

CEC STANDARD TERMS AND CONDITIONS

In consideration of the mutual obligations set forth herein and in the attached Statement of Work, Maintenance Contract, Purchase Agreement, and/or Equipment Order, pursuant to which CEC shall provide services and/or equipment to Customer, CEC and Customer, agree as follows:

1. Definitions.

- a. **"Agreement"** shall refer collectively to these CEC Standard Terms and Conditions together with the Proposal, including Equipment List, Scope of Work, Service Contract, Purchase Authorization, and/or Equipment Order.
- b. **"Equipment"** shall include all equipment, materials, or other goods purchased from CEC by Customer pursuant to the Agreement.
- c. **"Proposal"** shall refer to the Equipment List, Scope of Work, Service Contract, and/or Purchase Authorization.
- d. **"Services"** shall include all installation, maintenance, repairs or other services to be provided by CEC to Customer pursuant to the Agreement.

2. Scope of Performance. CEC shall provide all Equipment and perform all Services pursuant to the Proposal and subject to these CEC Standard Terms and Conditions, and Customer shall pay all charges in accordance with the Proposal and subject to these CEC Standard Terms and Conditions.

3. Effective Date and Time to Accept Proposal/Commencement Performance. The Agreement shall be effective upon the earliest date that the Proposal has been signed by a duly authorized representative of Customer (or Customer has placed its Equipment Order) and CEC has accepted such signed Proposal. The terms and quotations of any Proposal not signed by the Customer within 30 days of the date of such Proposal shall be subject to change at CEC's sole option. Any Services must commence within sixty (60) days of the Effective Date, unless otherwise agreed, or the pricing in the Proposal shall be subject to change by CEC at any time without notice.

4. Termination. The Agreement shall terminate upon the earlier of a) CEC and Customer substantially performing all of their respective obligations under the Proposal or b) thirty (30) days after either Party provides written notice to the other Party that the Agreement is terminated. Either Party may terminate this Agreement pursuant to subsection (b) hereof for any reason, provided that if Customer so terminates this Agreement, Customer shall pay CEC for all Equipment delivered, Services performed, and direct expenses incurred by CEC in connection with the Agreement (including without limitation manufacturer service contracts purchased in connection with the Agreement) prior to the termination date.

5. Special Provisions Regarding Any Equipment Purchased Pursuant to this Agreement.

- a. **Delivery of Equipment and Damage or Loss.**
 - i. **Equipment Not Installed By or Under the Supervision of CEC.** Delivery of Equipment not to be installed by or under the supervision of CEC shall be F.O.B. at the manufacturer's factory, warehouse, or office selected by CEC, and CEC shall not be liable for damage or loss of such Equipment after delivery to the point of shipment.
 - ii. **Equipment Installed By or Under the Supervision of CEC.** Delivery of Equipment that shall be installed by or under the supervision of CEC shall be freight as stated in the Proposal, and CEC shall not be liable for damage or loss of such Equipment after delivery by the carrier to the site of installation. If any such Equipment is damaged or destroyed, other than by the fault of CEC, after delivery to the site of installation but prior to full performance by CEC, Customer shall promptly pay or reimburse CEC, in addition to any other fees, an amount equal to the damage or loss. It shall be Customer's sole obligation to maintain the security of any Equipment following delivery.
- b. **Return of Equipment for Credit, Exchange, or Repair.** Equipment returned for credit, exchange, or repair shall not be accepted without prior authorization from CEC and any credit shall not exceed the original billed price. Equipment returned without authorization will be refused and returned (shipping paid by Customer). Equipment returned in a condition other than that specified on the return authorization will be credited on the basis of inspection. A restocking charge of 20% of the original billed cost of the returned Equipment or \$20.00, whichever is greater, will apply to all stock Equipment returned for credit.
- c. **Claims for Shortage.** Customer must report to CEC any claim for shortage or other non-conformance within 10 days of receipt of the Equipment.

6. Special Provisions Regarding Any Services Provided Pursuant to this Agreement. The provisions herein shall apply regardless of whether the equipment to be serviced is provided by CEC or a third party.

- a. **Performance of Services.** CEC may, in its sole discretion, appoint a third party to perform any Services on behalf of and for CEC. Appointment of a third party will not relieve CEC of its duties or obligations hereunder. CEC (or a CEC-authorized third party) will meet all response times, including both callback and onsite times, and will service any equipment pursuant to the Proposal. CEC shall assume sole responsibility for the supervision of its staff or any third parties assigned to perform any Services. CEC will perform its own clean up and will not be liable for any clean up done by others. Unless otherwise provided in the Proposal, all Services will be performed during normal business hours (7:30 a.m. to 4:30 p.m. Monday through Friday, excluding CEC holidays). If the Customer requests performance of any Service outside of such hours, Customer shall be responsible for any additional costs incurred as a result (including without limitation any overtime pay).
- b. **Unauthorized Services.** Customer shall not attempt to service any equipment that CEC services pursuant to the Proposal and shall not permit third parties not authorized by CEC to service such equipment. Upon such unauthorized service CEC may, in its sole discretion, immediately void warranties and/or terminate Services as to such equipment, and Customer shall have no right to a refund or to offset payment as a result of such termination.
- c. **Installation Other Than by CEC.** With respect to any equipment to be serviced by CEC that was installed by any party other than CEC (or a third party authorized by CEC), or having been installed by CEC was subsequently serviced by any party other than CEC (or a third party authorized by CEC), Customer warrants that to the best of Customer's knowledge such equipment was installed according to the manufacturer's specifications and as of the Effective Date of this Agreement such equipment is operating according to the manufacturer's specifications.
- d. **Exclusions.** Any Services provided by CEC (or a third party authorized by CEC) that are not system-related or not covered by the Proposal, will be billed to Customer at CEC's then current Time and Materials rates. The following are excluded from Services provided pursuant to the Proposal:
 - i. Specific items excluded from standard maintenance Services include non-serviceable and consumable items without limitation: base station antenna; base station transmission lines; base station multi-coupler; tower or tower lighting; external power supply system and/or battery; pager or portable batteries and accessories (speaker mics, etc.); reprogramming of equipment with different parameters; diagnostics to locate external interfering signals; and CCTV video tube.
 - ii. CEC has no responsibility for telephone and network lines, even when used in conjunction with equipment. Upon request and mutual agreement of the Parties, CEC will, at CEC's then current Time and Materials rates, assist the telephone/network company in repairing problems.

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iii. Any Services required as a result of configuration changes made or attempted by Customer or third parties unauthorized by CEC are excluded from the Agreement.

- a. **Obsolete Equipment.** Obsolete Equipment is defined as equipment that is no longer manufactured or for which parts are no longer available from the manufacturer. CEC recommends replacement or removal of any Obsolete Equipment, but will make a reasonable attempt to repair such Obsolete Equipment at Customer's request, provided parts are available. It is Customer's sole responsibility to replace Obsolete Equipment.

7. Payment and Taxes.

- a. **Payment.** Any Equipment purchased pursuant to this Agreement shall require a deposit of 40% of the total order, due at the time Customer places such order. Progress billing will apply throughout the project and such invoices shall be paid within 30 days of the date of any invoice for such order. Payment shall be due in full within 30 days of the date of any invoice for any Services. CEC reserves the right to require full payment prior to time of performance (or to otherwise alter the terms of payment).
- b. **Delinquency.** If Customer fails to pay any amounts due within 30 days of its due date, Customer shall be charged interest at a rate of 1.5% per month (or any part thereof) on the outstanding principal, until such principal and any accrued interest is paid. CEC reserves the right to apply any payments first towards outstanding interest. If Customer is 60 days or more delinquent in its payment, such delinquency may, in CEC's sole discretion, be considered a material breach hereunder and CEC may either suspend performance until Customer becomes current or terminate this Agreement (neither of which shall affect any other rights or remedies available to CEC). If Customer is 90 days or more delinquent, CEC may, upon 30 days notice, remove from Customer's premises all Equipment listed on the Proposal, provided further that if CEC chooses such removal, CEC shall not be obligated to restore Customer's premises to their original condition. Customer shall pay all costs and expenses of collection (or removal of Equipment) pursuant to this subsection, including attorneys' fees or collection agency's fees, out-of-pocket expenses, labor (including without limitation those assessed for removal), and interest. Customer shall receive credit for any removed Equipment pursuant to the provision herein regarding Return of Equipment.
- c. **Taxes.** Any and all taxes, except income taxes, imposed or assessed by reason of this Agreement or its performance, including but not limited to sales or use taxes, shall be paid by Customer and shall be included in the invoices. Those agencies or businesses that do not pay sales tax must submit their exempt or resale number.

8. Amendments. If circumstances change so as to affect, or the Parties agree to changes affecting, the scope of performance, the parties shall make any necessary equitable adjustment in the price, delivery schedule, or both, and amend this Agreement to reflect such changes in a change order or other writing signed by authorized representatives of both Parties and referencing this Agreement. The Parties may otherwise amend this Agreement, including without limitation these Terms and Conditions, only by written agreement signed by an authorized agent of each party.

9. Warranties. The terms of this Section shall survive the termination of this Agreement.

- a. **Warranty for Any Equipment Provided Pursuant to Proposal.** The Equipment provided by CEC to Customer pursuant to the Proposal will be covered only by the manufacturer's warranty for such Equipment, which CEC shall provide to Customer. EXCEPT AS AND ONLY TO THE EXTENT EXPRESSLY PROVIDED HEREIN, EQUIPMENT CUSTOMER PURCHASES PURSUANT TO THE PROPOSAL IS PROVIDED "AS IS." CEC DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Customer waives any right to assert any breach of warranty against CEC and agrees that its sole and exclusive remedy for any breach of warranty with respect to any Equipment shall be against the manufacturer of such Equipment.
- b. **Warranty for Any Services Provided Pursuant to Proposal.** CEC warrants its workmanship for the life of the installation pursuant to the Proposal. THE WARRANTY SET FORTH HEREIN IS CEC'S SOLE WARRANTY FOR SERVICES PROVIDED UNDER THIS AGREEMENT AND IS IN LIEU OF ANY AND ALL OTHER WARRANTIES WHETHER WRITTEN OR ORAL, EXPRESSED OR IMPLIED, STATUTORY OR OTHERWISE INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Customer agrees that its sole and exclusive remedy for any breach of the warranty provided in this **Section 9(b)** shall be to require CEC (or a third party authorized by CEC) to re-perform the Services that are the subject of such breach to the standards agreed to in this Agreement and at no additional cost to Customer. The warranty provided herein excludes abuse, modification, improper maintenance or operation, normal wear and tear under normal usage and is void after any party (other than CEC or a third party authorized by CEC) provides repairs or services.

10. Limitation of Liability. The total liability of CEC, including its affiliates, agents, officers, directors, employees, vendors, subcontractors, or suppliers, for all direct or indirect claims of any kind for any loss, cost, expense, liabilities, or damage, whether in contract, warranty (subject to the limitations set for the in **Section 9** hereof), tort (including without limitations negligence), strict liability, equity or otherwise, directly or indirectly arising out of, connected with, or resulting from the performance or non-performance of this Agreement or from the furnishing of any Equipment or Services pursuant to this Agreement shall not exceed the total amount paid by Customer under this Agreement. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR INFRINGEMENT), STRICT LIABILITY, EQUITY, OR OTHERWISE, SHALL CEC OR ITS AFFILIATES, AGENTS, OFFICERS, DIRECTORS, EMPLOYEES, VENDORS, SUBCONTRACTORS OR SUPPLIERS, BE DIRECTLY OR INDIRECTLY LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR EXEMPLARY DAMAGES. The terms of this Section shall apply notwithstanding any other provisions of this Agreement and shall survive the termination of this Agreement.

11. Insurance.

- a. At a minimum, Customer shall maintain insurance on all real property where any Equipment is installed or CEC is performing any Services, and such insurance shall be for the full replacement cost of such real property. Customer waives all rights against CEC and CEC's officers, directors, partners, employees, agents, and other consultants and subcontractors for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such insurance policy. Customer waives all rights against CEC and CEC's officers, directors, partners, employees, agents, and other consultants and subcontractors for loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Customer's property caused by, arising out of or resulting from fire or other peril whether or not insured by Customer.
- b. Any insurance policy maintained by Customer as described in **Section 11(a)** shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the property insurer will have no rights of recovery against CEC or CEC's officers, directors, partners, employees, agents, and other consultants and subcontractors.

12. Indemnification. Customer agrees and acknowledges that it has sole responsibility for the life and safety of all persons and property on its premises, and for protecting against losses to its own property. Therefore, Customer agrees to indemnify CEC and hold CEC harmless from and against all claims, demands and causes of action for direct or indirect damages (including reasonable legal fees) for personal injuries or

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damage to tangible property to the extent directly or indirectly resulting from any Equipment or Services provided pursuant to this Agreement. CEC agrees to notify Customer as soon as practical of any claim, demand or cause of action for which CEC will request indemnification from Customer. CEC will provide Customer with the necessary information and assistance to defend such claim, demand or cause of action.

13. Time to File. Any and all actions, rights, claims, costs, losses, and damages by any Party against any other Party arising out of this Agreement or the performance of this Agreement shall be barred one year after installation of any Equipment or performance of any Service that is the subject of such action, right, claim, cost, loss, or damage.

14. Injunctive Relief; Attorney Fees. CEC shall have the option to bring court proceedings to seek an injunctive or other equitable relief to enforce any right, duty, or obligation under this Agreement. CEC shall not be required to post a bond to obtain such relief or, if a bond is required by law or court order, Customer hereby consents to a bond in the lowest amount permitted by law. Additionally, the prevailing Party in any dispute under this Agreement, whether or not litigation commences, shall be entitled to recover from the other Party all of the prevailing Party's reasonable attorneys' fees and costs and expenses incurred as a result of such dispute that a court of competent jurisdiction determines to be just and reasonable under the circumstances.

15. Confidentiality. The term "Confidential Information" shall refer to any business information or data (including without limitation specifications, drawings, sketches, models, samples, tools, technical information, or pricing and contract terms) in written or other tangible form that is clearly marked "Confidential" (or otherwise clearly identified as confidential). Confidential Information shall not include any information that i) is or becomes publically available other than by breach of this provision; ii) was rightfully in the receiving Party's possession prior to the disclosure under this Agreement; iii) is rightfully obtained by the receiving Party from a third party under no obligation of confidentiality to the disclosing Party; iv) is independently developed by agents or employees of the receiving Party without access to the Confidential Information; or v) is required to be disclosed by appropriate governmental or judicial order provided that the receiving Party gives the disclosing Party written notice prior to such required disclosure.

During the term of this Agreement and for five (5) years thereafter, each Party shall treat the Confidential Information of the other party with the same degree of care it uses to protect its own Confidential Information and shall not disclose such Confidential information without the prior written consent of the other Party.

16. Marketing Disclosures. Unless otherwise agreed in writing, CEC may disclose for marketing or advertising purposes information with respect to the Proposal without prior approval. Customer agrees CEC may disclose such information even if the Proposal is designated "Confidential." Such disclosure shall waive confidentiality with respect to the disclosed information.

17. Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES SHALL BE GOVERNED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF IOWA WITHOUT REGARD TO ITS CONFLICT OF LAWS PROVISIONS. Any court proceedings or litigation arising out of or pertaining to this Agreement shall be brought in the Iowa District Court for Linn County, Iowa or the Federal District Court for the Northern District of Iowa situated in Cedar Rapids, Iowa. Each of the Parties hereto consent and submit to the jurisdiction of those courts and further agree that the service of any process, summons, notice, or document in the manner set forth for notices required or permitted under this Agreement shall be effective service for purposes of any litigation in any such court.

18. No Third Party Beneficiaries; Relationship between Parties. This Agreement is solely for the benefit of the Parties hereto. No other person shall be deemed a beneficiary of or otherwise have the right to enforce the Agreement. Customer and CEC hereby specifically agree and acknowledge that CEC is not an employee or agent of Customer.

19. Force Majeure. CEC shall not be considered in default of its performance of its obligations hereunder, if performance of such obligations is prevented or delayed by insurmountable circumstances, such as: delay in the production, delivery, supervision or installation of any of the labor and equipment covered hereby if such delay shall be due to one or more of the following causes: fire, strike, labor dispute with workmen, flood and other acts of God, accident, delay in transportation, shortage of fuel, inability to obtain material, war, embargo, demand or requirement of the United States or any governmental or war activity, or any other cause whatsoever beyond the reasonable control of CEC. Time of performance of CEC's obligations hereunder shall be extended by the time period reasonably necessary to overcome the effects of such force majeure occurrences.

20. Severability. If any term or provision of the Agreement is determined by a court or government agency of competent jurisdiction to be invalid under any applicable statute or rule of law, such provision(s) are, to that extent, deemed omitted, but this Agreement and the remainder of its provisions shall otherwise remain in full force and effect.

21. Assignment. No assignment or transfer, in whole or in part, of this Agreement by the Customer shall be binding upon CEC without the prior written consent of an authorized CEC Corporate Officer.

22. Waiver. Failure or delay on the part of CEC or Customer to exercise any right, power or privilege under this Agreement shall not operate as a waiver of any right, power or privilege of this Agreement.

23. Headings. Section headings are inserted for convenience only and shall not be used in any way to construe the meaning of terms used in this Agreement.

24. Entire Agreement; Conflicting Terms. Customer acknowledges that it has read and understands the terms and conditions of this Agreement and agrees to be bound by them. Furthermore, Customer agrees that this Agreement, consisting of the Proposal and these Terms and Conditions, constitutes the entire understanding between the Parties and supersedes all prior, contemporaneous or subsequent agreements or offers, whether oral or written. To the extent that any provision(s) in the Proposal (or any other prior, contemporaneous or subsequent agreements or offers, whether oral or written) conflicts with the provisions in these Terms and Conditions, these Terms and Conditions shall control unless the Parties explicitly agree otherwise in a writing signed by both Parties' authorized representatives.