March 14, 2019

Marion County Board of Education
1516 Mary Lou Retton Drive
Fairmont, WV 26554
Attn: Scott Reider

R: HVAC and Fire Preventive Maintenance Contract

Dear Mr. Reider:

Our PLANNED MAINTENANCE AGREEMENT is designed to provide the Customer with an ongoing, comprehensive maintenance program. At this time your contract is nearing its expiration date of February 28, 2019. In accordance with the provisions of the above Service agreement, the price has been adjusted based on year over year labor and material increases. This also affects our On Call rates which have changed. Effective March 1, 2019 this contract will renew at an Annual amount of $428,626.26. This Annual cost will be billed Monthly in the amount of $35,718.86 plus any applicable tax. Please sign and return this agreement as soon as possible. This program may be renewed upon mutual consent of both Marion County Schools and Emcor Services/Scalise Industries. This agreement may be discontinued in the ensuing fiscal year if funding becomes unavailable.

Sincerely,

Brandi Hines
Account Sales Representative

Accepted and Agreed:
Marion County Board of Education

__________________________  __________________________
Signature:  EMCOR Services Scalise Industries

Brandi Hines
Printed Name:  Printed Name:

Accounts Sales Representative
Title:

__________________________  __________________________
Date:  Date:

Leaders and Licenses in Ohio Pennsylvania and West Virginia
HVAC  CHILLERS  ELECTRICAL  PLUMBING  FIRE PROTECTION
MEMORANDUM

To: Mr. Gary Price
    Superintendent
From: Randy Farley
Subject: Board Agenda
Date: 3/1/2019

Please request approval for the 2019-2020 Marion County School Calendar.
Marion County Schools
Order of Making-up Lost Instructional Time for 2019-2020 School Calendar

Days will be made up on the proposed calendars in ascending order (top to bottom of column) as listed. The Non-Traditional Instruction Days will be made up with equivalent instructional time (30 added minutes per day). These do not show on the calendar because we don’t know when they will occur in advance. Faculty Senate days, Early Dismissals and Delays will be made up with remaining equivalent instructional time.

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Note: June 20 will be celebrated as WV Day and is not reflected in the make-up days.
Non-Traditional Instruction Days

West Virginia Board of Education Policy (WVBE) 3234, School Calendar defines the instructional term, requires districts to create school calendars to meet 180 separate days of instruction, and requires the formation of district policies to address early dismissals and late arrivals, among other requirements of statute.

WVBE Policy 3234 provides flexibility and options for county boards to determine when the use of a Non-Traditional Instruction Day is necessary. On occasion West Virginia school districts may have to cancel school due to an emergency, rethink how instruction will be delivered to students when the traditional methods of instruction are not feasible, or provide instruction in a non-traditional manner for other various reasons. In response to this and other concerns of the districts the WVBE promotes the use of Non-Traditional Instruction Days to address days when students are not receiving instruction within the school facility. School districts may utilize up to five days of non-traditional instruction. The WVDE has developed the following application to give districts the opportunity to submit a plan to meet 180 separate days of instruction while continuing instruction when students are not in the traditional learning setting. In order to take advantage of Non-Traditional Instruction Days, county boards must have an application on file with the WVDE. Please complete the application and return it with your county school calendar by May 3, 2019.

*Counties who currently have previously approved Reimagining Time applications on file should also complete this form and return it with the 2019-2020 county school calendar.
COUNTY APPLICATION

Non-Traditional Instruction
Days (NTID)

Please complete this form to provide the WVDE with information about your county’s plan for student learning on days when the schools are closed during an emergency.

County: Marion County
Contact Name: Randall Farley
Contact Email: rdfarley@k12.wv.us
Contact Phone: 304-367-2100 ext

Distribution of Days

- It is preferable to utilize NTID prior to considering the use of Out of School Environment days. All NTID are considered instructional days and should be counted as such.
- In preparation, utilize multiple data sources when considering how to plan for Non-Traditional Instruction Days.

Evidence of Stakeholder Involvement

Please answer the following questions. If the answer is “yes,” attach evidence. The employee survey results were: 81.61% for NTIDs and 18.39% against NTIDs. Comment period for the public gave these results: 83.66% for NTIDs and 16.34% against. The public input by survey and the discussion at public hearings gave parents and other community members the opportunity to comment on the proposed calendars and the use of NTID. Training for the plan will occur in the early Fall.

1) Were school personnel consulted about this plan? Yes ☐ No ☐
2) Are the majority in favor of this plan? Yes ☐ No ☐
3) Have teachers been trained to implement this plan? Yes ☐ No ☐
4) Were parents/guardians consulted about this plan? Yes ☐ No ☐
5) Are the majority of parents/guardians in favor of this plan? Yes ☐ No ☐
6) Have parents/guardians been trained to implement this plan? Yes ☐ No ☐
Addressing Current Learning
The plan should address current learning. For example, students may be asked to read materials that would have been covered were class in session and then write a report on their reading, they may be asked to design an experiment that they can later implement in class, or they may work out real-life problems that apply the math concepts they are currently studying. Teachers should be available via phone or internet, if at all possible, to provide assistance for students. (Please see guidance document for more details).

Please answer the questions below and provide evidence where needed.

1) Can school personnel provide learning via video Skype (Office 365)?  
   Yes ☐  No ☐

2) Can school personnel provide learning via telephone or mobile device?  
   Yes ☐  No ☐

3) How does the plan provide learning options for students without access to internet service or electronic devices? (This includes students who never have access and those who lose access due to power failures).

   Marion County Schools will provide grade level instructional materials that will go home with students via conventional paper packets focusing on skills enhancement, remediation and enrichment. The packets will be given in paper form in advance to all students to be completed on “Climate Control Days”. Students who do have internet service in their homes are able to view the assignments for grades Pre-K-12 on school and county websites.
4) How does the plan provide for employment days being used on NTI days to promote WVBE Policy 3234 and other related policies to ensure professional learning?

All county staff would report to work on a one-hour delay.

Teachers will:
A. Participate in school or county grade level or vertical PLCs
B. Work collaboratively on the goals of the school's strategic plan or participate in school level professional learning.
C. Dialogue with students via email, LiveGrades, telephone calls, skype, Office 365, etc.
D. Review and grade student work submissions through Office 365, LiveGrades, etc.
E. Participate in other duties as assigned by the principal

School Administrators will:
A. Participate in PLCs with staff members
B. Participate and collaborate with the school staff on strategic plan goals, activities, etc.
C. Facilitate, lead and participate in school or county level meetings, professional learning, etc.
D. Monitor staff and buildings
E. Adjust extra-curricular and curricular schedules

Counselors will:
A. Engage in addressing any student concerns that may arise
B. Participate in school or county grade level or vertical PLCs
C. Work collaboratively on the goals of the school's strategic plan or participate in school level professional learning.
D. Participate in other duties as assigned by the principal

School Nurses will:
A. Complete any necessary paperwork, etc.
B. Organize supplies, etc.
C. Participate in professional learning
D. Participate in other duties as assigned by the principal or central office supervisor

Secretaries will:
A. Complete duties associated with their work
B. Participate in professional learning
C. Participate in other duties as assigned by the principal
Custodians will:
   A. Complete duties associated with their work
   B. Participate in professional learning
   C. Participate in other duties as assigned by the principal or central office supervisor

Cooks will:
   A. Participate in professional learning
   B. Complete routine cleaning, maintenance, meal preparation, paperwork, etc. as necessary
   C. Prepare and Pack or serve reimbursable meals for any student who come for a meal between the hours of 10:30-12:30
   D. Participate in other duties as assigned by the principal or central office supervisor

Aides will:
   A. Complete duties associated with their work
   B. Participate in other duties as assigned by collaborative teachers or principal

Bus Drivers will:
   A. Remove snow from the bus
   B. Clean the bus and check to see if any routine maintenance needs performed
   C. Preview routes and report findings to Transportation Director
   D. Engage in professional learning
   E. Perform any other tasks associated with bus driving determined by the Transportation Director

Transportation Staff will:
   A. Report to the Transportation Director for the day’s assignments

Maintenance Workers:
   A. Report to the Maintenance Supervisor for the day’s assignment(s)

Central Office Professional and Service Staff will:
   A. All central office professional and service staff will report to work and conduct daily county business as usual.
5) How many instructional days do students have to complete the work they are assigned to do during school closure?

Students in Marion County will have two days upon returning to school to submit their assignments.

6) How does the plan address the needs of students who do not have adequate access to nutrition during prolonged stays at home?

Marion County Schools will offer students a reimbursable meal between the hours of 10:30-12:30 on each “Climate Control Day” at each school where it is safe enough for families to be on the roads. Students may also have access to a backpack program and soup kitchens in various communities in advance of a calamitous occasion.

7) Briefly describe how the instructional materials and tasks align with the curriculum that students would cover if they were in school.

Marion County teachers have developed grade level curriculum maps in the core content areas. Instructional materials would align with the state content standards and curriculum maps for the various grade levels. Teacher committees have developed packets for structured reviews based on the content already covered in class to keep students’ skills polished. The materials may also build on background knowledge while enhancing content currently being taught in the classroom.

“Climate Control Day” packets will include specific instructions in student and parent friendly language. Packets will be given to each child at the beginning of November and will also be available on school and district websites.

8) Briefly describe how the lessons or tasks support critical thinking/problem solving skills.

“Climate Control Day” packets are designed for students to hone their critical thinking skills in the various curricular areas and around necessary foundational skills. Teachers have chosen materials that give students a variety of questioning types or require specific tasks that promote higher order thinking. The packets may also contain problem-based learning activities that engage students’ interests. Students will not be expected to know “new” information, but may interact with “new” information as a preview or to engage their own background knowledge that will be useful to the teacher as instruction continues in the classroom. Students may even be asked to create a product rather than simply answering questions depending on the curricular area and grade level.
9) Do the lessons or tasks cover the four primary content areas (ELA, mathematics, science and social studies)?
   Yes ☐ No ☐

Assessment/Accountability
Which of the following will you use to demonstrate that students have participated in the required school work? You may select more than one option.

- Report
- Paper
- Essay
- Review
- Fictional piece
- Experiment design (science)
- Problem design (math)
- Problem solution (science/math)
- PBL design
- Classroom discussion when students return to school

Other (please describe briefly)

Teachers may utilize any of the above or provide other examples as evidence of student learning to meet the individual needs of the students in the classroom.

Will the evidence of learning above be graded? Yes ☐ No ☐

If yes, please provide a brief description of grading criteria

Marion County teachers will evaluate “Climate Control Day” packets utilizing the current classroom and county grading procedures established in school and district policies.
Please note:

The school calendar report will include a section where districts who utilized NTID identify which days were utilized as NTID and those utilized by Equivalent Time. Please keep track of the days as they are implemented for purposes of ensuring the district has met the 180 separate days of instruction.
EMCOR Services Scalise Industries is pleased to provide the following proposal to...

**Demo**
- Removal of existing (3) condensing units
- Removal of existing piping
- Removal of existing (18) branch controller boxes and all associated wiring
- Removal of 208 single phase wiring (the entire system)
- Removal of condensing unit that serves the data room closet

**Install**
- Replace (18) branch controller boxes with (2) new branch controller boxes that will be relocated in the hallway
- Install (2) new condensing units on the roof
- Install 1 ton ductless split that will serve the data room closet
- Verify pipe lengths (via drawings) depending on exact location of branch controller boxes and verify that drawing is correct
- Thermal Tech (Daiken) will present final pipe sizes to give exact refrigerant amount which is detrimental to the system
- Install piping per sizes provided by Thermal Tech

**VRF Report**
- All low voltage wire from indoor units to branch control boxes
- All high voltage wire from branch control boxes to the condensing units
- Pressure test system- using 550psi for 12 hours
- Complete the RX11 Flush
- Vacuum test- Thermal Tech will be present. A picture will be taken of the vacuum gage. Thermal Tech will verify vacuum
- Complete Start up
- Commission the system
- Thermal Tech will check every thermostat to ensure everything is running correctly
- Run test procedure- Thermal Tech will take the unit through all operating ranges
- Customer will receive training on the system
- Customer will receive all reports on the system

NOTE: All GC work is to be performed by Marion County Schools
Thank you for the opportunity to provide your mechanical service needs. Please don't hesitate to contact me with any questions.

Exclusion: All work to be done during normal working hours 7:00 AM to 4:00 PM. This contract excludes hazardous waste removal, any asbestos related work or any additional work not defined in the proposal.

We propose hereby to furnish material and labor - complete in accordance with above specifications, for the sum of:

**TWO HUNDRED EIGHTY SEVEN THOUSAND, TWO HUNDRED FORTY DOLLARS...**
TOTAL: $287,240.00

Payment to be made as follows: Net 30 days

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NOTE: This proposal may be withdrawn if not accepted within 60 days.

Acceptance of Proposal - The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do work as specified. Payment will be made as outlined above.

WO #_________ LC _________ MC _________ EC _________ SC _________ Other _________
GENERAL TERMS AND CONDITIONS OF THE SCALISE INDUSTRIES FACILITIES AGREEMENT

1. Scope of Work. The service work to be performed by SCALISE INDUSTRIES ("SCALISE") for CUSTOMER under this Service Agreement (the "Work") will be as stated in the Scope of Work section of the Service Agreement, which Scope of Work is mutually agreed upon and accepted by CUSTOMER. Any work not specifically identified in the Scope of Work section is not included in this Service Agreement.

2. Basis of Work. The Work will be performed in accordance with the specifications, criteria, and standards listed this Service Agreement.

3. Access, Temporary Services, and Cleanup. Unless otherwise stated in the Scope of Work, the following services and utilities will be furnished by CUSTOMER or others to provide safe and reasonable working conditions for the progress and completion of the Work: (a) timely access to and ingress throughout the site and the structures for the hoisting and placement of SCALISE's equipment and materials; (b) timely access to areas and equipment to allow SCALISE to install, start, and stop the equipment as necessary to perform required services; (c) sufficient quantities of the specified quality and type of filters, fuels, lubricants, chemicals, water and any other solids, liquids and gases required to perform SCALISE's Scope of Work; and (d) placement and removal of a centrally located dumpster in which SCALISE will place debris generated by its Work.

4. Changes. At any time during the term of the Service Agreement, CUSTOMER may request changes in the Work within SCALISE's general scope. If such changes involve changes in the Service Agreement Price and/or Schedule, SCALISE will submit a proposal regarding its requested changes to the Service Agreement Price and/or Schedule and CUSTOMER will issue a change order adjusting the Service Agreement Price and/or Schedule as mutually agreed. Unless CUSTOMER and SCALISE agree to the contrary, no work will be undertaken by SCALISE on any such change until the change order has been issued and signed by both parties. In the event an agreement on price is not reached, CUSTOMER may direct SCALISE to proceed with the change and such work will then be done on a time and material basis plus a percentage fee of thirty (30%) applied to all costs of labor, material, supervision, and subcontracts.

5. Payments. Payments will be made within thirty (30) days of the date invoiced. Late payments received after the date on which they are due will be subject to interest at a rate of one percent (1%) per month, or any part thereof until payment is received.

6. a) Warranty. SCALISE will repair or replace any construction work performed by it or its subcontractors that is found to be defective in materials or workmanship within one (1) year from the date installation, provided that SCALISE has been provided prompt, written notice of any such defects. The foregoing repair or replacement will be the limit of SCALISE's liability for defects and will provide the exclusive remedy for CUSTOMER.

b) All parts provided by Scalise Industries will be warranted for a period of 90 days from the date of installation unless the parts manufacturer provides different warranty terms. The warranty covers parts only, labor will be charged at contracted rates.

c) With respect to all equipment within the Scope of Work that is procured by SCALISE from outside manufacturers or vendors, SCALISE will use its best good faith efforts to obtain similar warranties from these manufacturers or vendors. SCALISE will pass on for the benefit of CUSTOMER all such warranties. Further, SCALISE agrees to act on behalf of the CUSTOMER for purposes of enforcing such warranties with respect to equipment furnished by outside sources.

d) Repair or replacement of items not provided by SCALISE is excluded from this Warranty. This Warranty is conditioned upon proper operation and maintenance by CUSTOMER and will not apply if the failure is caused or contributed to by accident, alteration, abuse, misuse, failure to properly operate the system, or other causes beyond the control of SCALISE. Only SCALISE's personnel or agents will be permitted to perform the Warranty work. If a Warranty call is made and inspection indicates a condition that is not covered under this Service Agreement or this Warranty, SCALISE will be reimbursed for its services.

e) THIS WARRANTY IS THE EXCLUSIVE REMEDY FOR DEFECTS IN SCALISE'S WORK AND IS IN LIEU OF ANY OTHER WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR AN INTENDED USE.

7. Safety. SCALISE will conduct the Work in strict accordance with its Safety Manual, the safety programs instituted by CUSTOMER, and all applicable OSHA safety regulations. CUSTOMER and SCALISE will make available to each other all pertinent Material Safety Data Sheets (MSDS) pursuant to OSHA's Hazard Communication Standard Regulations.

8. Hazardous Substances. SCALISE's obligations under this Service Agreement do not include the identification, abatement or removal of any asbestos products or other hazardous substances. In the event such products or substances are encountered, SCALISE's sole obligation will be to notify CUSTOMER of the existence of such products and materials. SCALISE will have the right thereafter to
suspend its Work until such products or materials and the resultant hazards are removed. The time for completion of the Work will be extended to the extent caused by such a suspension, and the Service Agreement Price will be equitably adjusted.

9. Insurance. SCALISE will carry Commercial General Liability Insurance with limits of $2,000,000 and Automobile Insurance with limits of $1,000,000. CUSTOMER will carry all Risk Property Insurance or Builder’s Risk Insurance, including extended coverage, without cost to SCALISE with limits equal to or greater than the value of the equipment being serviced and a deductible not greater than $10,000 per occurrence.

10. Indemnification. SCALISE agrees to indemnify CUSTOMER from and against any and all claims, losses, or liabilities for personal injury or property damage, as well as costs and expenses incurred in the defense thereof including attorney’s fees, caused by SCALISE’s negligence in the performance of the Work under this Service Agreement. CUSTOMER agrees to indemnify SCALISE from and against any and all claims, losses, or liabilities for personal injury or property damage, as well as costs and expenses incurred in the defense thereof including attorney’s fees, caused by CUSTOMER’s negligence or hazardous conditions in the CUSTOMER’s facility.

11. Limitation of Liability. UNDER NO CIRCUMSTANCES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), EQUITY, OR OTHERWISE, WILL CUSTOMER OR SCALISE BE LIABLE OR RESPONSIBLE TO EACH OTHER FOR LOSS OF USE, LOSS OF PROFITS, OR ANY OTHER SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES.

12. Termination. This Service Agreement will be on a one (1) year term, which will automatically renew if not terminated within thirty (30) days of anniversary date by written notice by either party at any time for any reason.

13. Dispute Resolution. CUSTOMER and SCALISE agree to negotiate in good faith to resolve any and all disputes arising from or relating to this Service Agreement or any alleged breach of this Service Agreement. In the event that the dispute cannot be resolved, it will be referred up to the executive level required to reach a resolution. If CUSTOMER and SCALISE executives are unable to resolve a dispute, the dispute will then be submitted to non-binding mediation. If CUSTOMER and SCALISE are still unable to resolve the dispute in mediation, the dispute can then be submitted to binding arbitration under the Construction Industry Rules of the American Arbitration Association then in effect. Any such arbitration demand or any other legal action by CUSTOMER or SCALISE relating to this Service Agreement or any alleged breach of this Service Agreement must be commenced within two (2) years from the date of the successful Acceptance Test or the applicable statute of limitations, whichever is earlier.

14. Assignment. This Service Agreement cannot be assigned by one party to a third party without the express written consent of the other party to this Service Agreement. Either party may subcontract portions of its obligations to others, but that party will still be principally liable and responsible to the other party for the satisfactory performance of the Service Agreement.
EMCOR Services Scalise Industries is pleased to provide the following proposal to...

**Demo**

- Removal of existing (3) condensing units
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TWO HUNDRED EIGHTY SEVEN THOUSAND, TWO HUNDRED FORTY DOLLARS...
TOTAL: $287,240.00

Payment to be made as follows: Net 30 days

All material is guaranteed to be as specified. All work is to be completed in a workmanlike manner according to standard practices. Any alteration or division from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents our delays beyond our control. Owners to carry fire, tornado and other necessary insurance. Our Workers are fully covered by Workman’s Compensation Insurance

Authorized Signature
Brandi Hines
bhines@scalisеindustries.com

NOTE: This proposal may be withdrawn if not accepted within 60 days.

Acceptance of Proposal - The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do work as specified. Payment will be made as outlined above.

Signature

Date of Acceptance

WO #_________  LC_________  MC_________  EC_________  SC_________  Other_________
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1. Scope of Work. The service work to be performed by SCALISE INDUSTRIES ("SCALISE") for CUSTOMER under this Service Agreement (the "Work") will be as stated in the Scope of Work section of the Service Agreement, which Scope of Work is mutually agreed upon and accepted by CUSTOMER. Any work not specifically identified in the Scope of Work section is not included in this Service Agreement.

2. Basis of Work. The Work will be performed in accordance with the specifications, criteria, and standards listed this Service Agreement.

3. Access, Temporary Services, and Cleanup. Unless otherwise stated in the Scope of Work, the following services and utilities will be furnished by CUSTOMER or others to provide safe and reasonable working conditions for the progress and completion of the Work: (a) timely access to and ingress throughout the site and the structures for the hoisting and placement of SCALISE’s equipment and materials; (b) timely access to areas and equipment to allow SCALISE to install, start, and stop the equipment as necessary to perform required services; (c) sufficient quantities of the specified quality and type of filters, fuels, lubricants, chemicals, water and any other solids, liquids and gases required to perform SCALISE’s Scope of Work; and (d) placement and removal of a centrally located dumpster in which SCALISE will place debris generated by its Work.

4. Changes. At any time during the term of the Service Agreement, CUSTOMER may request changes in the Work within SCALISE’s general scope. If such changes will involve changes in the Service Agreement Price and/or Schedule, SCALISE will submit a proposal regarding its requested changes to the Service Agreement Price and/or Schedule and CUSTOMER will issue a change order adjusting the Service Agreement Price and/or Schedule as mutually agreed. Unless CUSTOMER and SCALISE agree to the contrary, no work will be undertaken by SCALISE on any such change until the change order has been issued and signed by both parties. In the event an agreement on price is not reached, CUSTOMER may direct SCALISE to proceed with the change and such work will then be done on a time and material basis plus a percentage fee of thirty (30%) applied to all costs of labor, material, supervision, and subcontracts.

5. Payments. Payments will be made within thirty (30) days of the date invoiced. Late payments received after the date on which they are due will be subject to interest at a rate of one percent (1%) per month, or any part thereof until payment is received.

6. a) Warranty. SCALISE will repair or replace any construction work performed by it or its subcontractors that is found to be defective in materials or workmanship within one (1) year from the date of installation, provided that SCALISE has been provided prompt, written notice of any such defects. The foregoing repair or replacement will be the limit of SCALISE’s liability for defects and will provide the exclusive remedy for CUSTOMER.

b) All parts provided by Scalise Industries will be warranted for a period of 90 days from the date of installation unless the parts manufacturer provides different warranty terms. The warranty covers parts only, labor will be charged at contracted rates.

c) With respect to all equipment within the Scope of Work that is procured by SCALISE from outside manufacturers or vendors, SCALISE will use its best good faith efforts to obtain similar warranties from these manufacturers or vendors. SCALISE will pass on for the benefit of CUSTOMER all such warranties. Further, SCALISE agrees to act on behalf of the CUSTOMER for purposes of enforcing such warranties with respect to equipment furnished by outside sources.

d) Repair or replacement of items not provided by SCALISE is excluded from this Warranty. This Warranty is conditioned upon proper operation and maintenance by CUSTOMER and will not apply if the failure is caused or contributed to by accident, alteration, abuse, misuse, failure to properly operate the system, or other causes beyond the control of SCALISE. Only SCALISE’s personnel or agents will be permitted to perform the Warranty work. If a Warranty call is made and inspection indicates a condition that is not covered under this Service Agreement or this Warranty, SCALISE will be reimbursed for its services.

e) THIS WARRANTY IS THE EXCLUSIVE REMEDY FOR DEFECTS IN SCALISE’S WORK AND IS IN LIEU OF ANY OTHER WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR AN INTENDED USE.

7. Safety. SCALISE will conduct the Work in strict accordance with its Safety Manual, the safety programs instituted by CUSTOMER, and all applicable OSHA safety regulations. CUSTOMER and SCALISE will make available to each other all pertinent Material Safety Data Sheets (MSDS) pursuant to OSHA’s Hazard Communication Standard Regulations.

8. Hazardous Substances. SCALISE’s obligations under this Service Agreement do not include the identification, abatement or removal of any asbestos products or other hazardous substances. In the event such products or substances are encountered, SCALISE’s sole obligation will be to notify CUSTOMER of the existence of such products and materials. SCALISE will have the right thereafter to
suspend its Work until such products or materials and the resultant hazards are removed. The time for completion of the Work will be extended to the extent caused by such a suspension, and the Service Agreement Price will be equitably adjusted.

9. Insurance. SCALISE will carry Commercial General Liability Insurance with limits of $2,000,000 and Automobile Insurance with limits of $1,000,000. CUSTOMER will carry all Risk Property Insurance or Builder's Risk insurance, including extended coverage, without cost to SCALISE with limits equal to or greater than the value of the equipment being serviced and a deductible not greater than $10,000 per occurrence.

10. Indemnification. SCALISE agrees to indemnify CUSTOMER from and against any and all claims, losses, or liabilities for personal injury or property damage, as well as costs and expenses incurred in the defense thereof including attorney's fees, caused by SCALISE's negligence in the performance of the Work under this Service Agreement. CUSTOMER agrees to indemnify SCALISE from and against any and all claims, losses, or liabilities for personal injury or property damage, as well as costs and expenses incurred in the defense thereof including attorney's fees, caused by CUSTOMER's negligence or hazardous conditions in the CUSTOMER's facility.

11. Limitation of Liability. UNDER NO CIRCUMSTANCES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), EQUITY, OR OTHERWISE, WILL CUSTOMER OR SCALISE BE LIABLE OR RESPONSIBLE TO EACH OTHER FOR LOSS OF USE, LOSS OF PROFITS, OR ANY OTHER SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES.

12. Termination. This Service Agreement will be on a one (1) year term, which will automatically renew if not terminated within thirty (30) days of anniversary date by written notice by either party at any time for any reason.

13. Dispute Resolution. CUSTOMER and SCALISE agree to negotiate in good faith to resolve any and all disputes arising from or relating to this Service Agreement or any alleged breach of this Service Agreement. In the event that the disputes cannot be resolved, it will be referred up to the executive level required to reach a resolution. If CUSTOMER and SCALISE agree to resolve a dispute, the dispute will then be submitted to non-binding mediation. If CUSTOMER and SCALISE are unable to resolve the dispute in mediation, the dispute can then be submitted to binding arbitration under the Construction Industry Rules of the American Arbitration Association then in effect. Any such arbitration demand or any other legal action by CUSTOMER or SCALISE relating to this Service Agreement or any alleged breach of this Service Agreement must be commenced within two (2) years from the date of the successful Acceptance Test or the applicable statute of limitations, whichever is earlier.

14. Assignment. This Service Agreement cannot be assigned by one party to a third party without the express written consent of the other party to this Service Agreement. Either party may subcontract portions of its obligations to others, but that party will still be principally liable and responsible to the other party for the satisfactory performance of the Service Agreement.