



SERVICE AGREEMENT NO. 3684

Preventative Maintenance Service for UV System

THIS **Preventative Maintenance Service for UV System Agreement** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and Xylem Water Solutions USA, Inc. ("Contractor"), effective upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Contractor has bid to provide Preventative Maintenance Service for UV System in response to Request for Bid/Proposal No. 3684 ("RFB/RFP"), which RFB/RFP includes the required scope of work and all specifications and which RFB/RFP and the Contractor's bid or proposal response, as applicable, are incorporated by reference in this Agreement as Exhibits 1 and 2, respectively, as if each were fully set out here in its entirety.

NOW, THEREFORE, City and Contractor agree as follows:

1. **Scope.** Contractor will provide Preventative Maintenance Service for UV System ("Services") in accordance with the attached Scope of Work, as shown in Attachment A, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety, and in accordance with Exhibit 2.
2. **Term.**
 - (A) This Agreement is for four years. The parties may mutually extend the term of this Agreement for up to zero additional zero-year periods ("Option Period(s)"), provided, the parties do so in writing prior to the expiration of the original term or the then-current Option Period.
 - (B) At the end of the Term of this Agreement or the final Option Period, the Agreement may, at the request of the City prior to expiration of the Term or final Option Period, continue on a month-to-month basis for up to six months with compensation set based on the amount listed in Attachment B for the Term or the final Option Period. The Contractor may opt out of this continuing term by providing notice to the City at least 30 days prior to the expiration of the Term or final Option Period. During the month-to-month term, either Party may terminate the Agreement upon 30 days' written notice to the other Party.
3. **Compensation and Payment.** This Agreement is for an amount not to exceed \$311,756.00, subject to approved extensions and changes. Payment will be made for Services provided and accepted by the City within 30 days of acceptance, subject to receipt of an acceptable invoice. All pricing must be in accordance with the attached Bid/Pricing Schedule, as shown in Attachment B, the content

of which is incorporated by reference into this Agreement as if fully set out here in its entirety. Any amount not expended during the initial term or any option period may, at the City's discretion, be allocated for use in the next Option Period.

Invoices must be mailed to the following address with a copy provided to the Contract Administrator:

City of Corpus Christi
Attn: Accounts Payable
P.O. Box 9277
Corpus Christi, Texas 78469-9277

4. **Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement, including deductions for non-performance and authorizations for payment. The City's Contract Administrator for this Agreement is as follows:

Name: Joanna Moreno
Department: Utilities Department
Phone: (361 826-1649
Email: JoannaM@cctexas.com

5. **Insurance; Bonds.**

(A) Before performance can begin under this Agreement, the Contractor must deliver a certificate of insurance ("COI"), as proof of the required insurance coverages, to the City's Risk Manager and the Contract Administrator. Additionally, the COI must state that the City will be given at least 30 days' advance written notice of cancellation, material change in coverage, or intent not to renew any of the policies. The City must be named as an additional insured. The City Attorney must be given copies of all insurance policies within 10 days of the City Manager's written request. Insurance requirements are as stated in Attachment C, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.

(B) In the event that a payment bond, a performance bond, or both, are required of the Contractor to be provided to the City under this Agreement before performance can commence, the terms, conditions, and amounts required in the bonds and appropriate surety information are as included in the RFB/RFP or as may be added to Attachment C, and such content is incorporated here in this Agreement by reference as if each bond's terms, conditions, and amounts were fully set out here in its entirety.

6. **Purchase Release Order.** For multiple-release purchases of Services to be provided by the Contractor over a period of time, the City will exercise its right to specify time, place and quantity of Services to be delivered in the following

manner: any City department or division may send to Contractor a purchase release order signed by an authorized agent of the department or division. The purchase release order must refer to this Agreement, and Services will not be rendered until the Contractor receives the signed purchase release order.

7. Inspection and Acceptance. City may inspect all Services and products supplied before acceptance. Any Services or products that are provided but not accepted by the City must be corrected or re-worked at no charge to the City. If correction or re-working at no charge cannot be made by the Contractor, a replacement service may be procured by the City on the open market and any reasonable costs incurred, including additional costs over the item's bid/proposal price, must be paid by the Contractor within 30 days of receipt of City's invoice.

8. Warranty.

(A) The Contractor warrants that all products supplied under this Agreement are new, quality items that are free from defects, fit for their intended purpose, and of good material and workmanship. The Contractor warrants that it has clear title to the products and that the products are free of liens or encumbrances.

(B) In addition, the products purchased under this Agreement shall be warranted by the Contractor or, if indicated in Attachment D by the manufacturer, for the period stated in Attachment D. Attachment D is attached to this Agreement and is incorporated by reference into this Agreement as if fully set out here in its entirety.

(C) Contractor warrants that all Services will be performed in accordance with the standard of care used by similarly situated contractors performing similar services.

9. Quality/Quantity Adjustments. Any Service quantities indicated on the Bid/Pricing Schedule are estimates only and do not obligate the City to order or accept more than the City's actual requirements nor do the estimates restrict the City from ordering less than its actual needs during the term of the Agreement and including any Option Period. Substitutions and deviations from the City's product requirements or specifications are prohibited without the prior written approval of the Contract Administrator.

10. Non-Appropriation. The continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on September 30th annually, is subject to appropriations and budget approval specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the City's City Council to determine whether or not to fund this Agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget.

11. **Independent Contractor.** Contractor will perform the work required by this Agreement as an independent contractor and will furnish such Services in its own manner and method, and under no circumstances or conditions will any agent, servant or employee of the Contractor be considered an employee of the City.
12. **Subcontractors.** In performing the Services, the Contractor will not enter into subcontracts or utilize the services of subcontractors.
13. **Amendments.** This Agreement may be amended or modified only in writing executed by authorized representatives of both parties.
14. **Waiver.** No waiver by either party of any breach of any term or condition of this Agreement waives any subsequent breach of the same.
15. **Taxes.** The Contractor covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other applicable taxes. Upon request, the City Manager shall be provided proof of payment of these taxes within 15 days of such request.
16. **Notice.** Any notice required under this Agreement must be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day faxed or hand-delivered or on the third day after postmark if sent by certified mail. Notice must be sent as follows:

IF TO CITY:

City of Corpus Christi
Attn: Joanna Moreno
Title: Contracts/Fund Administrator
Address: 2726 Holly Road, Corpus Christi, Texas 78415
Phone: (361) 826-1649
Fax: (361) 826-4495

IF TO CONTRACTOR:

Xylem Water Solutions USA, Inc.
Attn: Sam Caillouet
Title: Aftermarket Territory Manager
Address: 4828 Parkway Plaza Blvd. Suite 200 Charlotte, NC 28217
Phone: (469) 404-0849
Fax: N/A

17. ***CONTRACTOR SHALL FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES AND AGENTS ("INDEMNITEES") FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS, AND CAUSES OF ON ACCOUNT OF PERSONAL INJURIES, PROPERTY LOSS, OR DAMAGE, INCLUDING ALL***

EXPENSES OF LITIGATION, COURT COSTS, ATTORNEYS' FEES AND EXPERT WITNESS FEES, WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF OR IN CONNECTION WITH A BREACH OF THIS AGREEMENT BY THE CONTRACTOR OR RESULTS FROM THE NEGLIGENT ACT, OMISSION, MISCONDUCT, OR FAULT OF THE CONTRACTOR OR ITS EMPLOYEES OR AGENTS. CONTRACTOR MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL REASONABLY SATISFACTORY TO THE CITY ATTORNEY, AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING OR RESULTING FROM ANY SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS, SUITS, OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF CONTRACTOR UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

18. Termination.

(A) The City may terminate this Agreement for Contractor's failure to comply with any of the terms of this Agreement. The City must give the Contractor written notice of the breach and set out a reasonable opportunity to cure. If the Contractor has not cured within the cure period, the City may terminate this Agreement immediately thereafter.

(B) Alternatively, the City may terminate this Agreement for convenience upon 30 days advance written notice to the Contractor. The City may also terminate this Agreement upon 24 hours written notice to the Contractor for failure to pay or provide proof of payment of taxes as set out in this Agreement.

19. Owner's Manual and Preventative Maintenance. Contractor agrees to provide a copy of the owner's manual and/or preventative maintenance guidelines or instructions if available for any equipment purchased by the City pursuant to this Agreement. Contractor must provide such documentation upon delivery of such equipment and prior to receipt of the final payment by the City.

20. Limitation of Liability. The City's maximum liability under this Agreement is limited to the total amount of compensation listed in Section 3 of this Agreement. In no event shall the City be liable for incidental, consequential or special damages.

21. Assignment. No assignment of this Agreement by the Contractor, or of any right or interest contained herein, is effective unless the City Manager first gives written consent to such assignment. The performance of this Agreement by the Contractor is of the essence of this Agreement, and the City Manager's right to withhold consent to such assignment is within the sole discretion of the City Manager on any ground whatsoever.

- 22. Severability.** Each provision of this Agreement is considered to be severable and, if, for any reason, any provision or part of this Agreement is determined to be invalid and contrary to applicable law, such invalidity shall not impair the operation of nor affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part had been omitted.
- 23. Order of Precedence.** In the event of any conflicts or inconsistencies between this Agreement, its attachments, and exhibits, such conflicts and inconsistencies will be resolved by reference to the documents in the following order of priority:
- A. this Agreement (excluding attachments and exhibits);
 - B. its attachments;
 - C. the bid solicitation document including any addenda (Exhibit 1); then,
 - D. the Contractor's bid response (Exhibit 2).
- 24. Certificate of Interested Parties.** Contractor agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement if required by said statute.
- 25. Governing Law.** Contractor agrees to comply with all federal, Texas, and City laws in the performance of this Agreement. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas, and such form and venue for such disputes is the appropriate court in and for Nueces County, Texas.
- 26. Public Information Act Requirements.** This paragraph applies only to agreements that have a stated expenditure of at least \$1,000,000 or that result in the expenditure of at least \$1,000,000 by the City. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.
- 27. Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties.

CONTRACTOR

DocuSigned by:
Signature:  _____
6B3BDB59DBDB44FA...

Printed Name: James Stewart Nix _____

Title: Aftermarket Sales & Service Manager, Treatment _____

Date: 6/25/2021 _____

CITY OF CORPUS CHRISTI

Josh Chronley
Assistant Director, Contracts and Procurement

Date: _____

APPROVED AS TO LEGAL FORM:

Assistant City Attorney Date

- Attached and Incorporated by Reference:**
Attachment A: Scope of Work
Attachment B: Bid/Pricing Schedule
Attachment C: Insurance and Bond Requirements
Attachment D: Warranty Requirements

- Incorporated by Reference Only:**
Exhibit 1: RFB/RFP No. 3684
Exhibit 2: Contractor's Bid/Proposal Response

ATTACHMENT A- SCOPE OF WORK

1. General Requirements

The Contractor shall provide its TotalCare Preventative Maintenance (PM) Services for the Broadway Wastewater Treatment Plant's Wedeco UV system, which is required to perform 24/7.

2. Scope of Work

A. The Wedeco Total Care Preventative Maintenance Program is outlined in the table below. It also includes unlimited phone support, additional on-site training, and priority in service scheduling.

B. This agreement includes three site visits per year at four 8-hours days per visit, for a total of 12 full day onsite visits per year.

C. In year one, the Contractor shall provide one eight-hour day of onsite comprehensive and tailored UV training, designed to keep site operators fully trained on UV methodology, operation, and troubleshooting. Training shall be provided by a senior technician.

Total Care Activities – Open Channel UV Systems	
Typical Tasks	Duron & TAK Systems
System Review	Pre-visit: <ul style="list-style-type: none"> • Identify outstanding issues from prior visits as well as new issues. • Recommend parts required for upcoming work. Onsite: • Review system history and alarm log since last visit– identify key tasks to resolve during visit.
Control Cabinets	<ul style="list-style-type: none"> • Inspect cabinets for dust and/or corrosion. Clean as necessary. • Confirm adequate cooling and or airflow through cabinet. • Check for hot spots that could cause temperature faults. • Replace filters as need from spares stock. • Troubleshoot and resolve faulty ballasts. • Replaced failed ballasts from spares stock as needed. • If indicated, measure incoming, voltage, current, neutral, and ground of supplied system power. Identify deficiencies and diagnostic recommendations. • Validate proper operation and set points of HMI, adjust as needed. • Validate proper operation and set points of internal UV system controllers, adjust as needed. • Validate proper function of all signal isolators. Replace from onsite spares as needed. • Validate proper function of all safety circuits. • Perform basic functional test of AC units if present. • Check remote communications if applicable.

Cables & Junction Boxes	<ul style="list-style-type: none"> • Examine cables, connectors and Harting hardware for proper function. Replace faulty hardware with onsite spares. • Identify and provide recommendations for unusual wear, rust and/or corrosion of components. Replace as needed from onsite spares.
Modules, Lamps, Reactor, Sleeves & Connectors	<ul style="list-style-type: none"> • Identify and provide recommendations for unusual wear, rust and/or corrosion of components. Replace as needed from onsite spares. • Check quartz sleeves for excessive surface abrasions, replace as needed from onsite spares. • Check quartz sleeves for excessive water ingress, replace from onsite spares as needed. • Identify and resolve any loose connections. • Validate cable connector functionality. Replace O-rings, or connector assembly from onsite spares as needed. • Check intensity sensors for proper operation, clean if needed, replace from onsite spares as necessary. • Examine Intensity sensor cleaning brushes. Replace from onsite spares as needed. • Examine a representative sampling of lamps for signs of excessive aging, replace as needed. Identify source of problem if premature. • Troubleshoot failed components and replace from onsite spares as needed.
Control Philosophy	<ul style="list-style-type: none"> • Identify chronic alarms - root cause and resolve. • Validate intensity readings. • Root cause and resolve UV intensity issues if system related (doesn't include system cleaning). • Validate incoming flow signal. Identify any inconsistencies. • Validate basic PLC function in Manual, Maintenance and Automatic modes
Wiper Cleaning Systems	<ul style="list-style-type: none"> • Repair junction box, pneumatic line, fitting and wiper module leaks utilizing onsite spares as needed. • Change air compressor filtration desiccant from onsite spares as needed. • Purge system of all water and oil. • Identify airline freezing risks. Make resolution recommendations as needed. • Validate all compressor set points. Fine tune as needed. • Validate operation of wiper modules to specification. Replace from onsite spares as needed. • Validate proper operation of wiper module limit switches. Replace from onsite spares as needed. • Confirm operation of automatic drain valve repair or replace from onsite spare as needed

Control Instrumentation	<ul style="list-style-type: none"> • Clean and validate level switches. • Clean and validate proper operation of ultrasonic level/flow measurement system. • Clean & calibrate onsite transmittance monitor.
Physical and Mechanical Components	<ul style="list-style-type: none"> • Validate proper manual and auto operation of all control gates. Adjust set points, torque settings and lubricate penstocks as necessary. • Validate weir elevation in conjunction with level controls. • Identify excessive gate and/or weir leakage if indicated by level control issues (if possible). • Check baffle plate for buildup. Recommend cleaning process as needed.
Water Quality	<ul style="list-style-type: none"> • Check fouling of quartz sleeves. Provide instruction and recommendations on cleaning if necessary. • Remove excessive debris (algae, trash, etc.) from module and cable assemblies • Identify recommendations for excessive channel fouling, debris buildup and other possible sources of sampling contamination. • Compare effluent transmittance against system design requirements. Identify possible sources of discrepancies.
Operational	<ul style="list-style-type: none"> • Provide informal operation, maintenance, and/or safety training as requested. • Identify maintenance and/or operation concerns and associated improvement recommendations • Identify spares utilized and recommendations for replacement or adjustments to existing levels. • Identify approximate future timeline for consumables (lamps, ballasts, sleeves, wiper rings, etc.) replacement. • Identify operational enhancements (power settings, timer adjustments, etc.). • Review Xylem 24/7 contact information.

3. Invoices

Invoices shall be mailed to the address below, and a copy emailed to Utilitiesdept@cctexas.com.

City of Corpus Christi
ATTN: AP/Utilities Department
P.O. Box 9277
Corpus Christi, TX 78469

ATTACHMENT B: PRICE SHEET



Wedeco Quote # J19100547870

ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	PRICE TOTAL
1	PM Site Visits 3 visits/yr, each visit is a 4- day site visit YEAR ONE	3	EA	\$8,899.50	\$26,698.50
2	PM Site Visits 3 visits/yr, each visit is a 4- day site visit YEAR TWO	3	EA	\$8,899.50	\$26,698.50
3	PM Site Visits 3 visits/yr, each visit is a 4- day site visit YEAR THREE	3	EA	\$9,302.00	\$27,906.00
4	PM Site Visits 3 visits/yr, each visit is a 4- day site visit YEAR FOUR	3	EA	\$9,581.00	\$28,743.00
5	On Site Training (8 Hours)	8	HRS	\$213.75	\$1,710.00
6	Parts Allowance Based on size of UV system	4	YR	\$50,000.00	\$200,000.00
	TOTAL				\$311,756.00

Attachment C -Insurance Requirements

I. CONTRACTOR'S LIABILITY INSURANCE

- A. Contractor must not commence work under this agreement until all insurance required has been obtained and such insurance has been approved by the City. Contractor must not allow any subcontractor Agency to commence work until all similar insurance required of any subcontractor Agency has been obtained.
- B. Contractor must furnish to the City's Risk Manager and Contract Administer one (1) copy of Certificates of Insurance (COI) with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City's Risk Manager. The City must be listed as an additional insured on the General liability and Auto Liability policies **by endorsement**, and a waiver of subrogation is required on all applicable policies. **Endorsements** must be provided with COI. Project name and or number must be listed in Description Box of COI.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
Commercial General Liability Including: <ol style="list-style-type: none"> 1. Commercial Broad Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury 	\$1,000,000 Per Occurrence
AUTO LIABILITY (including) <ol style="list-style-type: none"> 1. Owned 2. Hired and Non-Owned 3. Rented/Leased 	\$500,000 Combined Single Limit
WORKERS' COMPENSATION EMPLOYER'S LIABILITY	Statutory \$500,000 /\$500,000 /\$500,000

- C. In the event of accidents of any kind related to this agreement, Contractor must furnish the Risk Manager with copies of all reports of any accidents within 10 days of the accident.

II. ADDITIONAL REQUIREMENTS

- A. Applicable for paid employees, Contractor must obtain workers' compensation coverage through a licensed insurance company. The coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The workers' compensation coverage provided must be in an amount sufficient to assure that all workers' compensation obligations incurred by the Contractor will be promptly met.
- B. Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII.
- C. Contractor shall be required to submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following address:

City of Corpus Christi
Attn: Risk Manager
P.O. Box 9277
Corpus Christi, TX 78469-9277

- D. **Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**
- List the City and its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations, completed operation and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation policy;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
 - Provide 30 calendar days advance written notice directly to City of any, cancellation, non-renewal, material change or termination in coverage and not less than 10 calendar days advance written notice for nonpayment of premium.
- E. Within 5 calendar days of a cancellation, non-renewal, material change or termination of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.

- F. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to remove the exhibit hereunder, and/or withhold any payment(s) if any, which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
- G. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this agreement.
- H. It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of Corpus Christi for liability arising out of operations under this agreement.
- I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement.

2021 Insurance Requirements

Ins. Req. Exhibit **4-B**

Contracts for General Services – Services Performed Onsite

02/22/2021 Risk Management – Legal Dept.

Attachment C – Bond Requirements

“No bonds required for this Agreement.”

**TERMS AND CONDITIONS FOR SERVICES – XYLEM AMERICAS (V1 - Effective 11.10.2017)****12. Representation and Warranty.**

(a) For a period of ninety (90) days from the date of invoice, unless otherwise expressly set forth in the quotation or sales form or order acknowledgment, Service Provider represents and warrants to Customer that it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement (“Warranty”).

(b) The Service Provider shall not be liable for a breach of the Warranty set forth in Section 12(a) unless Customer gives written notice of the defective Services, reasonably described, to Service Provider within thirty (30) days of the time when Customer discovers or reasonably should have discovered that the Services were defective.

(c) Subject to Section 12(b), Service Provider shall, in its sole discretion, either: (i) repair or re-perform such Services; or (ii) credit or refund the price of such Services at the pro rata contract rate.

(d) **THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, CONDITIONS OR TERMS OF WHATEVER NATURE RELATING TO THE SERVICES PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED AND EXCLUDED. EXCEPT AS OTHERWISE PROVIDED BY LAW, BUYER’S EXCLUSIVE REMEDY AND SERVICE PROVIDER’S AGGREGATE LIABILITY FOR BREACH OF THE FOREGOING WARRANTY IS LIMITED TO REMEDIES SET FORTH IN SECTION 12(c).**