



State of Oklahoma

Office of Management and Enterprise Services

**ADDENDUM 1 TO
STATE OF OKLAHOMA CONTRACT WITH METRASENS
RESULTING FROM SOLICITATION NO. 0900000369 FOR SW0243**

This Addendum 1 ("Addendum") is an Amendment to the Contract awarded to Metrasens ("Vendor") in connection with Solicitation #0900000369 ("Solicitation") and is effective May 23, 2019.

Purpose

The State issued a Solicitation for proposals to provide Security Screening Equipment and Services, SW0243, as more particularly described in the Solicitation. Metrasens submitted a proposal which contained exceptions to the Solicitation terms and various other Contract Documents. The State and Metrasens have negotiated the final terms under which Metrasens will perform the Services under the Contract and this Addendum memorializes the agreement of the parties with respect to negotiated terms of the Contract that is being awarded to Metrasens as of even date with execution of this Addendum.

Now, therefore, in consideration of the foregoing and the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

1. **Work Commencement.**

The parties agree that Supplier has not yet begun performance of work contemplated by the Solicitation.

2. **Negotiated Documents of the Contract.**

The parties have negotiated certain exceptions to the Solicitation as contained in Attachment A to this Addendum titled Warranty Terms and Conditions and Maintenance Agreement, attached hereto and incorporated herein.

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**SIGNATURE PAGE TO ADDENDUM 1 TO
STATE OF OKLAHOMA CONTRACT WITH METRASENS
RESULTING FROM SOLICITATION NO. #0900000369 FOR SW0243**

STATE OF OKLAHOMA

By: _____



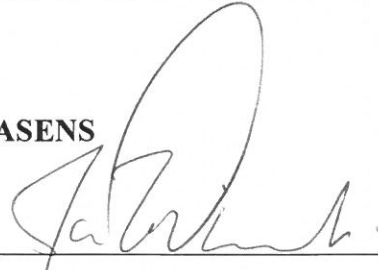
Name: Ferris J. Barger

Title: State Purchasing Director

Date: 6/24/2019

METRASENS

By: _____



Name: JAMES M. VISCARDI

Title: VICE PRESIDENT

Date: 6/19/19

**ATTACHMENT A TO
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Negotiated Exceptions to Contract Resulting from Solicitation No. 0900000369, SW0243

The negotiated exceptions to Solicitation No. 0900000369, SW0243 set forth below hereby supersede the exceptions set forth in Section 5 of Metrasens Proposal, METRASENS, LIMITED SECURITY DIVISION TERMS AND CONDITIONS OF SALE shall be deemed not to constitute a portion of the Contract.	
Term & Section	Language
Limited Security Division Terms and Conditions of Sale (Section E.11., Section Five (5), 2. Basis of Contract, 2.3	Section E.11., Section Five (5), 2. Basis of Contract, 2.3, shall be modified to add the following: “Effectively” 2.3 The Order shall only be deemed to be accepted when the product or service is received by the State.
(Section E.11., Section Five (5), 2. Basis of Contract, 2.7	Section E.11., Section Five (5), 2. Basis of Contract, 2.7, is deleted in its entirety: “Effectively” 2.7 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
(Section E.11., Section Five (5), 3. Goods and Services, 3.3	Section E.11., Section Five (5), 3. Goods and Services, 3.3, shall be modified to add the following: “Effectively” 3.3 As part of the Supplier’s policy of the development of its products, improvements are made in design from time to time and the Supplier reserves the right to supply substitute materials, components and units in place of the products ordered (and which shall thereby become “the Goods” for the purposes of the Contract) at no greater price than that specified in the price list current at the date of the Contract. The Buyer will be notified of any substantial changes made to the Goods before they are dispatched. The “State” has the option to agree to accept these newly developed products.
(Section E.11., Section Five (5), 4. Delivery of Goods, 4.4	Section E.11., Section Five (5), 4. Delivery of Goods, 4.4, is deleted in its entirety: “Effectively” 4.4 If the Supplier fails to deliver Goods or Services on or before any agreed delivery date in respect of which time shall have been agreed to be of the essence, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the relevant Goods or Services (as the case may be).

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(Section E.11., Section Five (5), 4. Delivery of Goods, 4.5 (b)	<p>Section E.11., Section Five (5), 4. Delivery of Goods, 4.5 (b), shall be modified to add the following:</p> <p>“Effectively” 4.5 (b) The Supplier shall store the Goods until delivery takes place, at zero expense to the Customer for all related costs and expenses (including insurance). Upon delivery, the customer shall inspect the product prior to acceptance.</p>
(Section E.11., Section Five (5), 4. Delivery of Goods, 4.6	<p>Section E.11., Section Five (5), 4. Delivery of Goods, 4.6, is deleted in its entirety:</p> <p>“Effectively” 4.6 If ten Business Days after the Supplier notified the Customer that the Goods or an instalment of them is ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of some or all of the Goods (or relevant instalment) and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price otherwise payable by the Customer in respect of such Goods or charge the Customer for any shortfall below such price (as the case may be).</p>
(Section E.11., Section Five (5), 5. Quality of Goods and Services, 5.2 (b)	<p>Section E.11., Section Five (5), 5. Quality of Goods and Services, 5.2 (b), shall be modified to add the following:</p> <p>“Effectively” 5.2 (b) The Customer has the initial right to inspect and make appropriate decisions about the quality of the delivery. The product comes with a full 2-year warranty. This includes normal wear-and-tear. For repairs, Metrasens and the “State” has the responsibility to determine if there has been misuse or abuse for warranty and coverage. Both parties must agree that there was misuse or abuse for warranty and coverage for repairs.</p>
(Section E.11., Section Five (5), 2. Basis of Contract, 5.2 (c)	<p>Section E.11., Section Five (5), 5. Quality of Goods and Services, 5.2 (c), shall be modified to add the following:</p> <p>“Effectively” 5.2 (c) The Customer shall, if it wishes to make a claim under this clause 5.2, complete and submit to the Supplier a Return Material Authorization form obtainable from the Supplier and upon and subject to receipt of the Supplier’s acknowledgement shall deliver the relevant Goods to the Supplier or its order within the United Kingdom; The ”State” is not responsible for paying for costs to return “defective goods” after the initial acceptance of the product and for repair purposes.</p>

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(Section E.11., Section Five (5), 6. Title and Risk, 6.4	<p>Section E.11., Section Five (5), 6. Title and risk, 6.4, is deleted in its entirety:</p> <p>“Effectively” 6.4 Unless and until the Supplier receives payment in full (in cash or cleared funds) for the Goods, the Supplier shall have a lien over them and the right to sell them by public auction or otherwise at its discretion for all sums due or to become due from the Customer to the Supplier under or by virtue of the Contract. Such lien and liability shall remain notwithstanding that the Goods have been delivered to the Customer. If on sale the net proceeds after deduction of all related costs, charges, expenses, commissions and VAT fail to realize the amount due the Supplier shall be entitled to recover the amount of the shortfall from the Customer.</p>
(Section E.11., Section Five (5), 6. Title and Risk, 6.5 (b)	<p>Section E.11., Section Five (5) 6. Title and Risk, 6.5 (b), is deleted in its entirety:</p> <p>“Effectively” 6.5 (b) maintain it in satisfactory condition and keep it insured against all risks for their full price on the Supplier's behalf from the date of delivery;</p>
(Section E.11., Section Five (5), 7. Cancellation of Order, 7 (a) and (b)	<p>(Section E.11., Section Five (5) 7. Cancellation of Order, 7. (a) and (b) shall be modified to add the following:</p> <p>“Effectively” 7. (a) and (b) Customer may cancel due to cause or convenience with a 30 day notice to the vendor.</p>
(Section E.11., Section Five (5), 8. Customer’s obligations. 8.2 (a) and (b)	<p>Section E.11., Section Five (5) 8. Customer’s obligations. 8.2 (a) and (b), is deleted in its entirety:</p> <p>8.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):</p> <p>(a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of Services and delivery of the Goods until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations; and</p> <p>(b) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.</p>
(Section E.11., Section Five (5), 8. Customer’s obligations. 8.3	<p>Section E.11., Section Five (5) 8. Customer’s obligations. 8.3, is deleted in its entirety:</p> <p>8.3 The Customer hereby agrees to indemnify and hold harmless the Supplier and keep it indemnified and held harmless from and against any and all costs, charges, claims, proceedings and damages sustained or to be sustained by the Supplier arising out of any breach by the Customer of its obligations under clause 8.1 or clause 8.2.</p>

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(Section E.11., Section Five (5), 9. Charges and Payment, The price of goods 9.1 (b))	<p>Section E.11., Section Five (5) 9. Charges and Payment, The price of goods 9.1 (b), shall be modified to add the following:</p> <p>“Effectively” 9.1 (b) Shipping will be included in quoted price per unit.</p> <p style="text-align: center;">The Supplier shall invoice the Customer after completion of delivery of Goods or Services or an installment of Goods within 30 days of receipt.</p>
(Section E.11., Section Five (5), 9. Charges and Payment, The price of goods 9.2 (a))	<p>Section E.11., Section Five (5) 9. Charges and Payment, The price of goods 9.2 (a), shall be modified to add the following:</p> <p>“Effectively” 9.2 (a) Forty Five (45) days from the date the invoice is received by the State. No late fees are charged until after 45 days has elapsed.</p>
(Section E.11., Section Five (5), 9. Charges and Payment, The price of goods 9.3)	<p>Section E.11., Section Five (5) 9. Charges and Payment, The price of goods 9.3 is deleted in its entirety:</p> <p>“Effectively” 9.3 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods or Services at the same time as payment is due for their supply.</p>
(Section E.11., Section Five (5), 9. Charges and Payment, The price of goods 9.4)	<p>Section E.11., Section Five (5) 9. Charges and Payment, The price of goods 9.4 is deleted in its entirety:</p> <p>“Effectively” 9.4 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 13 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.5 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.</p>
(Section E.11., Section Five (5), 9. Charges and Payment, The price of goods 9.5)	<p>Section E.11., Section Five (5) 9. Charges and Payment, The price of goods 9.5 is deleted in its entirety:</p> <p>“Effectively” 9.5 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).</p>
(Section E.11., Section Five (5), 13. Termination, 13.1 (e))	<p>Section E.11., Section Five (5) 13. Termination, 13.1 (e), shall be modified to add the following:</p> <p>“Effectively” 13.1 (e) The State can terminate the contract for either convenience or cause along with the other reasons listed in (a) through (d).</p>

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(Section E.11., Section Five (5), 14. Consequences of termination. On termination of the Contract: 14.1 (b)	Section E.11., Section Five (5) 14. Consequences of termination. On termination of the Contract: 14.1 (b), shall be modified to add the following: “Effectively” 14.1 (b) the Customer shall return all Goods which have not been fully paid for. The Customer is responsible for unpaid amounts owed, that are not contested by the Customer.
(Section E.11., Section Five (5), 16. General, Assignment and other dealings 16.1 (a)	Section E.11., Section Five (5) 16. General, Assignment and other dealings 16.1 (a), shall be modified to add the following: “Effectively” 16.1 (a) The Supplier may at any time assign, mortgage, or charge any or all of its rights and obligations under the Contract, if agreed to by the customer.
(Section E.11., Section Five (5), 16. General, Governing Law 16.9 (a)	Section E.11., Section Five (5) 16. General, Governing Law 16.9 (a), shall be modified to add the following: “Effectively” 16.9 (a) The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of the State of Oklahoma.
(Section E.11., Section Five (5), 17. Jurisdiction, 17.1	Section E.11., Section Five (5) 17. Jurisdiction, 17.1, shall be modified to add the following: “Effectively” 17.1 Each party irrevocably agrees that the courts of the State of Oklahoma shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

**METRASENS LIMITED
SECURITY DIVISION
TERMS AND CONDITIONS OF SALE**

The Supplier reserves the right to change these terms and conditions at any time but any such change shall not affect the rights of Customers under contracts made before the date of the change. This version of the terms and conditions was first published on 2018.

1. Interpretation

1.1 The following definitions and rules of interpretation apply in this agreement.

- (a) **Business Day:** a day other than a Saturday, Sunday or generally accepted public holiday.
- (b) **Conditions:** these terms and conditions.
- (c) **Contract:** the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.
- (d) **Customer:** the person, firm or corporation who purchases the Goods and/or Services and/or Finished Product from the Supplier, such purchase being made for the purposes of or in connection with the business of the Customer.
- (e) **Delivery Location:** has the meaning given in clause 4.2.
- (f) **Force Majeure Event:** has the meaning given to it in clause 15.
- (g) **Goods:** the goods (or any part of them) set out in the Order.
- (h) **Goods Specification:** any specification for the Goods, including any relevant plans or drawings, as included in the Supplier's Quotation.
- (i) **Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- (j) **Order:** Customer's order for the supply of Goods and/or Services, as set out in the Customer's written acceptance of the Supplier's Quotation.
- (k) **Order Confirmation:** the written confirmation issued by the Supplier to the Customer by way of its acceptance of the Order.
- (l) **Services:** the services supplied or to be supplied by the Supplier to the Customer as set out in the Services Specification included in the Supplier's Quotation.
- (m) **Service Specification:** the description or specification of Services to be provided by the Supplier to the Customer.
- (n) **Supplier:** Metrasens Limited a company incorporated with limited liability and registered in England and Wales with company number 05495096 and having its registered office at Unit 8, Beauchamp Business Centre, Sparrowhawk Close, Malvern, Worcestershire WR14 1GL.

- (o) Supplier Quotation: a quotation provided by the Supplier to the Customer in reply to the Customer's enquiry for the purchase of Goods and/or Services from the Supplier.
- (p) Warranty Period: in the case of Goods means the number years commencing on the date of their delivery to the Customer as detailed in Section 18.

2. Basis of contract

- 2.1 The essence of the transaction between the Supplier and the Customer is that the Supplier shall supply the Goods and/or Services to the Customer in consideration of the Customer paying to the Supplier the charges specified in the Supplier's Quotation.
- 2.2 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.3 The Order shall only be deemed to be accepted when the product or service is received by the State.
- 2.4 The Order and the Order Confirmation shall, so far as is practicable and relevant include provision for:
 - (a) A general description of the Goods and/or Services (as the case may be) to be supplied with, if appropriate, the Supplier's catalogue number;
 - (b) The quantity of Goods to be supplied;
 - (c) Price per unit of Goods and total price for the Goods the subject of the Order Confirmation;
 - (d) Approximate date or dates for delivery of Goods and/or Services;
 - (e) The Delivery Location;
 - (f) Payment terms applicable to the sale of Goods and/or supply of Services;
 - (g) Charges for delivery, insurance and safekeeping and applicable payment terms;
 - (h) Scale of charges applicable if Customer does not lawfully accept delivery;
 - (i) Purpose and use of the Goods.
- 2.5 To the extent, if any, that they are included in the Order or Order Confirmation, provisions within the scope of clause 2.4 shall override any corresponding provision of these Conditions.
- 2.6 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.7 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.8 The Supplier's Quotation shall not constitute an offer or acceptance of an offer, and is valid for a period of 60 days from its date of issue unless it shall have previously withdrawn by written or email notice from the Supplier.
- 2.9 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.10 If any period of time specified in these Conditions shall be held to be void but would be valid if such period were reduced or extended such period shall be amended to such reduced or extended period (as the case may be) as would be held to be valid.

3. Goods and Services

- 3.1 Goods and Services provided by the Supplier are generically described in the Supplier's catalogue and it is with reference to these that the Goods Specification and the Services Specification are prepared.
- 3.2 The Supplier reserves the right to amend the Goods Specification and the Services Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event as soon as practicable.
- 3.3 As part of the Supplier's policy of the development of its products, improvements are made in design from time to time and the Supplier reserves the right to supply substitute materials, components and units in place of the products ordered (and which shall thereby become "the Goods" for the purposes of the Contract) at no greater price than that specified in the price list current at the date of the Contract. The Buyer will be notified of any substantial changes made to the Goods before they are dispatched. The "State" has the option to agree to accept these newly developed products.
- 3.4 Spare parts for the Goods may be purchased by the Customer direct from the Supplier. Use of any spare parts not provided by the Supplier or an authorized distributor will result in immediate voiding of the warranty provision.
- 3.5 The Supplier will use its reasonable endeavors to include in the Services available for supply on and subject to the provisions of a Contract routine servicing and maintenance servicing for Goods supplied by it for a period of 7 years after date of supply.

4. Delivery of Goods

- 4.1 The Supplier shall ensure that each delivery of Goods is accompanied by a delivery note which shows the date of the Order including, where relevant, all Customer and Supplier reference numbers, the type and quantity of the Goods delivered, special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 4.2 The Supplier shall deliver the Goods or Services to the location set out in the Order Confirmation or such other location as the parties may agree (Delivery Location) at any time after the Supplier notifies the Customer that the Goods or Services (as the case may be) are ready for delivery to the Customer. For the avoidance of doubt the Delivery Location is that specified in the Contract and the time of delivery shall be:
 - (a) In the case of Goods delivered at the Supplier's premises, on completion of loading onto the Customer's nominated vehicle; or
 - (b) In the case of Goods to be delivered elsewhere to which the Supplier shall have arranged transport, completion of unloading at such premises, or
 - (c) In the case of Services at the time of execution.
- 4.3 Any dates quoted in the Order Confirmation for delivery of Goods or Services are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply.
- 4.4 If the Customer fails to accept delivery of Goods within three Business Days after the Supplier shall have

notified the Customer that it is ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of them:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
- (b) the Supplier shall store the Goods until delivery takes place, at zero expense to the Customer for all related costs and expenses (including insurance). Upon delivery, the customer shall inspect the product prior to acceptance.

4.5 The Supplier may deliver Goods by instalments, which shall each constitute a separate Contract and be invoiced and paid for separately. In any such event:

- (a) any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment, and
- (b) if the Customer unlawfully declines to accept delivery of more than one instalment the subject of the same Order Confirmation the Customer shall be deemed in all respects to have repudiated the Contract and, without prejudice to any other rights and remedies available to it, shall be entitled to the rights and remedies set out in clause 4.6, 6.3, and 7.2.

5. Quality of Goods and Services

5.1 The Supplier warrants that on delivery, the Goods and/or Services (as the case may be) shall:

- (a) conform in all material respects with the Goods Specification and the Services Specification;
- (b) in the case of Goods:
 - (i) be free from material defects in design, material and workmanship,
 - (ii) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979), and
 - (iii) be fit for any purpose held out by the Supplier;
- (c) in the case of Services be carried out with due and reasonable skill, care and attention.

5.2 In the event that any Goods (including, for the avoidance of doubt any included battery power source) shall be or become defective at any time during the Warranty Period:

- (a) the sole and exclusive remedies of the Buyer are, at the option of the Supplier in its sole and unfettered discretion, repair or replacement with a product at least functionally equivalent to the original;
- (b) the Customer shall, if it wishes to make a claim under this clause 5.2, complete and submit to the Supplier a Return Material Authorization form obtainable from the Supplier and upon and subject to receipt of the Supplier's acknowledgement shall deliver the relevant Goods to the Supplier or its order within the United Kingdom; The "State" is not responsible for paying for costs to return "defective goods" after the initial acceptance of the product and for repair purposes.
- (c) the Customer shall, if it wishes to make a claim under this clause 5.2, complete and submit to the Supplier a Return Material Authorization form obtainable from the Supplier and upon and subject to receipt of the Supplier's acknowledgement shall deliver the relevant Goods to the Supplier or its order within the United Kingdom; The "State" is not responsible for paying for costs to return "defective goods" after the initial acceptance of the product and for repair purposes.
- (d) In the event of a legitimate fault being found in the Goods, the Supplier will repair or replace
- (e) If it is found the Goods have been returned without cause and are still operational, the Customer will be notified and a charge for testing and examination may be made at the Supplier's sole discretion. If so requested and funded by the Customer the Supplier will then return to Goods to the Customer at the Customer's cost and risk;

- (f) If, in the circumstances of Condition 5.2.(e), the Customer makes no such request within 5 Business Days after receipt of the Supplier's notification (as to which time shall be of the essence) the Supplier may dispose of such Goods in such manner as it shall in its absolute discretion determine without being accountable to the Customer for any proceeds arising in money or money's worth;
- 5.3 The Supplier shall not be liable for the failure of any Goods to comply with any element of the warranty in clause 5.1 if:
 - (a) the Customer makes any use of such item after giving a notice in accordance with clause 5.2;
 - (b) the defect arose in transit arranged by the Customer;
 - (c) the Customer alters or repairs such item without the written consent of the Supplier;
 - (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - (e) the Goods differ from the description contained in the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Finished Product's failure to comply with any element of the warranty set out in clause 5.1.
- 5.5 The Supplier affords to the Customer the benefit of its return and refund policy set out in this Condition 5.5:
 - (a) The Customer may return the Goods to the Supplier within 30 calendar days after the date of delivery, as to which this time limit shall be of the essence;
 - (b) To be eligible for a return, the Goods must be in the same condition as that at delivery, and in the original carrying case with all accessories and manuals present and intact;
 - (c) The Supplier will notify the Customer when it receives the Goods and refund their price to the Customer net of a 20% handling fee and charge in respect of depreciation;
 - (d) In addition to the deduction under Condition 5.5.(c), the Customer shall be responsible for paying for any Services rendered in respect of them by the Supplier prior to return;
 - (e) The Customer shall be responsible for all shipping costs associated with a returned item.
- 6. Title and risk
 - 6.1 Title in and to Goods shall be vested in the Supplier until the time of delivery determined in accordance with Condition 4.2, at which time title shall pass to the Customer, subject to any lien asserted or exercised by the Supplier in accordance with clause 6.4.
 - 6.2 If the Customer returns Goods in accordance with clause 5.5 title in and to such returned Goods shall automatically pass to the Supplier upon their receipt.
 - 6.3 The risk in Goods shall be with the Supplier while in the Supplier's possession and shall pass to the Customer on delivery.

- (a) the Customer's right to use the Goods in the ordinary course of its business ceases immediately; and
- (b) the Supplier may at anytime:
 - (i) require the Customer to deliver up all Goods in its possession; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where Goods lie in order to recover them.

7. Cancellation of Order

7.1 Customer may cancel due to cause or convenience with a 30 day notice to the vendor.

8. Customer's obligations

8.1 The Customer shall, and shall at its cost procure that its personnel, servants or agents shall, at all times:

- (a) ensure that the terms of the Order and any information it provides for inclusion in the Service Specification and the Goods Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Goods and Services;
- (c) allow the Supplier, its employees, agents, consultants and subcontractors access to the Customer's premises and other facilities as reasonably required by the Supplier to exercise any lien to which it may be entitled over the Goods;

- (d) comply with all applicable laws, including health and safety laws; and
- (e) keep the Goods at its premises that is or may become subject to the Supplier's lien in safe custody at its own risk, and maintain it in good condition until returned to the Supplier or paid for in full.

9. Charges and payment

9.1 The price for Goods:

- (a) shall be the price set out in the Order Confirmation or, if no price is quoted, the price set out in the Supplier's published price list as at the date of the Order Confirmation; and

- (b) Shipping will be included in quoted price per unit.

the Supplier shall invoice the Customer after completion of delivery of Goods or Services or an installment of Goods within 30 days of receipt.

9.2 Unless otherwise agreed and evidenced in the Order Confirmation, the Customer shall pay each invoice submitted by the Supplier:

- (a) Forty Five (45) days from the date the invoice is received by the State. No late fees are charged until after 45 days has elapsed.
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

10. Intellectual property rights

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Purchased Goods shall be owned by the Supplier.

11. Confidentiality

- 11.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2
- 11.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information observe and discharge the undertaking contained in clause 11.1 as if they were individually and severally a party to it; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

12. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 12.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - (e) defective products under the Consumer Protection Act 1987.
- 12.2 Subject to clause 12.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- (a) loss of profits or revenue;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, data or information;

- (f) loss of or damage to goodwill; and
 - (g) any indirect or consequential loss.
- 12.3 Subject to clause 12.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to the total price paid or to be paid under the Contract.
- 12.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 12.5 This clause 12 shall survive termination of the Contract.
- 13. Termination**
- 13.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
 - (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within seven Business Days after receipt of notice in writing to do so;
 - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
 - (e) The State can terminate the contract for either convenience or cause along with the other reasons listed in (a) through (d).
- 13.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 13.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.1(b) to 13.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 14. Consequences of termination**
- 14.1 On termination of the Contract:
 - (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest, and in respect of Services and/or Goods (as the case may be) supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - (b) the Customer shall return all Goods which have not been fully paid for. The Customer is responsible for unpaid amounts owed, that are not contested by the Customer.
- 14.2 Termination or expiration of the Contract shall not affect any rights, remedies, obligations and liabilities

of the parties that have accrued up to the date of termination or expiration, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiration.

- 14.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiration shall continue in full force and effect.

15. Force majeure

- 15.1 Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control, including:

- (a) fire, explosion, flood, storm or accident;
- (b) sabotage, strikes (official and unofficial), riot, acts of war, (whether war be declared or not) or civil commotion;
- (c) shortage of labor, power or materials, delays by the Supplier's suppliers, plant breakdowns or technical difficulties connected with the manufacture;
- (d) acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental or local authority;
- (e) import or export regulations or embargoes or in any event or circumstances beyond the control of the Supplier.

16. General

16.1 Assignment and other dealings

- (a) The Supplier may at any time assign, mortgage, or charge any or all of its rights and obligations under the Contract, if agreed to by the customer.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

16.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to any email address appearing in correspondence between the parties.
- (b) Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by fax or email on the next Business Day after transmission.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

16.3 Severance.

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or

unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

16.4 Waiver.

- (a) A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

16.5 No partnership or agency.

- (a) Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

16.6 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

16.7 Third parties rights.

- (a) The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

16.8 Variation

- (a) Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

16.9 Governing law.

- (a) The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of the State of Oklahoma.

17. Jurisdiction.

- 17.1 Each party irrevocably agrees that the courts of the State of Oklahoma shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

18. Warranty

- 18.1 The Seller's applicable standard warranty is incorporated herein by the reference. Repair, or at the Seller's option replacement, of defective parts shall be the sole and exclusive remedies under warranty.

- 18.2 If the Goods require repair during the warranty period, and the Goods have been used in accordance with the user manual, the Seller will repair or exchange the product at no charge and with a product at least functionally equivalent to the original product.

- 18.3 In all cases, the Seller has sole responsibility for determining the cause and nature of failure and Seller's determination with regard thereto shall be final.
- 18.4 The warranty period for equipment is twenty four (24) months from the date of issue of invoice, unless otherwise specified in the Seller's invoice. For clarity, the battery is included for the full life of the warranty. The start date of the warranty is the date of invoice.
- 18.5 This warranty also covers any replacement products or parts provided as part of a warranty claim from the date of the replacement or repair for 90 calendar days or for the remaining portion of the original product's warranty, whichever provides longer coverage.
- 18.6 In the event of a legitimate fault being found in the Goods, the Seller will return the Goods freight prepaid by means of transportation acceptable to the Seller. Before such Goods are returned to the Seller, the Buyer shall complete and submit to the Seller a Return Material Authorization (RMA) form, which shall be acknowledged by the Seller, after which such Goods can then be shipped.
- 18.7 If it is found the Seller's Goods have been returned without cause and are still operational, the Buyer will be notified and a charge for testing and examination may be made at the Seller's sole discretion on any Goods so returned.
- 18.8 This warranty does not apply if:
- (a) The product has been tampered with in any way. This includes removal or defacement of serial numbers, opening the casing, or any modifications of any sort unless carried out by the Seller or a Seller-approved service agent. If an approved service agent is authorized to carry out any modifications this will be stated in writing by the Seller
 - (b) The product has been damaged in any way, externally or internally and that damage is determined by the Seller to be caused by water/dust ingress, abuse, misuse and/or misapplication.
- 18.9 To the maximum extent permitted by law, this warranty and the remedies set forth above are exclusive and in lieu of all other warranties, remedies and conditions, whether oral or written, express or implied. The Seller specifically disclaims any and all implied warranties, including, without limitation, warranties of merchantability and fitness for a particular purpose. If the Seller cannot lawfully disclaim or exclude implied warranties under applicable law then, to the extent possible, any claims under such implied warranties shall expire on expiration of the warranty period.
- 18.10 To the maximum extent permitted by law, the Seller is not responsible for direct, special, incidental or consequential damages resulting from any breach of warranty or condition, or under any other legal theory. For consumers who have the benefit of consumer protection laws or regulations in their country of purchase or, if different, their country of residence, the benefits conferred by this warranty are in addition to all rights and remedies conveyed by such consumer protection laws and regulations. To the extent that liability under such consumer protection laws and regulations may be limited, The Company's liability is limited, at its sole option, to replacement with a new or graded product, to a repair of the product or supply of the repair service again.
- 18.11 No unapproved reseller, agent, or employee is authorized to make any modification, extension, or addition to this warranty.