

## Tech Electronics, Inc.

### Preventive Maintenance Services General Terms and Conditions

The following terms and conditions have been incorporated into and are an integral part of any Service Agreement provided by Tech Electronics, Inc. or one of its affiliates for preventive maintenance services to a Customer. Capitalized terms used herein and not otherwise defined shall have the meaning given in the Service Agreement.

#### 1. **Services.**

**1.1 Type of Services.** TE agrees to provide Services (as defined in the Service Agreement) with respect to the System(s) (as defined in the Service Agreement).

**1.2 Service Limitations.** If maintenance service is requested because of causes other than normal wear and tear or breach of a warranty provided by TE, the service will be provided at TE's per call rates and terms then in effect. Some examples of causes other than normal wear and tear include: unauthorized attempts by other than TE personnel to move, alter, tamper with, repair, maintain or modify the System or its component parts; catastrophe; failure of equipment not maintained by TE or of equipment not covered by the Agreement; fault or negligence of Customer; operator error, improper use or misuse of the equipment; improper use of expendable items which do not meet the manufacturer's specifications; causes external to the equipment such as, but not limited to, transportation or fluctuations of humidity, temperature, power surges and lighting. Maintenance service does not include (i) operating supplies, accessories, cleaning supplies or other expendable items necessary for Customer preventive maintenance; (ii) paint, or refinishing the equipment or furnishing materials for this purpose; (iii) electrical work external to the machines or maintenance of accessories; (iv) batteries or lamps; (v) alterations, attachments or other devices not furnished by TE unless specifically noted herein; (vi) moves, adds or changes of software and/or System hardware not related to maintenance of the System; or (vii) foreign connections, including fiber connection, network connections and telephone connections not described in the Service Agreement.

**1.3 Customer's Responsibilities.** During the term of the Agreement, Customer shall (i) furnish to TE in writing and on a continuing basis a list of the names and telephone numbers of persons authorized to place service requests on behalf of the Customer and/or from whom TE representatives should obtain authorization in performing service on the System, provided that if no such list is furnished or the Customer does not require such contacts to be the exclusive authorized contacts as provided by the Agreement, TE may accept service or other requests from any Customer representative; (ii) not tamper with, disturb, injure, misuse, abuse, remove or otherwise interfere with the System, nor permit the same to be done, and shall indemnify and pay to TE the cost of repair or replacement of any loss or damage to the System, including but not limited to loss by fire, earthquake, riot, vandalism, flood or other damage or destruction; (iii) maintain, repair, service, and/or assure the operation of any other property, system or any device of Customer or of others to which the System may be attached or connected, including, by way of example but not limited to, sprinkler systems, Customer provided equipment and/or software, and door closures, and to redecorate any portion of Customer's premises affected by the removal of all or part of the System; (iv) to provide uninterrupted 110 volt A.C. power at location(s) through Customer's meter and at Customer's expense; (v) to the extent that the System is under Customer control: (a) to carefully and properly set the System immediately prior to the closing of the premises and carefully test the System, understanding particularly that the sensitivity and area of coverage of space protection devices may change, that TE is unable to detect such changes, and accordingly, that "walk tests" in the area or areas of such coverage are necessary to insure that adequate sensitivity is maintained. Customer shall immediately report to TE any claimed inadequacy in, or failure of, the System; (b) to turn off or remove all devices which are the source of air turbulence or a movement which may interfere with the effectiveness of the System, and particularly space protection components of the System, during closed periods while the System is on; and (c) to

refrain from causing false alarms through the carelessness of Customer, failure to maintain the premises in a suitable and safe condition, or the malicious or accidental use of the System, and to reimburse TE for payment of any false alarm fine, penalty, or fee assessed against TE by any governmental or municipal agency as a result of such false alarms and, in addition, to bear the expense of the cost of any TE response to such false alarms; (vi) to notify TE immediately of equipment failure and allow TE full and free access to the equipment, whether on-site or remotely, as determined by TE. Waiver of liability or other restrictions shall not be imposed by Customer as a site access requirement. Also, Customer shall allow TE to use necessary machines, communication facilities, features and other equipment (except as normally supplied by TE) at no charge; (vii) control site environmental conditions by maintaining temperature and humidity levels appropriate for all computer portions of the System. Customer shall maintain (a) a temperature of 18 degrees to 24 degrees Celsius (65 degrees to 75 degrees Fahrenheit with a maximum change of 6 degrees Fahrenheit per hour) and (b) a humidity of 40% to 60% (non-condensing); (viii) notify TE of any alterations, remodeling, fixture or structural changes, and to bear the cost of changes in the System required as a result which are authorized by Customer; (ix) unless otherwise provided in the Service Agreement, provide TE with extension ladders, powered lifts or scaffolding where required for inspection of System equipment. Customer shall move, at its own expense, any heavy equipment or obstacles which TE indicates must be moved to permit inspection and/or service of the System; (x) have a representative on Customer's premises during TE's performance of maintenance services hereunder; (xi) to facilitate TE's performance of maintenance services, provide reasonable facilities such as, but not limited to, secure storage space, a designated work area with adequate heat and light, and access to a local telephone line, with such facilities to be provided upon request and at no charge to TE; (xii) pay all false alarm assessments, charges for service caused by telephone line problems, taxes, fees and charges imposed by any governmental authority on or relating to the System; (xiii) arrange, at its own expense, for telephone line and telephone interface or interconnection to be installed by the telephone company in accordance with standard procedures; (xiv) secure, at its own cost and expense, whatever permission, permits or licenses that may be necessary from the required authorities (including utility companies) for installation, monitoring and/or repair of the System. Customer shall pay or reimburse TE for all taxes, fees or charges, including sales/use tax, personal property tax, licenses and permit fees imposed by any governmental authority (including utility companies) relating to the Services provided; (xv) ensure that all alarms, valves, tanks, pumps, compressors, inspector test connections, or other elements of any sprinkler system, are or will be corrected at Customer's expense so as to be acceptable to the insurance carrier, fire rating bureau or agency or other authorities having jurisdiction when equipped with TE signaling devices; (xvi) obtain and maintain passwords and other network security adequate to insure protection against loss of information or data network operations. Customer acknowledges and agrees that if Customer ties the System, or any part thereof, with its computer network, TE shall not be responsible for any viruses, data corruption, hacking or other breaches of network security; (xvii) provide TE with access to and use of Customer's local area or wide area network, including all passwords as necessary to enable such access, including remote access to any equipment that is connected to or associated with the System; and (xviii) Customer shall notify tenants, employees, invitees and any other occupants of Customer's premises that during audible testing, care should be taken not to risk exposure to continuous System (as hereinafter defined) alarm signals for more than five minutes. Any System components that require interface with Customer's local area or wide area network must comply with the specifications provided by the System's manufacturer. It is Customer's responsibility to ensure that such compatibility is maintained while the System is covered under the Agreement. In the event that the System experiences problems that are suspected to arise from compatibility issues and/or if needed repairs or modifications to Customer's local area or wide area network, or for any other reason, Tech will devote a maximum of four (4) hours troubleshooting and repairs at its own expense. After the four (4) hours are used, Customer may choose to either give authorization to pay Tech on a time and material basis at its current service charges to continue troubleshooting and repairs or may hire a third party to make the required repairs and or modifications to the local area or wide area network at its own expense. If such written authorization is not granted to TE within a time period specified in writing by TE to Customer, or if Customer fails to take the corrective actions required to make its local area network or wide area network compatible with the System, the Agreement shall terminate automatically and Customer shall pay TE for all of its costs.

**1.4 Movement of Equipment.** To permit continuity of service under the Agreement, Customer shall give TE at least thirty (30) days prior written notice of its intent to move any equipment comprising part of the System. TE personnel shall supervise the dismantling and packing/unpacking of the equipment and shall inspect and reinstall the equipment at the new location, and charge Customer for all such labor and materials provided at its then-current rates and terms. The monthly charges hereunder shall be suspended when the System is dismantled and reinstated on the day following equipment reinstallation and acceptance by TE at the new location. TE shall be under no obligation to furnish continued Services (preventive or remedial) under the Agreement if any part of the System is moved from its location of initial installation and/or reinstalled without the prior written approval of TE.

**1.5 Authorization of TE.** Customer hereby authorizes and empowers TE, its agents or assigns, if required by the Agreement, to: (i) to perform any necessary Services as required to be performed by TE hereunder; (ii) to enter Customer's premises in the event of an emergency occurring during periods of Customer's apparent or actual absence for the purpose of making emergency repairs to the System, but only if Customer has furnished TE with a key to its premises; and (iii) where necessary and appropriate, as determined by TE, or where invited to do so by Customer, to access the System remotely for the purpose of making emergency repairs or for other purposes requested by Customer. TE assumes no liability for any delay, however caused, in the installation of the System or for interruption of Services, due to strikes, fires, power failures, interruptions or unavailability of telephone service, acts of God, or any other cause beyond the control of TE. Notwithstanding the foregoing, TE shall have no obligation to enter Customer's premises or access the System remotely without being asked to do so by Customer.

## **2. Payment Terms.**

**2.1 Fees; Payment.** Customer agrees to pay TE for preventive maintenance services in the amount set forth in the Service Agreement (plus any taxes and fees), payable in advance on the first day of each applicable billing period during the term of the Agreement or as otherwise provided in the Service Agreement.

**2.2 Fee Increase.** TE shall have the right to increase the recurring service charges set forth in the Service Agreement, upon written notice to Customer, at any time or times after the date service is operative under the Agreement. Customer agrees to notify TE of any objection to such increase in writing within 20 days after the date of the notice of increase, failing which it shall be conclusively presumed that Customer has agreed to such increase. In the event Customer objects to such increase, TE may elect, at its option, to (i) continue the Agreement under the terms and conditions in effect immediately prior to such increase, without notice to Customer, or (ii) terminate the Agreement upon 15 days written notice to Customer.

**2.3 Expansion of System.** If, during the term of the Agreement, Customer expands the System, TE may, in its sole discretion, increase the recurring service charge commensurate with the expansion of the System, in which case TE shall send Customer an additional invoice with such fee prorated over the remaining term of the Agreement. Customer agrees to pay such fee, as increased hereunder, for the remainder of the term of the Agreement.

**2.4 Additional Charges to Customer.** Customer acknowledges and agrees that Customer is responsible for the following additional costs: (i) discontinued or obsolete hardware and software. In the event the hardware and/or software components on the System are discontinued or rendered obsolete by the manufacturer, then Customer agrees to pay the additional costs to modify and/or purchase the replacement hardware and/or software necessary for the System to function properly as reasonably determined by TE; (ii) increased service charges of software or System manufacturer. In the event such manufacturer increases service charges to TE after the effective date of the Agreement, Customer agrees to pay the additional costs; (iii) additional charges, imposed at the discretion of TE, in the event that Customer's software is not maintained at the current manufacturer's software version; (iv) any taxes or fees imposed by local ordinances on the System or the maintenance thereof; (v) costs to maintain all Customer provided hardware and software in order to

maintain compatibility with the System as the System hardware and/or software is upgraded throughout the term of the Agreement; and (vi) service fees and costs in connection with curing an Event of Default pursuant to Section 8.2. In such cases, TE reserves the right to add a special processing fee as well. All such additional charges shall be payable in accordance with the terms of TE's invoice for same.

### **3. Software Sublicense.**

**3.1 Right To Distribute and Sublicense; Restrictions.** TE has acquired from one or more third parties (each a "Third Party") the right to distribute and sublicense certain Third Party software (the "Software") for use in conjunction with the System. TE hereby grants to Customer a non-exclusive, non-transferable sublicense to use the Software in the System. Customer acknowledges that TE is only a licensed distributor, and not the creator, owner or manufacturer, of the Software. TE shall assign to Customer all of its rights and interests in and to any warranty or indemnity offered in connection with the Third Party Software that are assignable by TE.

**3.2 Third Party Software Terms and Conditions.** Customer shall comply with all Third Party terms and conditions applicable to the maintenance of the Software, including but not limited to any requirements to enter into a separate software support and/or maintenance agreement with the applicable Third Party manufacturer, creator or owner and paying all associated maintenance and/or service fees associated therewith. In the event Customer fails to comply with any provisions of the Third Party maintenance terms and conditions, then (i) TE may terminate the Agreement immediately and (ii) any additional Services provided by TE that are requested by Customer shall be on a time-and-materials basis at TE's then-current services rates.

**3.3 Third-Party Beneficiary.** Customer acknowledges that the provisions contained in this Section 3 are intended to protect the Third Party manufacturers, creators and/or owners of the Software; accordingly, each Third Party shall be deemed a third party beneficiary with respect to this Section 3 and shall have the right to enforce this Section as appropriate against Customer.

**3.4 Software Release Levels.** Customer shall, at Customer's sole cost and expense, maintain the Software at the then-current version or release of the Software; otherwise (i) Customer may not be eligible to receive Services hereunder, (ii) TE may terminate the Agreement immediately and (iii) any additional Services provided by TE that are requested by Customer shall be on a time-and-materials basis at TE's then-current services rates.

**4. Term and Termination.** The term of the Agreement shall be as set forth in the Service Agreement. Thereafter, the Agreement shall require rebid unless either party gives the other party written notice of termination not later than the 30th day before the last day of the then-current term. Notwithstanding the foregoing, the Agreement may be terminated pursuant to Sections 1.3(xvii), 2.2, 3.2, 3.4, 8.2 and 9.4 of the Agreement.

### **5. Warranties and Indemnification.**

**5.1 General Warranty.** TE warrants that any goods furnished hereunder will be free from defects and that any Services performed will be done in a workmanlike manner. If any failure to conform to this warranty be found within 30 days from the date such goods are installed, TE will correct such nonconformity by replacement of defective material and parts or by making other suitable repairs. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED AND DISCLAIMED BY TE. TE does not represent or warrant that Customer's fire, alarm, security, telephone and/or other communications system will not be compromised or circumvented, that the System will prevent any loss by burglary, hold-up, fire or otherwise, or that the System will in all cases provide the protection for which it is installed or intended or protect Customer from all losses. Customer acknowledges that (i) Customer assumes all risks for loss or damage to Customer's premises and to its

contents, (ii) TE has made no representation or warranties nor has Customer relied on any representations or warranties, express or implied, except as set forth herein and (iii) Customer has read and understands this entire Agreement, including Section 1 and Section 6 setting forth TE's obligations and maximum liability in the event of any loss or damage to Customer. Customer acknowledges and agrees that TE is not an insurer and that the Agreement is not intended to be an insurance policy or a substitute for an insurance policy. Insurance, if any, will be maintained by Customer. TE's charges are based solely upon the value of the services provided and are unrelated to the value of Customer's property or the property of others located on Customer's premises.

**5.2 Disclaimer of Warranties as to Software.** TE MAKES, AND CUSTOMER RECEIVES, NO WARRANTY, EXPRESS OR IMPLIED, REGARDING ANY ASPECT OF THE SOFTWARE, AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT ARE EXPRESSLY EXCLUDED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, TE MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, REGARDING THE PERFORMANCE OF THE SOFTWARE OR THE RESULTS THAT MAY BE OBTAINED BY USING THE SOFTWARE. ACCORDINGLY, WITH THE EXCEPTION OF ANY WARRANTIES THAT TE IS AUTHORIZED TO PASS THROUGH TO CUSTOMER DIRECTLY FROM THE APPLICABLE THIRD PARTY, THE SOFTWARE IS LICENSED "AS IS" WITHOUT ANY WARRANTIES OF ANY KIND. CUSTOMER ASSUMES THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE SOFTWARE.

**5.3 Indemnification.** CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD TE HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS AND LAWSUITS (REGARDLESS OF THE CAUSE OF ACTION OR LEGAL THEORY), INCLUDING THE PAYMENT OF ALL DAMAGES, EXPENSES, COSTS AND ATTORNEY FEES, WHETHER THESE CLAIMS AND LAWSUITS ARE BASED UPON ACTIVE OR PASSIVE NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL OR WANTON CONDUCT, RECKLESS CONDUCT, INDEMNIFICATION, CONTRIBUTION OR STRICT OR PRODUCT LIABILITY, OR ANY OTHER TYPE OF CLAIM OR CONDUCT ON THE PART OF TE, ITS AGENTS OR EMPLOYEES, EXCEPT TO THE EXTENT SUCH CLAIMS, DEMANDS OR LAWSUITS OCCUR WHILE AN EMPLOYEE OR AGENT OF TE IS ON CUSTOMER'S PREMISES OR REMOTELY ACCESSING CUSTOMER'S SYSTEM AND WHICH DAMAGES, EXPENSES AND OTHER LIABILITY ARE SOLELY AND DIRECTLY CAUSED BY THE ACTS OF SAID EMPLOYEE OR AGENT. THIS PROVISION (AND ALL OTHER PROVISIONS IN THE AGREEMENT) SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PROVIDED BY LAW.

**6. LIMITATION OF LIABILITY.** THE TOTAL LIABILITY OF TE HEREUNDER OR ARISING IN CONNECTION WITH THE PROVISION OF ANY SERVICES (REGARDLESS OF THE CAUSE OF ACTION OR LEGAL THEORY), WHETHER BASED UPON OR ARISING OUT OF NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL OR WANTON CONDUCT, RECKLESS CONDUCT, STRICT LIABILITY, CONTRACT, TORT, WARRANTY, MISREPRESENTATION, PATENT INFRINGEMENT OR OTHERWISE, SHALL NOT EXCEED THE ACTUAL AMOUNT PAID BY CUSTOMER TO TE FOR SUCH SERVICES, NOT TO EXCEED ONE YEAR'S RECURRING SERVICE CHARGE (AS SET FORTH BELOW), OR \$10,000, WHICHEVER IS GREATER. THE PROVISIONS OF THIS SECTION SHALL APPLY IN THE EVENT OF LOSS OR DAMAGE, IRRESPECTIVE OF THE ORIGIN, RESULTING DIRECTLY OR INDIRECTLY TO PERSONS OR PROPERTY FROM THE PERFORMANCE OR NON-PERFORMANCE OF THE OBLIGATIONS SET FORTH BY THE TERMS OF THE AGREEMENT OR FROM THE ACTIVE OR PASSIVE NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL OR WANTON CONDUCT, RECKLESS CONDUCT OF TE'S AGENTS OR EMPLOYEES. IN NO EVENT SHALL TE BE LIABLE TO CUSTOMER FOR CONSEQUENTIAL DAMAGES SUCH AS, BUT NOT LIMITED TO, LOSS OF OR DAMAGE TO OTHER EQUIPMENT OR ANY PLANT OR FACILITIES, LOSS OF PROFIT, OR LOSS OF PRODUCTION, REGARDLESS OF WHETHER THE CLAIM FOR SUCH CONSEQUENTIAL DAMAGES BE BASED ON WARRANTY (EXPRESS OR IMPLIED), CONTRACT, TORT, GROSS

NEGLIGENCE, WILLFUL OR WANTON CONDUCT, RECKLESS CONDUCT OR OTHERWISE. TE SHALL NOT BE LIABLE TO INDEMNIFY CUSTOMER AGAINST ANY CLAIMS MADE AGAINST CUSTOMER FOR SUCH CONSEQUENTIAL DAMAGES. CUSTOMER AGREES TO DEFEND, INDEMNIFY AND HOLD TE HARMLESS FOR ALL CLAIMS (INCLUDING CLAIMS FOR INDEMNITY) FOR ANY SUCH CONSEQUENTIAL DAMAGES BROUGHT AGAINST TE. THIS PROVISION (AND ALL OTHER PROVISIONS IN THE AGREEMENT) SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PROVIDED BY LAW.

7. **WAIVER OF SUBROGATION.** CUSTOMER DOES HEREBY FOR ITSELF AND ANY PARTIES CLAIMING UNDER IT, RELEASE AND DISCHARGE TE FROM AND AGAINST ALL HAZARDS COVERED BY CUSTOMER'S INSURANCE, AND ALL CLAIMS AGAINST TE ARISING OUT OF SUCH HAZARDS, INCLUDING ANY RIGHT OF SUBROGATION BY CUSTOMER'S INSURANCE CARRIER, ARE HEREBY WAIVED BY CUSTOMER, AND CUSTOMER SHALL PROMPTLY SO NOTIFY ITS INSURANCE CARRIER. THIS WAIVER OF SUBROGATION EXTENDS TO ANY ALLEGED NEGLIGENCE GROSS NEGLIGENCE, WILLFUL OR WANTON CONDUCT OR RECKLESS CONDUCT BY TE. THIS PROVISION (AND ALL OTHER PROVISIONS IN THE AGREEMENT) SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PROVIDED BY LAW.

8. **Default and Remedies.**

**8.1 Default.** The happening of any one of the following shall be an "Event of Default" under the Agreement: (i) failure by Customer to pay any amount within 30 days after the same is due and payable; (ii) failure by Customer to observe, keep or perform any agreement required of it herein and to correct such breach within 10 days after written notice of same from TE; (iii) abuse of the System; (iv) dissolution, termination of existence, discontinuance of the business, insolvency or business failure of Customer; (v) initiation of any bankruptcy, reorganization, assignment for the benefit of creditors, or like proceeding by or against Customer; (vi) excessive false alarms caused by Customer; or (vii) allow other vendors to work on the System during the term of the Agreement.

**8.2 Remedies.** Upon the occurrence of an Event of Default, then at any time thereafter TE may pursue one or more of the following remedies: (i) by written notice to Customer, declare the balance of all unpaid amounts due and to become due under the Agreement to be immediately due and payable, provided that all past due amounts shall bear interest at the rate of 1-1/2% per month (18% per year) or the maximum rate permitted by law from the first occurring Event of Default; (ii) cure the Event of Default, in which case Customer shall pay TE's service fees and costs incurred in effecting such cure; (iii) receive immediate possession of any TE owned portion of the System, and for such purpose enter Customer's premises and remove said portion of the System and Customer hereby waives any further rights to the TE owned portion of the System and any claims resulting from said repossession, including any claim or restoration of the premises to its former condition; (iv) proceed at law or in equity to enforce performance by Customer of the provisions of the Agreement, or to recover damages for the breach of the Agreement; (v) discontinue furnishing the Services, including, without limitation, disabling communication software, hardware and/or firmware contained within the System from the any monitoring facility, and terminate the Agreement by written notice to Customer; (vi) recover any other costs TE is required to bear in respect to the System and/or services provided under the Agreement; and (vii) recover all costs of collection, including court costs, collection expenses, attorneys' fees, reasonable costs of removal of the TE-owned portion of the System, and any other reasonable costs paid or incurred by TE in enforcing or attempting to enforce the terms and conditions of the Agreement. Furthermore, if there are any other agreements in effect between TE and Customer, then TE, at its option, may deem Customer's default under any other agreement to be a default under any or all the agreements and TE shall be entitled to exercise any or all of its remedies upon default with respect to any or all of such agreements. The above remedies are cumulative and exercise of one does not preclude the exercise of another.

## 9. Miscellaneous Provisions.

**9.1 Subcontracting; Assignment.** TE shall have the right to subcontract any of the Services that it may be obligated to perform. The Agreement and its benefits are not assignable by Customer except upon the prior written consent of TE. Customer acknowledges that the Agreement, and particularly those Sections relating to TE's maximum liability and third party indemnification, inure to the benefit of, and are applicable to any assignees or subcontractors of, TE.

**9.2 Nonsolicitation.** Neither party may solicit to hire, employ or otherwise receive the services of (except for services provided pursuant to the Agreement), any individual who was employed by the other party at the time of such solicitation or employment or at any time during the one year period immediately preceding such solicitation or employment, without the prior written consent of the party employing the individual.

**9.3 Third-Party Beneficiary.** Except as provided in Section 3.3, the Agreement is solely for the benefit of the parties and their respective successors and permitted assigns, and no other person has any right, benefit, priority or interest under or because of the existence of the Agreement. The parties hereby expressly disclaim any intention to create any third party beneficiaries of the Agreement or the Services.

**9.4 Force Majeure.** TE shall not be liable for nonperformance or delay in performance due wholly or partially to any cause beyond its control, including action or failure of the government to act where action is required, strikes or other labor troubles, riots, power failures, interruption or unavailability of telephone service fire, flood, lightning, earthquakes, or other acts of God. Replacement of the System necessitated by any such event will be at Customer's expense. The Agreement may be suspended or terminated, at the option of TE or Customer, if Customer's premises or the System or any part thereof is destroyed by fire, lightning or other catastrophe or so substantially damaged that it is impractical to continue to provide Services. Upon such suspension or termination, an equitable refund of the service charges paid, but not yet earned, shall be made. Notice of termination shall be given upon written notice given within ten (10) days of such event.

**9.5 Entire Agreement.** Customer acknowledges receipt of a copy of the Service Agreement. The Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior agreements, letters of intent, understandings, negotiations and discussions of the parties, whether oral or written. If there is any conflict between the Agreement and Customer's purchase order, or any other document or any oral agreements, the Agreement will govern. No conditions in the acceptance by Customer and no subsequent agreements or communications in any way modifying the provisions of the Agreement shall be binding unless signed by an authorized representative of TE.

**9.6 Amendments.** The Agreement may only be amended in a writing signed by both parties; provided, however, that TE may update these Terms and Conditions from time to time without Customer's consent. No waiver of any of the terms and conditions contained herein shall be effective unless such waiver is in writing and signed by an authorized representative of the party waiving such condition.

**9.7 Severability.** In the event any of the terms and conditions of the Agreement are declared invalid or inoperative, all of the remaining terms and conditions shall remain in full force and effect.

**9.8 Governing Law and Venue.** The Agreement and the rights and obligations of the parties hereunder are to be governed by and construed and interpreted in accordance with the laws of the State of Missouri applicable to contracts made and to be performed wholly within Missouri, without regard to choice or conflict of laws rules. The parties hereto submit to the exclusive jurisdiction of and venue in the state courts located in St. Louis County, Missouri, or the U.S. District Court, Eastern District of Missouri, Eastern Division for purposes of any suit arising hereunder instituted by any party.

**9.9 Waiver of Jury Trial.** EACH PARTY HERETO HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THE AGREEMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM IN RESPECT OF THE AGREEMENT OR TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE. EACH PARTY HERETO AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION WILL BE DECIDED BY COURT TRIAL WITHOUT A JURY.

**9.10 Notices.** Any notice provided pursuant to the Agreement, if specified to be in writing, shall be in writing and shall be deemed given: (i) if by facsimile, hand delivery or by delivery service, upon receipt thereof; (ii) if mailed, three days after deposit in the U.S. mail, postage prepaid; or (iii) if by electronic mail, upon receipt thereof. All notices shall be addressed to the parties at the addresses specified below or at such other addresses as either party may in the future specify in writing to the other.

**9.11 Binding Effect.** The Agreement shall not be binding upon TE until the Service Agreement has been signed by an authorized representative of TE. In the event of failure of such written approval, the sole liability of TE shall be to refund to Customer the amount paid to TE upon the signing of the Agreement.

**9.12 Disclaimers and Waivers.** The Agreement contains certain exculpatory clauses, disclaimers and waivers to which Customer has agreed. Those clauses are set forth in Sections 5.1, 5.2, 6, 7 and 9.9. Customer's signature below indicates its acceptance of and assent to such provisions.

**9.13 Survival.** Sections 2, 5, 6, 7 and 9.2 shall survive the cancellation, expiration or termination of the Agreement.

**9.14 Electronic Signatures.** Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in the Agreement are intended to authenticate this writing and will have the same force and effect as manual signatures. Electronic signatures may include any electronic sound, symbol, or process executed and adopted by a party with the intent to sign the Agreement, including, without limitation, facsimile or email electronic signatures.