



Department of Administration  
Purchasing Division  
2019 Washington Street East  
Post Office Box 50130  
Charleston, WV 25305-0130

# State of West Virginia Purchase Order

Order Date: 06-27-2022

CORRECT ORDER NUMBER MUST APPEAR  
ON ALL PACKAGES, INVOICES, AND  
SHIPPING PAPERS. QUESTIONS  
CONCERNING THIS ORDER SHOULD BE  
DIRECTED TO THE DEPARTMENT  
CONTACT.

Order Number:	CPO 0705 0705 LOT2200000009 1	Procurement Folder:	1041203
Document Name:	LEIBERT UPS BATTERY SOFTWARE/HARDWARE MAINT	Reason for Modification:	
Document Description:	LEIBERT UPS BATTERY SOFTWARE/HARDWARE MAINT		
Procurement Type:	Central Sole Source		
Buyer Name:	Toby L Welch		
Telephone:	(304) 558-8802		
Email:	toby.l.welch@wv.gov		
Shipping Method:	Best Way	Effective Start Date:	
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	

VENDOR		DEPARTMENT CONTACT	
Vendor Customer Code:	000000172046	Requestor Name:	Jodi R Hash
VERTIV CORPORATION 1050 DEARBORN DR		Requestor Phone:	(304) 558-0500
COLUMBUS OH 430851544 US		Requestor Email:	jhash@wvlottery.com
Vendor Contact Phone:	614-841-6329	<div>23 FILE LOCATION</div>	
Extension:			
Discount Details:			
Discount Allowed	Discount Percentage		
Discount Days			
#1	No	0.0000	0
#2	Not Entered		
#3	Not Entered		
#4	Not Entered		

INVOICE TO	SHIP TO
ACCOUNTS PAYABLE LOTTERY PO BOX 2067  CHARLESTON WV 25327-2067 US	PURCHASING LOTTERY 900 PENNSYLVANIA AVE  CHARLESTON WV 25302 US

Total Order Amount: \$25,863.00

Purchasing Division's File Copy

ENTERED

PURCHASING DIVISION AUTHORIZATION DATE: <i>Mark A. [Signature]</i> 8/10/2022 ELECTRONIC SIGNATURE ON FILE	ATTORNEY GENERAL APPROVAL AS TO FORM DATE: <i>John S. [Signature]</i> ELECTRONIC SIGNATURE ON FILE	ENCUMBRANCE CERTIFICATION DATE: <i>Beverly T. [Signature]</i> 8-13-2022 ELECTRONIC SIGNATURE ON FILE
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10/13/2022

**Extended Description:**

One Time Purchase  
Yearly Maintenance and Support Services for Liebert UPS Battery Backup System

The Vendor Vertiv corporation, agrees to enter with the Agency, the West Virginia Lottery(IT Dept), into a one-time purchase to provide Yearly Maintenance and Support Services for Liebert UPS Battery Backup System per the attached documentation incorporated herein by reference, and made a part of hereof.

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
1	81112200	0.00000		0.000000	25863.00
Service From	Service To	Manufacturer		Model No	
2022-06-01	2023-05-31				

**Commodity Line Description:** UPS BATTERY SOFTWARE/HARDWARE MAINTENANCE

**Extended Description:**

AS PER ATTACHED QUOTATION

## **ORDER OF PRECEDENCE AND MODIFICATION AGREEMENT**

**THIS ORDER OF PRECEDENCE AND MODIFICATION AGREEMENT**, (hereinafter "Agreement") by and between Vertiv Corporation (hereinafter "Vertiv") and the West Virginia Lottery (hereinafter "State"), (both referred to as "Parties"), is intended to identify the various documents that comprise the contract resulting from the Direct Award identified as LOT2200000003, Procurement Folder # 1041203 for UPS Battery Backup Maintenance and Support ("Contract"), to establish an order of precedence for the various documents, and to modify documents as necessary.

**NOW THEREFORE**, the Parties hereto hereby agree as follows:

1. **Order of Precedence:** The Contract is comprised of the documents listed in this section. The terms and conditions contained in the various documents shall be interpreted according to the priority given to the document in this section. In that way, any terms and conditions contained in the first priority document shall prevail over conflicting terms in the second priority document, and so on.

### **Terms Agreement Documents:**

- a. **Order of Precedence and Modification Agreement** (this document) – First Priority
- b. **WV-96** (Attached as Exhibit A) – Second Priority
- c. **Vendor Quote** (Attached as Exhibit B) – Third Priority
- d. **Vendor Terms and Conditions** (Attached as Exhibit C) – Fourth Priority

### **2. Modifications:**

- a. **WV-96:** The WV-96 is modified as follows:

- i. The term entitled "9. Limiting Liability" is removed in its entirety and replaced with the following:

"Excluding Vendor's gross negligence, willful misconduct and indemnification obligations regarding third party claims, in no event shall vendor's liability to the State exceed the total price paid under this Contract."

### **3. Additional Contract Terms.** The following additional terms are added to the Contract.

- a. **BACKGROUND CHECK:** In accordance with W. Va. Code § 15-2D-3, the State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check. Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.
- b. **ANTITRUST:** In submitting a bid to, signing a contract with, or accepting an Award Document from any agency of the State of West Virginia, the

Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.

IN WITNESS WHEREOF, the Parties have entered into this Terms Agreement as of the date of the last signature below.

**WEST VIRGINIA LOTTERY**

By:

Jodi Hash

Name:

Jodi Hash

Its:

Procurement Spec. Sr.

Date:

6/14/22

**VERTIV CORPORATION**

By:

Stephanie L. Hamm

Name:

Stephanie L. Hamm

Its:

Senior Contract Administrator

Date:

6/14/2022

**EXHIBIT A**

**STATE OF WEST VIRGINIA  
ADDENDUM TO VENDOR'S STANDARD CONTRACTUAL FORMS**

State Agency, Board, or Commission (the "State"): *WV LOTTERY*

Vendor: *Vertiv Corporation*

Contract/Lease Number ("Contract"): *CPO LOT 2200000009*

Commodity/Service: *Liebert UPS Battery Backup yearly maintenance & Support*

The State and the Vendor are entering into the Contract identified above. The Vendor desires to incorporate one or more forms it created into the Contract. Vendor's form(s), however, include(s) one or more contractual terms and conditions that the State cannot or will not accept. In consideration for the State's incorporating Vendor's form(s) into the Contract, the Vendor enters into this Addendum which specifically eliminates or alters the legal enforceability of certain terms and conditions contained in Vendor's form(s). Therefore, on the date shown below each signature line, the parties agree to the following contractual terms and conditions in this Addendum are dominate over any competing terms made a part of the Contract:

1. **ORDER OF PRECEDENCE:** This Addendum modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Addendum. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS ADDENDUM, THIS ADDENDUM SHALL CONTROL.**
2. **PAYMENT** – Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance.  
Any language imposing any interest or charges due to late payment is deleted.
3. **FISCAL YEAR FUNDING** – Performance of this Contract is contingent upon funds being appropriated by the WV Legislature or otherwise being available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.
4. **RIGHT TO TERMINATE** – The State reserves the right to terminate this Contract upon thirty (30) days written notice to the Vendor. If this right is exercised, the State agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are deleted that seek to require the State to (1) compensate Vendor, in whole or in part, for lost profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.  
Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.
5. **DISPUTES** – Any language binding the State to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.  
Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.  
Any language requiring the State to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.
6. **FEES OR COSTS:** Any language obligating the State to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.
7. **GOVERNING LAW** – Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia.
8. **RISK SHIFTING** – Any provision requiring the State to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.
9. **LIMITING LIABILITY** – Any language limiting the Vendor's liability for direct damages to person or property is deleted.
10. **TAXES** – Any provisions requiring the State to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. The State will, upon request, provide a tax exempt certificate to confirm its tax exempt status.
11. **NO WAIVER** – Any provision requiring the State to waive any rights, claims or defenses is hereby deleted.

12. **STATUTE OF LIMITATIONS** -- Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.
13. **ASSIGNMENT** -- The Vendor agrees not to assign the Contract to any person or entity without the State's prior written consent, which will not be unreasonably delayed or denied. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract.
14. **RENEWAL** -- Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.
15. **INSURANCE** -- Any provision requiring the State to maintain any type of insurance for either its or the Vendor's benefit is deleted.
16. **RIGHT TO REPOSSESSION NOTICE** -- Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.
17. **DELIVERY** -- All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
18. **CONFIDENTIALITY** -- Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act ("FOIA") (W. Va. Code §29B-a-1, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the State's sole discretion.

Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.

19. **THIRD-PARTY SOFTWARE** -- If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that it has the authority to modify such third-party software's terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the State against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.
20. **AMENDMENTS** -- The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

Notwithstanding the foregoing, this Addendum can only be amended by (1) identifying the alterations to this form by using *italics* to identify language being added and ~~strikes through~~ for language being deleted (do not use track-changes) and (2) having the Office of the West Virginia Attorney General's authorized representative expressly agree to and knowingly approve those alterations.

State: \_\_\_\_\_

Vendor: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT B**





# **Proposal for Service**

## **Vertiv Corporation**

**3/14/2022**

**West Virginia Lottery  
600 Pennsylvania Ave  
Charleston WVa 26307**



**3/14/2022**

**West Virginia Lottery  
900 Penn Ave  
Charleston Wva  
CPQ-288886-1**

**Phone:  
Fax:  
Email:**

**Dear , Mark**

**Thank you for your interest in Veriv Corporation. 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, Veriv 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 (804) 785-0781. I look forward to your response and the opportunity to work together to improve your data center investment.**

**Sincerely,**

**Greg Bridgewater**

**301 Smiley Drive**

**8L Albans, WV 26177**

**PHONE (804) 785-0781**

**FAX Fax: (804) 785-4010**

**EMAIL: gbridgewater@maasopberry.com**

**Order CPQ-288886-1**



#### 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.
- We maintain and follow 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#:

Tag #	Description	Model #	Annual PM Qty.	Coverage Type (Coverage Dates)	Coverage Amount
1324633	FPC 150-300	PPA200C315S8696	1	PREFERRED (06/01/2022) - (05/31/2023)	\$2,085.00
1324630	S600 SCC<2500	U39CC6404AT696	2	PREFERRED (06/01/2022) - (05/31/2023)	\$5,009.25
1324632	SEALED BATTERY	U36BP125PJBNUUU	4	Preferred 24x7 (06/01/2022) - (05/31/2023)	\$7,281.75
1324634	CUSTOM_PREFERRED2 7X24	MBP3800A10N3901	2	(06/01/2022) - (05/31/2023)	\$1,492.50
1324628	S600T 65-125	U39MM125A0AA696	2	PREFERRED (06/01/2022) - (05/31/2023)	\$9,994.50

Total price not including tax: \$25,863.00

any tax required must be included in customer purchase order

Payment Terms: Net 30 Days



## SCOPE OF WORK

### UNINTERRUPTIBLE POWER SYSTEMS

### ALL 3-PHASE MODELS

### PREFERRED SERVICE - 2 PM

#### SERVICE SUMMARY

Feature	Detail
On-Site Service	Includes 1 Annual and 1 Semi-Annual Preventive Maintenance Services, scheduled by the customer at the customer's convenience (excluding national holidays).
Response Time	Guaranteed 4-hour on-site emergency response, 7 days/week, 24 hours/day, within 150 miles of a Vertiv Services' Service City.
Customer Support	Includes access to the Customer Resolution Center (1-800-543-2378) and the Vertiv Customer Services Network Online Internet portal.
Parts	Includes parts coverage (limits may apply; see Assumptions and Clarifications, as applicable, for more details).
Labor & Travel	Includes 100% labor and travel coverage 7 days/week, 24 hours/day, within the 48 contiguous states and Hawaii.
Service Professional	Performed by Vertiv factory trained and authorized technician. Vertiv Services is the OEM service provider for Liebert products.

#### SERVICE PERFORMED

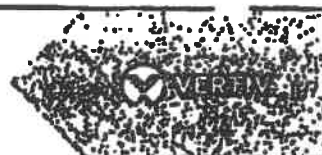
##### UPS Full Preventive Maintenance Service

###### *Semi-Annual Service*

1. Perform 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.
3. Check air filters for cleanliness. (if applicable)
4. Check rectifier and inverter snubber boards for discoloration.
5. Record all voltage and current meter readings on the module control cabinet or the system control cabinet.

###### *Annual Service (Includes the above, plus)*

- Check power capacitors for swelling or leaking oil (if applicable).
- Check for DC capacitor vent caps that have extruded more than 1/8" (if applicable).
- Measure and record harmonic trap filter currents (if applicable).
- Check the inverter and rectifier snubbers for burned or broken wires.
- Check all nuts, bolts, screws, and connectors for tightness and heat discoloration.
- Check fuses on the DC capacitor deck for continuity (if applicable).
- With customer approval, perform operational test of the system, including unit transfer and battery discharge.



- Calibrate and record all electronics to system specifications.
- Check or perform Engineering Field Change Notices (FCN) as necessary
- Measure and record all low-voltage power supply levels.
- Record phase-to-phase input voltage and currents.
- Review system performance with customer to address any questions and to schedule any repairs.

#### **Battery Inspection Service - Performed During the UPS Annual PM Service**

- Check integrity of battery cabinet (if applicable).
- Visual inspection of the battery cabinet and/or room to include:
  - ☐ Check for NO-OIL grease or oil on all connections (if applicable).
  - ☐ Check battery jars for proper liquid level (if flooded cells).
  - ☐ Check for corrosion on all the terminals and cables.
  - ☐ Examine the physical cleanliness of the battery room and jars.

1. Measure and record DC bus ripple voltage (if applicable).

2. Measure and record total battery float voltage.

#### **ASSUMPTIONS AND CLARIFICATIONS**

Parts coverage excludes batteries, air filters, preventive full bank capacitor and preventive full fan replacement.

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

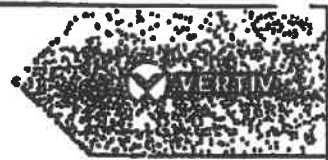
Maintenance does not include System Control Cabinet, Power Tie, Breaker Cabinets, Load Bus Sync or Maintenance Bypass Cabinets.

The Battery Inspection Service listed above is only a visual inspection and is not intended to replace a full preventive maintenance program for the battery system.

#### **CUSTOMER RESPONSIBILITIES**

In order to provide timely, accurate and thorough execution of the services described herein, Vertiv requests the following:

9. **Point of Contact:** Provide an authorized point of contact(s), specific for the scope of work, for scheduling and coordination purposes.
10. **Scheduling:** Make dates available for scheduling service. All visits must be requested 10 business days in advance of need by contacting the Vertiv Services Customer Resolution Center at 1-800-643-2378.
11. **Site Access:** Prior to time of scheduled work, provide site access including any customer required escort, security clearance, safety training and badging for Vertiv service personnel.
12. **Equipment Access:** Convenient access to the equipment covered by the Scope of Work. Prior to scheduled time of work, notify Vertiv service personnel of any special requirements for equipment access including lifts, ladders, etc.
13. **Shutdown:** Service may require shutdown of load to ensure electrical connection integrity.
14. **Notification:** If for any reason the work cannot be performed during scheduled time, notify Vertiv service personnel 24-hours prior to scheduled event.



## **TERMS AND CONDITIONS**

**Subject to all Terms & Conditions as noted in the Verity Service Terms & Conditions or the terms of a Master Agreement between the parties, if any, shall apply**



## SCOPE OF WORK

### UNINTERRUPTIBLE POWER SYSTEMS

### PERIPHERALS MAINTENANCE BYPASS CABINET MODULE BATTERY DISCONNECT, LOAD BUS SYNC, POWER TIE, SLIM LINE DISTRIBUTION CABINET

PREFERRED SERVICE - 2 PM

### SERVICE SUMMARY

Points	Detail
On-Site Service	Includes 2 Preventive Maintenance Services, scheduled by the customer at the customer's convenience (excluding national holidays).
Response Time	Guaranteed 4-hour on-site emergency response, 7 days/week, 24 hours/day, within 150 miles of a Vertiv Services' Service City.
Customer Support	Includes access to the Customer Resolution Center (1-800-543-2378) and the Vertiv Customer Services Network Online Internet portal.
Parts	Includes parts coverage (limits may apply; see Assumptions and Clarifications, as applicable, for more details).
Labor & Travel	Includes 100% labor and travel coverage 7 days/week, 24 hours/day, within the 48 contiguous states and Hawaii.
Service Professional	Performed by Vertiv factory trained and authorized technician. Vertiv Services is the OEM service provider for Liebert products.

### SERVICE PERFORMED

1. Perform a complete visual inspection of the equipment, including sub-assemblies, wiring harnesses, contacts, cables and major components.
2. Check all mechanical connections for tightness and heat discoloration, making corrections where necessary.
3. Clean any foreign material and dust from internal compartments.
4. Perform a status check of alarm circuits. (If Applicable).
5. Calibration of the equipment to meet manufacturer's specifications (if applicable).
6. Operational checkout of the system to include transfers and proper status indications.
7. Check or perform Engineering Field Change Notices (FCN) as necessary.
8. Return unit to operational service with normal load then measure and verify display indications.

### ASSUMPTIONS AND CLARIFICATIONS

Includes 100% parts coverage, excluding circuit breakers and switches.

### CUSTOMER RESPONSIBILITIES

In order to provide timely, accurate and thorough execution of the services described herein, Vertiv requests the following:



- **Point of Contact:** Provide an authorized point of contact(s), specific for the scope of work, for scheduling and coordination purposes.
- **Scheduling:** Make dates available for scheduling service. All visits must be requested 10 business days in advance of need by contacting the Verity Services Customer Resolution Center at 1-800-543-2378.
- **Site Access:** Prior to time of scheduled work, provide site access including any customer required escort, security clearance, safety training and lodging for Verity service personnel.
- **Equipment Access:** Convenient access to the equipment covered by the Scope of Work. Prior to scheduled time of work, notify Verity service personnel of any special requirements for equipment access including lifts, ladders, etc.
- **Shutdown:** Service may require shutdown of load to ensure electrical connection integrity.
- **Notification:** If for any reason the work cannot be performed during scheduled time, notify Verity service personnel 24-hours prior to scheduled event.

## **TERMS AND CONDITIONS**

Subject to all Terms & Conditions as noted in the Verity Services Terms & Conditions or the terms of a Master Agreement between the parties, if any, shall apply.





## SCOPE OF WORK

### POWER CONDITIONING

### POWER CENTER (PPC/FPC)

### PREFERRED SERVICE - 1 PM

### SERVICE SUMMARY

Feature	Detail
On-Site Service	Includes 1 Preventive Maintenance Service, scheduled by the customer at the customer's convenience (excluding national holidays).
Response Time	Guaranteed 4-hour on-site emergency response, 7 days/week, 24 hours/day, within 150 miles of a Veriv Services' Service City.
Customer Support	Includes access to the Customer Resolution Center (1-800-543-2378) and the Veriv Customer Services Network Online Internet portal.
Parts	Includes parts coverage (limits may apply; see Assumptions and Clarifications, as applicable, for more details).
Labor & Travel	Includes 100% labor and travel coverage 7 days/week, 24 hours/day, within the 48 contiguous states and Hawaii.
Service Professional	Performed by Veriv factory trained and authorized technician. Veriv Services is the OEM service provider for Liebert products.

### SERVICE PERFORMED

1. Perform a complete visual inspection of the equipment including internal sub-assemblies, wiring harnesses, contactors, cables, major components, and check for proper clearance around the unit.
2. Perform an Infrared Scan (IR Scan) and verify all transformer, terminal block, and ground/neutral bus bar connections for tightness.
3. Perform an Infrared Scan (IR Scan) and verify all circuit breakers including the panelboard(s) branch circuits for tightness.
4. Perform an Infrared Scan (IR Scan) and verify high and low voltage junction box terminals for tightness (if applicable).
5. Perform an Infrared Scan (IR Scan) and verify all option wiring for tightness. (Spike suppressor, ground fault, phase rotation/loss)
6. Verify system control power fuses. (Equipment MUST be de-energized)
7. Verify grounding electrode conductor and any isolated grounds.
8. Verify EPO lamps are illuminated (if applicable).
9. Perform operational test of the optional local EPO. (Equipment MUST be able to be de-energized)
10. Record all the electrical data via the local display (if applicable). Ensure all values are within the specification.
11. Verify specified restart capabilities (manual or auto-restart).
12. Verify all monitoring options (if applicable) are displaying values within preset parameters.
13. Check or perform Engineering Field Change Notices (FCN) as necessary.
14. Configuration of the LDMLDMF (for newly installed branch circuit breakers, if applicable).
  1. Verify firmware and update as required.



2. Verify the location, alarm set points, number of points, and address of every newly installed breaker.
3. Verify the CT ratio for every newly installed breaker.
4. Demonstrate use of software tools. (If applicable)
3. (Excludes interoperability with SiteScan and Building Management Systems)
6. Save the configuration file to a laptop as a backup for customer. (If applicable)

## **ASSUMPTIONS AND CLARIFICATIONS**

Parts coverage excludes branch circuit breakers.

## **CUSTOMER RESPONSIBILITIES**

In order to provide timely, accurate and thorough execution of the services described herein, Verity requests the following:

- **Point of Contact:** Provide an authorized point of contact(s), specific for the scope of work, for scheduling and coordination purposes.
- **Scheduling:** Make dates available for scheduling service. All visits must be requested 10 business days in advance of need by contacting the Verity Services Customer Resolution Center at 1-800-543-2378.
- **Site Access:** Prior to time of scheduled work, provide site access including any customer required escort, security clearance, safety training and badging for Verity service personnel.
- **Equipment Access:** Convenient access to the equipment covered by the Scope of Work. Prior to scheduled time of work, notify Verity service personnel of any special requirements for equipment access including lifts, ladders, etc.
- **Shutdown:** Service may require shutdown of load to ensure electrical connection integrity.
- **Notification:** If for any reason the work cannot be performed during scheduled time, notify Verity service personnel 24-hours prior to scheduled event.

## **TERMS AND CONDITIONS**

Subject to all Terms & Conditions as noted in the Verity Services Terms & Conditions or the terms of a Master Agreement between the parties, if any, shall apply.



## SCOPE OF WORK

### STATIONARY BATTERY SYSTEMS

### VRLA (SEALED) BATTERY

### PREFERRED SERVICE - 4 PM

#### SERVICE SUMMARY

Feature	Detail
On-Site Service	Includes 1 Annual and 3 Semi-Annual Preventive Maintenance Services, scheduled by the customer at the customer's convenience (excluding national holidays).
Response Time	Guaranteed 4-hour on-site emergency response, 7 days/week, 24 hours/day, within 150 miles of a Vertiv Services' Service City.
Customer Support	Includes access to the Customer Resolution Center (1-800-543-2378) and the Vertiv Customer Services Network Online Internet portal.
Internal Battery Coverage	Includes parts, labor, disposal and battery jars as required - up to 10% of the battery jars per year, not accumulated over contract term (limits may apply; see Assumptions and Clarifications, as applicable, for more details).
Labor & Travel	Includes 100% labor and travel coverage 7 days/week, 24 hours/day, within the 48 contiguous states and Hawaii.
Service Professional	Performed by Vertiv factory trained and authorized technician. Vertiv Services is the OEM service provider for Liebert products.
Battery Recycling	Includes battery recycling as required, with documentation meeting EPA requirements.

#### SERVICE PERFORMED

***\*\*During the Initial PM visit, an Annual Service PM must be performed.\*\****

##### Semi-Annual Service

1. Inspect the appearance and cleanliness of the battery and the battery room. Clean normal jar 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 the overall AC ripple voltage.
4. Measure and record the overall AC ripple current.
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 integrity of the battery rack/cabinet.
9. Measure and record 100% of the jar temperatures.
10. Measure and record the float voltage of all cells.
11. Measure and record all internal ohmic readings.
12. Provide a detailed written report noting any deficiencies and corrective action needed, taken and/or planned.



**13. Verify approval for Battery Life program.**

**Annual Service (includes the above, plus)**

1. Re-tighten all battery connections to the battery manufacturer's specifications, if required. Refer to the manufacturer's literature to determine if re-tightening is required.
2. Measure and record all battery connection resistances in micro-ohms, when applicable.

**Corrective Maintenance Performed as Required**

1. Redubish cell connections as deemed necessary by the detailed inspection report.

**Conditions for Single Jar Replacement Service for Lead Acid Batteries**

1. The Customer is covered by an Essential or Preferred Contract.
2. The battery string is in overall good health as determined by Vertiv Service; the battery string is not beyond expected service years or has had excessive single jar replacements that would make the string unstable.
3. Up to 10% of defective battery jars may be replaced within a 12-month period as exclusively determined by Vertiv Service.
4. Contracts have no cash value for future years or full string battery replacements. Single jar replacement is limited to batteries in the original string.

**ASSUMPTIONS AND CLARIFICATIONS**

Does not include battery or full-string replacement labor or parts coverage.

**CUSTOMER RESPONSIBILITIES**

In order to provide timely, accurate and thorough execution of the services described herein, Vertiv requests the following:

- **Point of Contact:** Provide an authorized point of contact(s), specific for the scope of work, for scheduling and coordination purposes.
- **Scheduling:** Make dates available for scheduling service. All visits must be requested 10 business days in advance of need by contacting the Vertiv Services Customer Resolution Center at 1-800-543-2378.
- **Site Access:** Prior to time of scheduled work, provide site access including any customer required escort, security clearance, safety training and badging for Vertiv service personnel.
- **Equipment Access:** Convenient access to the equipment covered by the Scope of Work. Prior to scheduled time of work, notify Vertiv service personnel of any special requirements for equipment access including lifts, ladders, etc.
- **Shutdown:** Service may require shutdown of load to ensure electrical connection integrity.
- **Notification:** If for any reason the work cannot be performed during scheduled time, notify Vertiv service personnel 24-hours prior to scheduled event.

**TERMS AND CONDITIONS**

Subject to all Terms & Conditions as noted in the Vertiv Services Terms & Conditions or the terms of a Master Agreement between the parties, if any, shall apply.

Order Number: CPQ-255925-1

Purchase Order must be assigned to:  
Verity Corporation  
1080 Deernon Dr.  
Columbus, OH 43085

Payment/shipment address:  
Verity Corporation  
PO Box 70474  
Chicago, IL 60673

FID# 31-0715255

PO should be e-mailed or faxed with signed proposal to:  
Verity Corporation c/o Greg Bridgewater  
Attn: Greg Bridgewater  
Email: [gbridgewater@msn.com](mailto:gbridgewater@msn.com)  
Fax: Fax (604) 766-4010

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: \_\_\_\_\_

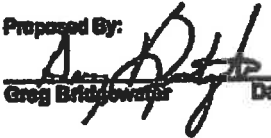
**\*\* COVERAGE DETAILS \*\***

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 manufacturer specifications are the responsibility of the buyer and labor 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 the Proposal is modified in any way. This Proposal is valid for 90 days from the date of this Proposal unless otherwise noted. INFORMATION TO BUYER: This order between the Buyer and Seller is limited to Seller's Terms and Conditions located at [www.verity.com](http://www.verity.com) unless a formal agreement governing this Purchase Order transaction has been executed by the parties, in which case the Terms and Conditions of this signed agreement shall govern. Buyer hereby accepts to all Buyer's terms and conditions received by Seller under issued by Buyer.

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 invoice by authority of the signature below.

Thank you for your business.

Prepared By:

  
Greg Bridgewater Date: 3/14/22

Accepted By:

Buyer Signature Required \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name \_\_\_\_\_ Title \_\_\_\_\_ Phone \_\_\_\_\_

**EXHIBIT C**



Verity Corporation  
TERMS AND CONDITIONS OF SALE

Verity Corporation is herein referred to as the "Seller" and the customer or person or entity purchasing goods and/or services ("Goods") and/or parts required for services ("Parts") or licensing, software and/or firmware, which are provided, or to be used with Goods ("Software") from Seller is referred to as the "Buyer." These Terms and Conditions, any price list or schedule, quotation, acknowledgment, Seller's scope or statement of work, or invoice from Seller relevant to the sale of the Goods, Parts and/or Software by Seller, and all associated terms, conditions and documents incorporated by specific reference herein or therein, constitute the complete and exclusive statement of the terms of the agreement ("Agreement") governing the sale of Goods, Parts, and/or Software 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 Seller's terms and conditions of sale, 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 Goods, Parts, and/or Software 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 Goods, Parts and/or Software 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 Goods, whichever occurs first, provided an unconditional authorization from Buyer for the shipment or performance of the Goods and/or Parts, and/or Software is received and accepted by Seller within such time period. If such authorization is not received by Seller within such thirty (30) day period, Seller shall have the right to change the price for the Goods, Parts and/or Software to Seller's price for the Goods, Parts, and/or Software at the time of Seller's shipment or performance thereof. All prices and license fees are exclusive of taxes, transportation and insurance, which are to be borne by Buyer. Seller reserves the right to correct any obvious errors in specifications or prices and, in the event of a force majeure event, make equitable adjustments in Seller's price for the Goods, Parts, and/or Software prior to Seller's shipment or performance thereof. Unless otherwise specified by Seller, Parts that are required for the performance of services will be furnished at Seller's then-prevailing prices. A service charge of \$19.99 will be added to all orders which, excluding shipping charges, taxes, and insurance, do not meet the minimum order value of \$750.00. The service charge amount and/or minimum order value may be changed by Seller at any time, without notice.

**2. TAXES:** Any current or future tax, duty, tariff or governmental charge (or increase in same) affecting Seller's costs of production, sale, services or delivery or shipment of Goods, Parts, and/or Software, or which Seller is otherwise required to pay or collect in connection with the sale, purchase, delivery, performance, storage, processing, use or consumption of Goods, Parts, and/or Software, 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 are net thirty (30) days from date of Seller's invoice in U.S. currency. Seller shall have the right, among other remedies, either to terminate this Agreement or to suspend further performance under this 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 attorney's 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 entering any applicable mechanic's, labor, construction or similar lien rights. Should Buyer's financial responsibility become unsatisfactory to Seller, upon payment or security satisfactory to Seller may be required by Seller for future deliveries or performance of Goods, Parts, and/or Software. If such cash payment or security is not provided, in addition to Seller's other rights and remedies, Seller may discontinue deliveries or performance. Buyer hereby grants Seller a security interest in all Goods, Parts, and/or Software sold to Buyer by Seller, which security interest shall continue until all such Goods, Parts, and/or Software are fully paid for, and Buyer, upon Seller's demand, will execute and deliver to Seller such instruments as Seller requests to protect and perfect such security interest. As permitted by law, 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 delivery date(s) and/or performance dates acknowledged or quoted by Seller, all shipping dates and/or performance dates are approximate and not guaranteed. Seller reserves the right to make partial shipments. Seller, at its option, shall not be bound to tender delivery of any Goods, Parts, and/or Software for which Buyer has not provided shipping instructions and other required information. If the shipment or performance of the Goods, Parts, and/or Software 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. For sales in which the end destination of the Goods, Parts, and/or Software is outside of the United States (except for those international sales to Seller's affiliated companies), risk of loss and legal title to the Goods, Parts, and/or Software shall transfer to Buyer immediately after the Goods, Parts, and/or Software have passed beyond the territorial limits of the United States. For international sales to Seller's affiliated companies, all shipments of Goods, Parts, and/or Software are made on a Delivered at Place (DAP) basis, per Incoterms 2020, with freight charges from Seller's facility to destination terminal involved to buyer either on a Prepaid or PPDA/ded basis, as agreed to by Seller and Buyer. All other shipments of Goods, Parts, and/or Software are made on an Ex Works (EXW) Seller's Shipping Point basis, per Incoterms 2020, with Seller responsible to load goods on Buyer's nominated vehicle. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Notwithstanding the above, risk of loss and legal title to Parts shall transfer to Buyer (i) upon delivery by the Seller, or (ii) at the time Parts are placed in storage due to Buyer's delay or postponement. Shortages or damages must be identified and signed for at the time of delivery. Requests for changes in quoted transportation modes will not be made or accepted on orders already processed unless otherwise mutually agreed upon by Seller and Buyer. Requests for changes in quoted transportation modes to orders already accepted by Buyer will be subject to new freight terms and billed at the price in effect at the time of the request for change. Any request for changes in quoted transportation modes must be submitted in writing to Seller and are subject to Seller's acceptance and adjustment in freight price. The transportation costs quoted by Seller may be changed by Seller without notice in order to reflect Seller's prices at the time of shipment and will reflect any market increase in transportation

costs. If a price for delivery has been quoted, any changes at the destination for transportation modes, spotting, unloading, handling, storage and other accessorial services and demurrage shall be borne by the customer, and any related increase in transportation charges shall be added to the quoted price.

**5. LIMITED WARRANTY:** Subject to the limitations of Section 6, Seller's standard warranty that is applicable to the Goods and/or Software at the time of purchase is the only warranty applicable to the sale of Seller's Goods and/or Software and its terms, conditions and limitations are incorporated by reference herein. Seller warrants that it will perform the services as described in these terms and conditions and will exercise all reasonable skill, care and due diligence in the performance of the services. Seller warrants that all services performed shall be free from faulty workmanship for a period of thirty (30) days from completion of services. Thermal Solution Components, including but not limited to, fans, air-to-air heat exchangers, air conditioners, emergency DC vent systems and filtered thermal vent systems are warranted to be free from defects in material and workmanship for a period of twelve (12) months from date of shipment, or manufacturer's pass through warranty, whichever is longer, provided the following conditions are met: (i) Semi-annual preventive maintenance logs are maintained by Buyer and such logs are available to Seller upon request; and (ii) Input voltage to the air conditioner unit does not vary by greater than +/-10%; and (iii) In the event of accidental or intentional shut-off, a Thermal Solution Component will not be reactivated for at least five (5) minutes; and (iv) the refrigerant specified on the unit nameplate label will be the only refrigerant utilized in the air conditioner unit; and, (v) Buyer complies with all installation, operations and maintenance instructions provided by Seller. Goods, Parts and/or Software purchased by Seller from a third party for resale or license to Buyer ("Resale Products") shall carry only the warranty extended by the original manufacturer. To the extent assignable, Seller assigns to Buyer any warranties that are made by manufacturers and suppliers of such Resale Products. EXCEPT AS SPECIFIED ABOVE, REBABLE PRODUCTS FURNISHED HEREUNDER ARE FURNISHED AS-IS, WHERE-IS, WITH NO WARRANTY WHATSOEVER. THE WARRANTY SET FORTH IN THIS SECTION 5 AND THE WARRANTY SET FORTH IN SECTION 6 ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY SELLER WITH RESPECT TO THE GOODS AND/OR SOFTWARE 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, AND WHETHER OR NOT SELLER'S PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY SELLER FOR BUYER'S USE OR PURPOSE. SELLER'S WARRANTY EXTENDS ONLY TO PURCHASERS WHO BUY FOR INDUSTRIAL OR COMMERCIAL USE. This warranty does not extend to any lease 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, unstable power source or environmental conditions, improper installation, repair, handling, maintenance or operation 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 in the selection or design of the Goods and/or Software and 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 Goods, Parts, and/or Software, other than or in combination with other product components.

**6. LIMITATION OF REMEDY AND LIABILITY:** THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER (OTHER THAN THE WARRANTY PROVIDED UNDER SECTION 5) SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT, OR REFUND OF THE PURCHASE PRICE UNDER SECTION 5. 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 GOODS, PARTS, AND/OR SOFTWARE 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 Goods, Parts and/or Software 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 per location aggregate. 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. Buyer expressly acknowledges and agrees that Seller has not 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. PATENTS AND COPYRIGHTS:** Subject to the limitations of the second paragraph of Section 6 and any and all associated terms, conditions and documents incorporated by specific reference by Seller, Seller warrants that the Goods and/or Software sold, except as are made specifically for Buyer according to Buyer's specifications, do not infringe any valid U.S. patent or copyright in existence as of the date of shipment. This warranty is given upon the condition that Buyer promptly notify Seller of any claim or suit involving Buyer in which such infringement is alleged and cooperate fully with Seller and permit Seller to control completely the defense, settlement or compromise of any such allegation of infringement. Seller's warranty as to utility patents only applies to infringement arising solely out of



Buyer's operation according to Seller's specifications and instructions of such Goods and/or Software. In the event (i) such Goods and/or Software are held to infringe such a U.S. patent or copyright in such suit, and the use of such Goods and/or Software is enjoined, or (ii) a compromise or settlement is made by Seller, Seller shall have the right, at its option and expense, to procure for Buyer the right to continue using such Goods and/or Software, or replace them with non-infringing Goods and/or Software, or modify same to become non-infringing, or grant Buyer a credit for the depreciated value of such Goods and/or Software and accept return of them. In the event of the foregoing, Seller may also, at its option, cancel the agreement as to future deliveries of such Goods and/or Software, without liability. Except as otherwise provided herein, Seller or applicable third party licensor to Seller maintains all right, title and interest in and to the intellectual property in the Goods, Parts, and/or Software.

**9. EXCUSE OF PERFORMANCE:** Seller shall not be liable for delays in performance or for non-performance due to acts of God; acts of Buyer; war; viral outbreaks, disease, pandemic, widespread sickness, or 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; unavailability of or delays in the supply of materials, components, parts or labor required for the design and/or manufacture of Goods, Software or the performance by Seller hereunder; default of suppliers; or unforeseen circumstances, acts or omissions of Buyer, or any events or causes beyond Seller's reasonable control. Deliveries or other performance may be suspended for an appropriate period of time or corrected 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 Goods, Parts, and/or Software, or to obtain material used directly or indirectly in the manufacture of the Goods, Parts, and/or Software, is hindered, limited or made impracticable due to causes set forth in this paragraph, Seller may delay or cancel performance, make equitable adjustments in Seller's price for the Goods, Parts, and/or Software, and/or allocate its available supply of the Goods, Parts, Software, and/or such material (without obligation to acquire other supplies of any such Goods, Parts, Software, or material) among its purchases on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom.

**10. 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 to cover commitments made by the Seller, and a reasonable profit thereon. Seller's determination of such cancellation charges shall be conclusive.

**11. CHANGES:** Buyer may request changes or additions to the Goods, Parts, and/or Software consistent with Seller's specifications and criteria. In the event such changes or additions are accepted by Seller, Seller may revise the price, license fees, and dates of delivery and/or performance dates. Seller reserves the right to change designs and specifications for the Goods, Parts, and/or Software without prior notice to Buyer, except with respect to Goods, Parts, and/or Software being made to order for Buyer. Seller shall have no obligation to install or make such change in any Goods, Parts, and/or Software manufactured prior to the date of such change.

**12. NUCLEAR/MEDICAL: GOODS, PARTS, AND SOFTWARE SOLD HEREUNDER ARE NOT FOR USE IN CONNECTION WITH ANY NUCLEAR, MEDICAL, LIFE-SUPPORT AND RELATED APPLICATIONS.** Buyer accepts Goods, Parts, and Software with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchasers or users and to demand, indemnify and hold harmless Seller from any claims, losses, suits, judgments and damages, including incidental 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.

**13. 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, without such consent, shall be void.

**14. SOFTWARE:** Notwithstanding any other provision herein to the contrary, Seller or applicable third party licensor to Seller shall retain all rights of ownership and title in its respective Software, including without limitation all rights of ownership and title in its respective copies of such Software. Except as otherwise provided herein, Buyer is hereby granted a non-exclusive, non-transferable royalty free license to use the Software incorporated into the Goods solely for purposes of Buyer properly utilizing such Goods purchased from Seller. All other Software shall be furnished to, and used by, Buyer only after execution of Seller's (or the licensor's) applicable standard license agreement, the terms of which are incorporated herein by reference.

**15. TOOLING:** Tool, die, and pattern charges, if any, are in addition to the price of the Goods and are due and payable upon completion of the tooling. All such tools, dies and patterns shall be and remain the property of Seller. Charges for tools, dies, and patterns do not convey to Buyer, title, ownership interest in, or rights to possession or removal, or prevent their use by Seller for other purchases, except as otherwise expressly provided by Seller and Buyer in writing with reference to this provision.

**16. DOCUMENTATION:** Seller shall provide Buyer with that data/documentation which is specifically identified in Seller's quotation. If additional copies of data/documentation are to be provided by Seller, it shall be provided to Buyer at Seller's applicable prices then in effect.

**17. INSPECTION/TESTING:** Buyer, at its option and expense, may observe the inspection and testing by Seller of the Goods and/or Software for compliance with Seller's standard test procedures prior to shipment, which inspection and testing shall be conducted at Seller's plant at such reasonable time as is specified by Seller. Any rejection of the Goods and/or Software must be made promptly by Buyer before shipment. Tests shall be deemed to be satisfactory completed and the test duly met when the Goods and/or Software meet Seller's criteria for such procedures. If Buyer does not inspect the Goods and/or Software at Seller's plant as provided herein, Buyer shall have ten (10) days from (i) the date of delivery of Goods, Parts, and/or Software and (ii) from the date of completion of each portion of the services to inspect the Goods, Parts, and/or Software, and in the event of any non-conformity, Buyer must give written notice to Seller within said period stating why the Goods, Parts, and/or Software are not conforming. Failure by Buyer to give such notice constitutes unqualified acceptance of the Goods, Parts, and/or Software. Buyer's sole remedy for non-conforming services shall be actual performance of services incorrectly performed by Seller.

**18. RETURNED GOODS:** Advance written permission to return Goods, Parts, and/or Software must be obtained from Seller in accordance with Seller's then current Return Material Authorization (RMA) procedures and a return authorization number issued. Such Goods, Parts, and/or Software must be (i) current, unused, catalogued Goods, Parts, and/or Software, still in original packaging (ii) free of all liens, encumbrances, or other claims, and (iii) shipped, transportation prepaid, to Seller's specified location. Returns made without proper written permission will not be accepted by Seller. Seller reserves the right to inspect Goods, Parts, and/or Software prior to authorizing return.

**19. BILLABLE SERVICES:** Additional charges will be billed to Buyer at Seller's then prevailing labor rates and Parts prices for any of the following: a) any services not specified in Seller's quotation. Seller's order acknowledgment, 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 alternative 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; (v) 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.

**20. DRAWINGS:** Seller's documentation, prints and drawings (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, holding and sale. Possession of such prints or drawings does not convey to Buyer any rights or license, and Buyer shall return all copies (in whatever medium) of such prints or drawings to Seller immediately upon request therefor. Notwithstanding the foregoing, Buyer may use the documentation, prints and drawings in connection with the use of the Goods, Parts, and/or Software.

**21. BUYER SUPPLIED DATA:** To the extent that Seller has been provided by, or on behalf of, Buyer any specifications, description of operating conditions or other data and information in connection with the selection or design of the Goods, Parts, and/or Software, and/or the provision of services, and the actual operating conditions or other circumstances differ from those provided by Buyer and relied upon by Seller, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.

**22. 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 European Union, and the jurisdictions in which the Seller and Buyer are established or from which Goods, Parts, Software, and services may be supplied, will apply to their receipt and use. In no event shall Buyer use, transfer, release, import, export, Goods, Parts, or Software in violation of such applicable laws, regulations, orders or requirements.

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

**24. GENERAL PROVISIONS:** This Agreement supersedes all other communications, negotiations and prior oral or written statements regarding the subject matter of this Agreement. No change, modification, rescission, discharge, abandonment, or waiver of these 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 heretofore 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 hereto. 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 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 Ohio without regard to its conflict of laws principles. Buyer and Seller agree that the proper venue for all actions arising in connection herewith shall be only in Ohio and the parties agree to submit to such jurisdiction. 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.

**25. DATA COLLECTION AND USE:** By using the Goods, Parts and/or Software, Buyer grants Seller, its affiliates, subsidiaries, and service providers, a non-exclusive, irrevocable, royalty free, worldwide right and license to collect, compile, retain, use, reproduce, and create derivative works of, any non-personal information and data, which includes without limitation, all data, materials, reports, text, sound, video, image files, software or any other information ("Service Data") that is provided by, or on behalf of, Buyer, or collected or compiled by Seller, its affiliates, subsidiaries, or service providers through the Goods, Parts, and/or Software. Seller, its affiliates, subsidiaries, and service providers may collect, compile, retain, use, reproduce, and create derivative works of Service Data: (i) to provide services, support and maintenance; (ii) to develop and improve products, software, and services; and (iii) for scientific and technical research and marketing purposes. Buyer is solely responsible for the Service Data, and Buyer will secure and maintain all rights necessary for Seller, its affiliates, subsidiaries, and service providers to process and use Service Data as described in this paragraph without violating the rights of any third party or otherwise obligating Seller, its affiliates, subsidiaries,



and service providers to Buyer or any third party. The Service Data will be aggregated with other information, materials, or data collected or compiled by, or provided to, Seller, its affiliates, subsidiaries, or service providers and anonymized, such that the Service Data will not intentionally reveal Buyer's identity. In accordance with applicable law, Service Data may be transferred, transmitted, or distributed to, stored, and processed in, cloud computing environments in the United States or any other country in which Seller, its affiliates, subsidiaries, or service providers maintain operations. By using the Goods, Parts, and/or Software, Buyer agrees to such use, transfer, transmission, distribution, storage, and processing of the Service Data. Seller, its affiliates, subsidiaries, and service providers will retain Service Data for as long as is necessary for Seller and its affiliates and subsidiaries business purposes in accordance with applicable law. The rights and licenses granted herein to Seller's service providers shall only be granted to the extent service providers are providing goods and services on Seller's and its affiliates and subsidiaries behalf.

**26. PRIVACY:** Seller will collect and process personal data of those employed by or otherwise affiliated with Buyer in accordance with Seller's "Privacy Notice for Customers and Suppliers - California" available here: [www.veritiv.com/privacy](http://www.veritiv.com/privacy) (the "Notice"), which Notice the Buyer hereby acknowledges having received, read, and understood. In the event of any queries or concerns with its contents, Buyer must contact Seller at the contact details provided in the Notice prior to entering into this Agreement or the commencement of performance hereunder, in failure of which, the terms of the Notice will be deemed accepted and consented to in their entirety.

**27. 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 Goods are to be provided. Seller and its representatives shall have full and free access to the equipment in order to provide the necessary Goods. 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's discovery of unsafe or hazardous site substance or condition or any other circumstance affecting Seller's performance hereunder. Buyer shall appoint a representative familiar with the site and the nature of Seller's performance 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.

**28. INDEMNITY:** Each party shall indemnify and hold the other party 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 the party providing indemnification or that party'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 and in no event shall the indemnifying party be obligated to indemnify or insure the other party for the indemnitee's own fault or negligence. The indemnifying party shall defend the other party in accordance with and to the extent of the above indemnification, provided that the indemnifying party is: 1) promptly notified by the other party, in writing, of any claims, demands or suits for such damages or injuries; 2) given all reasonable information and assistance by the other party; 3) given full control over any resulting negotiation, arbitration or litigation, including the right to choose counsel and settle claims, or the indemnifying party's obligations herein shall be deemed waived.

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