shall have the right, in its sole discretion, to terminate the Service Agreement if the Purchaser:
 - (i) is unable to pay its debts generally as and when they become due;
 - (ii) is the subject of a legal process declaring it insolvent;
 - (iii) ceases or threatens to cease carrying on its business;
 - (iv) commits any breach of the Service Agreement which is (a) incapable of remedy (as reasonably determined by the Company) ; or (b) not remedied within 14 days of the date of the breach.
- (b) Purchaser may make a written request for amendment, modification, or termination. If a request for amendment or modification is accepted by the Company, and any changes cause an increase or decrease in the cost of, or the time required for, the performance of any work under the Service Agreement an equitable adjustment shall be made in the price or delivery schedule, or both, and the Service Agreement shall be modified in writing accordingly. Wherever the cost of property made obsolete as a result of the change is included in the price adjustment, Purchaser shall have the right to prescribe the manner of disposition of such property. If request for termination is accepted by the Company, equitable provision shall be made to The Company for a recoupment of all costs incurred under the Service Agreement and for reasonable profit based on time and costs expended. The Service Agreement shall continue in effect until such time as payment is received. A written request as specified herein shall give The Company adequate reason to demand written assurance of Purchaser's ability and intent to carry out the Service Agreement.

17. FORCE MAJEURE

The Company shall not be liable to the Purchaser for any loss or damage arising due to delay or non-performance of its obligations under this Agreement arising from any cause beyond its reasonable control including, without limitation, any of the following: act of God, exceptional adverse weather conditions, flood, lightning or fire (except if the cause of fire originates from the Equipment), strike or lockout, terrorist and/or insurgent activity, armed conflict, large scale organized criminal activity, the act or omission of Government or administrative or other competent authority, war, military operations or riot. The Company shall be permitted to suspend its obligations under the Service Agreement for the duration of any force majeure event.

18. SOFTWARE

To the extent that the Equipment contain or are software, or that the Services include software, Company hereby grants to Purchaser a non-exclusive, non-transferable, personal license to use the software and related documentation solely with the Equipment. Purchaser's use of the Equipment conclusively evidences its acceptance of this license and these Terms and Conditions, including this Section 22. Title to the software shall at all times remain with Company. Purchaser agrees that the software, all enhancements, related documentation, and derivative works are, and will remain, the sole property of the Company and includes valuable trade secrets. Purchaser agrees to treat the software and related documentation as confidential and to not copy, reproduce, sub-license, or otherwise disclose the software and related documentation to third parties. Purchaser agrees to not disassemble, decompile, reverse engineer, create derivative works from, attempt to derive the source code or otherwise translate, customize, localize, modify, add to, or in any way alter, rent, or loan the software or related documentation.

19. X-RAY BODY SCANNER

- (a) Purchaser is hereby notified that the exposure of human beings to x-ray radiation may be harmful. Purchaser acknowledges that the safe operation of the Equipment is entirely the Purchaser's responsibility and that the Company shall have no liability relating to the use or operation of the Equipment by Purchaser or anybody acting on the Purchaser's behalf. Purchaser undertakes to exercise such care and to adopt and follow such procedures in the use and operation of the Equipment as may be necessary to eliminate or minimize the hazards referred to in this section. Without limiting the generality of the foregoing, Purchaser undertakes to use the Equipment in full compliance with Company' maintenance procedures and operator manuals, to comply with the requirements of all applicable environmental or occupational health and safety laws, radiation safety laws and industry standards relating to radiation safety for personnel security screening systems using x-rays,

and to operate the Equipment within the radiation dose limits established by such laws and standards.

- (b) Purchaser is further notified that the use of x-ray Equipment on human beings for non-medical purposes may be prohibited in some states or require registration with governmental authorities. Purchaser undertakes to comply with all such prohibitions and registration requirements.
- (c) Purchaser covenants that the use and operation of the Equipment by or on behalf of the Purchaser shall comply with all applicable privacy and data protection laws.
- (d) To the fullest extent permitted by applicable law, Purchaser shall defend, indemnify, and hold harmless Company and its affiliates and their respective officers, partners, directors, employees, agents, successors, and assigns from and against any and all actual or threatened Losses to the extent they arise from any non-compliance with the undertakings in paragraphs (a) to (c).

20. COMPLIANCE AND ETHICS

The Company is an Equal Opportunity Employer and is committed to conducting its business ethically and lawfully. To that end Company maintains a Code of Business Ethics and mechanisms for reporting unethical or unlawful conduct. Company expects that the Purchaser also will conduct its business ethically and lawfully. Company Code of Business Ethics is available at <http://www.smiths-group.com/responsibility-code-of-business-ethics.aspx>