

Contract
Maintenance and Support Agreement

By and Between

Cuyahoga County, Ohio

and

Emerson Network Power, Liebert Services, Inc.

THIS AGREEMENT (the "Contract") is made and entered into this _____ day of _____, 2011, by and between Cuyahoga County, Ohio (the "County"), on behalf of the Cuyahoga County Common Pleas Court and Emerson Network Power, Liebert Services, Inc. ("Emerson"), a Ohio corporation having principal place of business at, 610 Executive Campus Drive, Westerville, OH 43082, (the "Provider").

WHEREAS, the County has a present need for maintenance of their Liebert Uninterruptible Power System - UPS / Back up Power Supply (Part # 38SA015COFJ); and

WHEREAS, Emerson, is the supplier of factory trained and authorized support services for Liebert Uninterruptible Power System - UPS / Back up Power Supply; and

WHEREAS, Emerson is the awarded vendor (lowest price of three bids), for maintenance service of the Liebert Uninterruptible Power System at Common Pleas Court; and

WHEREAS, the County desires to avail itself of the support services for the Liebert Uninterruptible Power System - UPS / Back up Power Supply and Emerson is willing to provide such support to the County all upon the terms and conditions set forth herein.

NOW, THEREFORE, in the consideration of mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Emerson and the County agree as follows:

ARTICLE I - AGREEMENT AND TERM

1.1 **Scope of Agreement.** During the term of this Contract, Emerson shall provide the County under this agreement with, UPS Maintenance Service as listed on Schedule A - Quote # Q01425578 including the terms and conditions hereby attached. In the event that the terms and conditions of Schedule A and this Contract are not in agreement, the County and Emerson hereby expressly agree that the terms and conditions of this Contract will be controlling and will take precedence over Schedule A.

1.2 **Term.** The term of this Contract shall commence as of March 15, 2011; and, unless earlier terminated in accordance with the provisions of this Contract, shall continue in effect from the date of commencement. (3/15/11 - 3/14/14)

1.3 **Cost.** This contract shall be in an amount not to exceed Six Thousand Five Hundred Thirty Two Dollars and Zero Cents (\$6,532.00), for the time period of three years, (\$2,177.33) is payable yearly.

ARTICLE II - ADDITIONAL MAINTENANCE SERVICE

2.1 At the request of the County, and with the consent of Emerson, Emerson may also provide technical, operational or other assistance on a consulting basis to the County in excess of the scope of service included but such services would require an amendment to the annual Support Services Agreement between the County and Emerson under a separate and existing contract.

ARTICLE III - PAYMENT AND INVOICING

3.1 **Payment.** During the term of this contract, the County shall pay yearly, 30 days upon receipt of said yearly invoice from Emerson and approval of the County Executive.

3.2 **Invoicing.** Emerson shall invoice the County for the maintenance and support agreement upon execution of this agreement. Emerson shall submit original invoice(s) to the following address:

Cuyahoga County Information Services Center
Business Department
1255 Euclid Avenue, 4th floor
Cleveland, Ohio 44115

ARTICLE IV - INDEMNITIES AND LIABILITIES

4.1 Indemnification. Emerson Network Power, Liebert Services, shall agree to release, indemnify and to hold harmless Cuyahoga County and any and all officers, agents, servants or employees thereof, from any and all third party responsibility or liability for its gross negligence or willful misconduct under this contract, resulting out in property damage and bodily injuries. Cuyahoga County must provide reasonable notice regarding such claim and Emerson has sole right to select direct counsel and settle the claim.

NEITHER PARTY SHALL BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND THE REMEDIES OF THE PARTIES SET FORTH HEREIN ARE EXCLUSIVE. IN NO EVENT SHALL A PARTY'S LIABILITY TO THE OTHER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC GOODS/SOFTWARE, SERVICES OR PARTS PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION.

THE PARTIES AGREE THAT NEITHER PARTY SHALL BE LIABLE FOR 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.

4.2 Subcontracting. This Contract was awarded to Emerson based upon Emerson's unique license product, and no task required to be performed under this contract by Emerson shall be subcontracted to third parties without the express written consent of Cuyahoga County.

4.3 Indemnification for Infringement. Emerson warrants that the County will have full right to use the product delivered to County and that it will not infringe upon the rights of any third party.

ARTICLE V - ELECTRONIC SIGNATURE POLICY

5.1 Adherence to Electronic Signature Policy of County. By entering into the Signed contract of Emerson, its officers, employees, subcontractors, sub-grantees, agents or assigns, to conduct this transaction by electronic means by agreeing that all documents requiring county signatures may be executed by electronic means, and that the electronic signatures affixed by Cuyahoga County to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document.

Emerson, further agrees to be bound by the provisions of Chapter 304 and 1306 of the Ohio Revised Code as they pertain to Electronic Transactions and to comply with the electronic signature policy of Cuyahoga County.

ARTICLE VI INSURANCE

6.1 Emerson maintains insurance as listed on the attached certificate of insurance. Seller may self-insure. Provisions regarding waiver of subrogation, additional insured status, or the primary nature of Seller's insurance shall be limited to the extent of Seller's negligent acts or omissions. Under no circumstance shall Buyer have access to view or copy Seller's insurance policy.

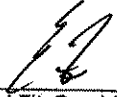
THIS AGREEMENT shall be subject to interpretation under the laws of the State of Ohio, and is subject to the review of the County Prosecutor's Office as to legal for and correctness.

IN WITNESS WHEREOF, THE County and Emerson have each caused this Contract to be signed and delivered by its duly authorized representative as of the date first written.

EMERSON NETWORK POWER,
LIEBERT SERVICES, INC.

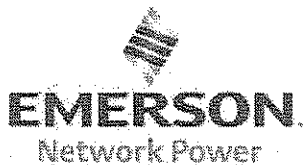
CUYAHOGA COUNTY, OHIO

BY: 

BY: X 

Edward FitzGerald, County Executive





Schedule A



1/20/11

Mike Stanic
CUYAHOGA COUNTY COMMON
1200 ONTARIO STREET
CLEVELAND, OH 44113

Quote No. Q01425578

We are pleased to submit the following proposal for service of your Liebert equipment for your consideration. Please refer to the Scope of Work for specific coverage information. Below is a summary of the Service(s) included in this quote.

Essential Service

- Guaranteed 4-hour response 24 hours/day, 7 days/week
- Emergency service labor and travel coverage
- Parts coverage
- Preventive Maintenance visits scheduled Monday-Friday, 8 am – 5 pm.

Site ID: 99302 CUYAHOGA COUNTY COMMON, 1200 ONTARIO STREET, CLEVELAND, OH 44113

Tag #	Description	Part #	Annual PM Qty.	Coverage Type	Coverage Amount
1346323	NX 10-15 INTBAT	38SA015COCFJ	1	Essential	6,532.00

Total Price NOT including tax: \$ 6,532.00

(any tax required must be included in Buyer's purchase order amount)

Unless otherwise noted this Agreement shall commence on the date acknowledged by both parties signature below and shall be effective from 3/15/11 – 3/14/14. Customer will be invoiced \$2,177.33 each year for 3 years.

Thank you for your business.

Proposed By:

Accepted By:

Jeff DuMont

Jeff DuMont
Account Representative

Mar 5, 2010
Date

X _____
Buyer Signature Required Date

Printed Name Title

SERVICES TERMS AND CONDITIONS

[illegible]

1. **PRICES:** Unless otherwise specified in writing by Seller, the price quoted or specified by Seller for the Services shall remain in effect for Buyer (30) days after the date of Seller's quotation. Seller's scope of work or performance of Buyer's order for the Services, whichever occurs first, provided an accompanying acknowledgment from Buyer for the performance of the Services is received and accepted by Seller within such time period, a authorization as not received by Seller within such time period (30) day period, Seller shall retain 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, Bank will be charged at Seller's then prevailing prices.

2. YAWP: Any current or future law or governmental change (or increase in taxing) affecting Seller's costs of Services, all 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 price to Buyer separately, at Seller's election.

[illegible]

4. **SHIPMENT AND DELIVERY.** Buyer shall use all reasonable commercial efforts to maximize the shipment and delivery of goods by Seller, all performance goals are approximate and not guaranteed. Seller, at its option, shall not be bound to tender delivery of any Parts to which Buyer has not provided shipping instructions and either 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 expenses resulting from such delay. 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 when the Parts leave Seller 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 office. Notwithstanding the above, risk of loss and legal title to the Parts shall pass to Buyer at the time of individual receipt by Buyer. All claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Discrepancies or damages must be identified and signed for at the time of delivery.

[illegible]

This warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, altered use, fire, theft, negligence (other than Seller's), unauthorized modification or alteration, or beyond normal wear, corrosion, power sources or environmental conditions, improper installation, repair, misuse, maloperation or degradation or any other cause not the fault of Seller. To the extent Seller has provided specifications, information, instructions or representations of performance, Seller warrants that the product is (1) the selection of the Seller and (2) the product and its components are designed to perform within the scope of, and in the event this actual operation deviates from the specifications or representations of performance, Seller warrants that the product will conform to any other conditions offered there by Seller represented by Buyer, any warranties or other promises contained in the literature or other materials provided by Seller, and any other conditions that may be set forth in writing.

Buyer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of or resulting from the use of Sandco's or Pore's, 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 (OTHER THAN THE WARRANTY PROVIDED UNDER SECTION 7) 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, BREACH OF WARRANTY, 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" includes, but not be limited to, loss of anticipated profits, business interruption, loss of time, revenue, reputation or data, costs incurred in making repairs, loss of use, power and loss of damage to property and equipment.

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

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

[illegible]

2. MEASURE OF PERFORMANCE: Seller shall not be liable for delays in performance in its non-performance due to acts of God or war, epidemic, fire, flood, war, strike, embargo, strikes or labor disputes, civil disturbances or riots, governmental requisition, requisition, seizure, requisition, laws, regulations, orders or actions; unavailability of or delays in transportation, delivery, or supply; or other circumstances; acts or omissions of Buyer, including, without limitation, those specified in Section 1, or any event or cause beyond Seller's reasonable control. Performance of Buyer and deliveries at Port may be suspended for an indefinite period of time or delayed by Seller upon notice to Buyer in the event of any of the foregoing, but the duration 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 principal used directly or indirectly in the manufacture of the Parts is restricted, in any or under circumstances due to causes not foreseen in the preceding paragraph, Seller may delay performance of Services or procure 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 responsible delivery within notice and upon payment to Seller of Seller's cancellation charges which include, among other things, all costs and expenses incurred and to cover commitments made by the Seller, and a reasonable profit thereon. Seller's determination of such cancellation charges shall be conclusive.

14. ~~Contracting~~ 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 create 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 Enxerox and Parts with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchaser in users and to defend, indemnify and hold Seller from any claims, suits, judgments, penalties and damages, including incidental and consequential damages, arising from such use, whenever the basis of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability.

12. ASSIGNMENT: Buyer shall not attempt to make or designate to another person or entity, without the prior written consent of Seller, any such assignment or designation, whether such transfer, shall be valid.

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.

[illegible]

55. **DRAWINGS:** Sellers 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, license and sale. Notwithstanding the foregoing, Buyer may use the Documents in connection with the Services, and Parts.

10. **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 export 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 or helper during the period any Services are being provided to Buyer and for a period of one (1) year after the last provision of Services.

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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 Ohio without regard to its conflict of laws principles. No action, regardless of forum, arising out of transactions relating to this contract, may be brought by either party more than ten (10) years after the cause of action has accrued. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

19. **ADDITIONAL SERVICE CONDITIONS:** The Buyer shall furnish to Seller, in no cost, suitable working space, storage bins, tables, chairs, lockers, light, ventilation, adequate electric power and outlets for lasting purposes. Seller shall be able to walk 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 shall provide the means to shut-off and secure electric power to the equipment and provide the working conditions for Seller to under no obligation to assume or dispose of. Seller shall be responsible for the agreed upon in Seller's scope of work. Seller retains title and ownership of the property of Seller. Buyer shall immediately inform Seller, 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, or expenses incurred by Seller as a result of Buyer's failure to so advise Seller shall be borne by Buyer. Seller, in its discretion and without limitation, shall have the right to cancel its performance under this Agreement or any portion thereof upon written notice to Buyer, following Seller's discovery of unsafe or hazardous site conditions or any other circumstances affecting Seller's 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 present at the site at all times and shall not be held responsible for any delays or interruptions in the performance of the Services. Buyer, in removing, replacing, reestablishing any Buyer equipment and/or materials, shall be responsible for the removal of the equipment and/or materials and shall provide all necessary assistance to Seller. Seller shall not be held responsible for any work performed by Buyer.

Services, Terms and Conditions - Nov 2020

SERVICES TERMS AND CONDITIONS

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1. PRICES: Unless otherwise specified in writing by Buyer, 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, Prices will be furnished at Seller's then prevailing prices.

2. **TAXES:** Any amount 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, in 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.

TERMS OF PAYMENT Unless otherwise specified by Seller, terms of payment are net 30 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 if Buyer fails to make timely payments, including arrears, in full. Payment shall be in full cash. Buyer shall be liable for all expenses, including attorney's fees, relating to the collection of said due amounts. If any payment owed to Seller is not paid when due, it shall become interest, as to be determined by Seller, which will not entitle Seller to payment by note provided by Buyer. Seller's mechanic's, contractor's 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 any goods, Seller reserves the right to suspend or discontinue its action in the event of non-payment of any bills, decreasing performance to Seller and protection of Party.

4. **SHIPMENT AND DELIVERY.** While Seller will use all reasonable commercial efforts to maintain the performance levels contemplated or required by Seller, all performance delays are approximate and not guaranteed. Seller shall not be liable for delay in shipment or delivery of any Parts, but Seller Buyer has not provided shipping instructions and/or other required information. If the provisions of Seller's 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 within the continental United States of the Parts is outside of the United States, risk of loss and legal title to the Parts shall transfer to the Buyer immediately after the Parts have departed from 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 the Parts shall transfer to Buyer (i) where delivered by the carrier, (ii) where delivered by Seller's personnel, or (iii) at the time of the Seller's delivery to the carrier. In all cases, the responsibility of Buyer and shall be assumed by Buyer directly to the carrier. Shipments 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 specified in the Service 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 warranted, Seller agrees to fix any warranties that are made by or for Seller, UNLESS OTHERWISE SPECIFIED AS SUCH, WHEREAS, WITH EXCEPT AS SPECIFICALLY SET FORTH IN SECTION 6, THE WARRANTY SET FORTH IN THIS SECTION 5 AND THE WARRANTY SET FORTH IN SECTION 7 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, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHETHER OR NOT THE PURPOSE OF THE SALE HAS BEEN SPECIFIED BY SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE.

The warranty does not extend to any losses or damages due to misuse, vandalism, theft, insects, neglect, normal wear and tear, negligence (other than Seller's), unauthorized modification or alteration, use beyond rated capacity, installation in an inappropriate location, use in violation of applicable codes, laws or regulations, use in areas with excessive 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 applied specifications, instructions or representations of operating conditions as listed data to Seller that is varied in (a) the notation of the Services provided by Seller and (b) 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 warranty or other provision contained herein that are affected by such variations shall be null and void.

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

5. LIMITATION OF REMEDY AND LIABILITY: THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER (OTHER THAN THE WARRANTY PROVIDED UNDER SECTION 7) 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, INFRAINGEMENT, 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 PART 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" also 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.

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

It is expressly understood that any technical advice furnished by Seller with respect to the use of the Parts and 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.

[illegible]

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, embargoes, strikes or labor stoppages, civil disturbances, governmental restraints, restrictions, allocations, laws, regulations, orders or decrees, unavailability of delays, transportation, default of suppliers, or unforeseen circumstances, acts or omissions of Buyer, including, without limitation, those specified in Section 10, or any events or causes beyond Seller's reasonable control. Performance

of Damages and Breach of this Lease or its extension for an appropriate period of time is calculated by credit (with notice to Buyer in the event of any of the foregoing, for 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 for which it is business customers were affected by its inability in the manufacture of the Parts is reduced, limited or made impracticable due to reasons 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 delay of performance which may result therefrom.

9. **CANCELLATION.** Buyer may cancel orders only upon reasonable advance written notice and upon payment to Seller of Seller's cancellation charges which include, among other things, all costs and expenses incurred and in excess of amounts made by the Seller, and a reasonable profit thereon. Seller's determination of such cancellation charges shall be conclusive.

16. **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 class. Seller reserves the right to change design 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. **NONWARRANTY:** SERVICES AND PARTS SOLD HEREUNDER ARE NOT FOR USE IN CONNECTION WITH ANY NONMEDICAL, MEDICAL, LIFE-SUPPORT AND RELATED APPLICATIONS. Buyer accepts Services for use in the foregoing understanding, agrees to commence the same in writing at its subsequent purchase or use; and to defend, indemnify and hold harmless Seller from any claims, losses, suits, judgments and damages, including moderate and consequential damages, arising from such use, whether the cause of action be based in tort, contract, or otherwise, including allegations that the Seller's liability is based on negligence or strict liability.

IN ASSIGNMENT. Boyer shall not assign or grant a license in whole or in part, or any interest therein without the prior written consent of GSA. Any and all assignments or licenses, without such consent, shall be void.

13. INSPECTION: Buyer must 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 acceptance and approval of the Services.

12. ADDITIONAL SERVICES: Additional charges will be added if Buyer at Seller's then prevailing price rates for any of the following services not specified in Seller's quotation: (a) order acknowledgement; Seller's advice 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 notice and/or equipment needed to complete Seller's service representative; (d) if it is necessary, due to local circumstances, to use an outside service representative; (e) if Seller Service representative is required to report to a location where such unit or installed labor will be charged to Buyer; (f) if maintenance, repair, or modification (including, without limitation, changes in specifications or installation of attachments or other features), (g) misuse or handling, including, without limitation, failure to maintain features, equipment in a specified manner; (h) failure to operate equipment in accordance with the manufacturer's instructions; (i) if the equipment is damaged or destroyed; or (j) Seller's performance is made more difficult or costly as a result of Buyer's failure to comply with its obligations herein.

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 this, Buyer may use the Documents in connection with the Services and Parts.

18. EXPORT/IMPORT: Buyer agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those in 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 storage and use. In no event shall Buyer use, transfer, re-export, import, or export Parts in violation of such applicable laws, regulations, orders and 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.

10. **RENTAL 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, extension, discharge, abandonment, or waiver of these Services Terms and Conditions shall be binding upon the Seller, unless made in writing and signed on the behalf by a duly authorized representative of Seller. No conditions, exchange of trade, counter offer or other proposal, including any agreement pertaining to modify, vary, waive, or supersede any of the provisions herein, shall be binding upon Seller, unless made in writing and signed by the Seller. Any modification or additional terms shall be applicable to this agreement, and signed by the Seller. Seller acknowledges and acceptance of purchase order, triggering installation, and other documentation constituting terms of variance with or in addition to those set forth herein. Any additional modifications or additional terms are specifically rejected and deemed a material alteration hereof. If it does constitute that be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer's consent to any additional or different terms set forth herein. Seller reserves the right to discontinue or alter its services. The waiver by either party voids respect to any breach or default by either party. There shall be no cure or remedy, unless the remedy is expressly agreed in writing and signed by the party to be bound. All hypothetical or non-binding offers made by Seller in any negotiation, acknowledgment or purchase are subject to contract.

The validity, performance, and of other matters relating to the interpretation and effect of this Agreement shall be governed by the law of the state of Ohio without regard to the location of the parties or assets. Buyer and Seller agree that the proper venue for all matters arising in connection herewith shall be only in the county of Franklin, state of Ohio. The parties agree to submit to the jurisdiction of the courts of the state of Ohio in connection with this contract, may be brought by either party more than two (2) years after the cause of action has accrued. To M.F. Conveyance Corporation, the International Union of Goods will not apply to this Agreement.

[illegible]



**UNINTERRUPTIBLE POWER SYSTEMS
NX MODELS WITH INTERNAL BATTERIES
SCOPE OF WORK**

ESSENTIAL SERVICE (1)

- Guaranteed 4-hour on-site response, 7 days/week, 24 hours/day, within 150 miles of a Liebert Services Service Center.
- Includes 100% parts (excluding air filters and proactive full bank capacitor replacement) coverage.
- Includes parts, labor and battery jars as required - up to 10% of the battery string per year (not accumulated over contract term).
- Includes 100% labor and travel coverage 7 days/week, 24 hours/day, within the 48 contiguous states and Hawaii.
- Performed by Liebert factory trained Customer Engineers.
- Includes battery recycling as required, with documentation meeting EPA requirements.
- Includes one Annual Preventive Maintenance Service on the UPS and internal battery cabinet scheduled by the customer between 8am-5pm, Monday-Friday (excluding national holidays).
- Includes 1-800-LIEBERT Customer Response Center.
- Includes access to Liebert Customer Services Network On-Line Internet portal.
- Subject to all Terms & Conditions as noted in the Liebert Maintenance Agreement.

SERVICE PERFORMED

UPS Full Preventive Maintenance Service

Annual Service

1. Perform a temperature check on all breakers, connections, and associated controls. Repair and/or report all high temperature areas.
2. Perform a complete visual inspection of the equipment including subassemblies, wiring harnesses, contacts, cables, and major components. Check air filters for cleanliness.
3. Check module(s) completely for the following (if applicable):
4. Rectifier and inverter snubber boards for discoloration.
5. Power capacitors for swelling or leaking oil.
6. DC capacitor vent caps that have extruded more than 1/8".
7. Record all voltage and current meter readings on the module control cabinet or the system control cabinet.
8. Measure and record harmonic trap filter currents.
9. Check the inverter and rectifier snubbers for burned or broken wires.
10. Check all nuts, bolts, screws, and connectors for tightness and heat discoloration.
11. Check fuses on the DC capacitor deck for continuity (if applicable).
12. With customer approval, perform operational test of the system including unit transfer and battery discharge.
13. Calibrate and record all electronics to system specifications.
14. Install or perform Engineering Field Change Notices (FCN) as necessary.
15. Measure and record all low-voltage power supply levels.
16. Measure and record phase-to-phase input voltage and currents.
17. Review system performance with customer to address any questions and to schedule any repairs.

NOTE 1: Preventive Maintenance usually requires a shut-down to ensure electrical connection integrity.

NOTE 2: Customer should check air filters monthly for cleanliness and replace as necessary.

NOTE 3: Above maintenance does not include System Control Cabinet, Power Tie, Breaker Cabinets, Load Bus Sync or Maintenance Bypass Cabinets.



Battery Full Preventive Maintenance Service

Annual Service

1. Inspect the appearance and cleanliness of the battery and the battery room. Clean normal cell top dirt accumulation (to be done only with battery off line).
2. Measure and record the total battery float voltage and charging current.
3. Measure and record overall AC ripple current.
4. Measure and record overall AC ripple voltage.
5. Visually inspect the jars and covers for cracks and leakage.
6. Visually inspect for evidence of corrosion.
7. Measure and record the ambient temperature.
8. Verify the condition of the ventilation equipment, if applicable.
9. Verify the integrity of the battery rack/cabinet.
10. Measure and record 100% of the cell temperatures.
11. Measure and record the float voltage of all cells.
12. Measure and record all internal impedance readings.
13. Re-tighten all battery connections to the battery manufacturer's specifications, offline only.

Corrective Maintenance Performed as Required

Refurbish cell connections as deemed necessary by the detailed inspection report.

NOTE 4: All battery checks are recorded through the LDI reporting system. Only visual battery inspection and total battery voltages are to be recorded on the UPS E-form. The full battery maintenance inspection will be conducted through LDI.