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P & S SERIAL NO _____

Equipment Contract

RUS Contract Form 395

U. S. Department of Agriculture
Rural Utilities Service
Telecommunications Program

EQUIPMENT CONTRACT

THIS EQUIPMENT CONTRACT, hereinafter referred as ("Contract") is between

("Buyer"), a

existing under the laws of the State of _____ and

("Seller"), a

existing under the laws of the State of _____

RECITALS

The Buyer has applied for financial assistance to the Rural Utilities Service ("RUS"), an agency which administers the U.S. Department of Agriculture's Rural Development Utilities Programs (hereinafter "*USDA Rural Development*" or the "Agency.") RUS is willing to extend financial assistance to the Buyer under its financial assistance programs and all applicable federal regulations. Although RUS only funds loans directly to borrowers for permissible projects under the applicable act and regulations, it permits the use of this standard Contract, and all its standard contracts, solely to enable RUS to quickly and easily approve contracts for funding.

THEREFORE, in consideration of the promises and mutual covenants herein contained, the parties agree and bind themselves as follows:

SELLER'S PROPOSAL TO ENGINEER, FURNISH, DELIVER, AND, IF APPLICABLE, INSTALL EQUIPMENT AND MATERIALS

The undersigned (hereinafter called the "Seller") hereby proposes to engineer, furnish, deliver, and if applicable, install, align and test the equipment, materials and software (hereinafter called the "Equipment") described in the plans, specifications and drawings (hereinafter called the "Specifications") prepared by the Buyer, and attached hereto, and designated _____.

The Seller has become informed as to the location and characteristics of the proposed Equipment and the facilities over which the Equipment is to perform, has become informed as to the kind of facilities required before and during the delivery and installation of the Equipment, and has become acquainted with the labor conditions which would affect the work.

The Seller agrees that if its Proposal is accepted the following terms and conditions must govern. If, in submitting this Proposal, the Seller has taken any exception to the form of proposal furnished by the Buyer, the Seller understands that the Buyer may evaluate the effect of

such change as they see fit and they may exclude the Proposal from consideration in determining the award of the Contract.

SCHEDULE 1 -SELLER'S PROPOSAL

Price: The Seller will engineer, furnish, deliver to the location(s) specified below, and if applicable install, align and test the equipment, materials, and software described in the Specifications for the sums shown below. Add as many pages as needed and renumber them as 2, 2a, 2b, 2c, 2d, etc.

ARTICLE I

DEFINITIONS

- (a) “Buyer” means the Borrower/Grantee (and its employees, agents, or contract employees) of a Rural Utilities Service loan or Grant or Loan/Grant combination and a party to this Contract.
- (b) “Contract” means collectively the Seller’s Proposal, Seller’s Technical Proposal including any general or feature descriptions, equipment lists, Seller’s responses to the Buyer’s specifications and Performance Requirements, the Buyer’s Acceptance, Articles I through X herein, the Performance Requirements, and the Contractor’s Bond when required by the Buyer.
- (c) “Completion of Installation” means the full completion of a Project listed in Schedule I hereunder, including the delivery and installation, if applicable, of all Equipment and all features required of said Project, as well as any alternates thereto accepted by the Buyer except that it does not include the Buyer’s final acceptance tests nor performance of the Seller's obligations in respect to final documents.
- (d) “Completion of Project” means the full completion of a Project listed in Schedule I hereunder, including the delivery and installation, if applicable, of all Equipment and all features required of said Project, as well as any alternates thereto accepted by the Buyer, and also includes the Buyer’s acceptance tests, and satisfactory resolution of all discrepancies.
- (e) “Completion of Contract” means full performance by the Seller of all of the Seller's obligations under the Contract and all amendments and revisions thereof for all Projects including the Seller's obligations with respect to final documents. The actual date of Completion of the Contract is the date of the receipt by the Buyer from the Seller of written notification that all Projects have been completed without defects, or if any deficiencies have been corrected; provided however, that the Buyer finds the deficiencies satisfactorily resolved. If the deficiencies have not been satisfactorily resolved, the actual date of Completion of the Contract is the date that all deficiencies are fully and satisfactorily resolved.
- (f) “Days” means calendar days.
- (g) “Date of the Contract” means the date of acceptance by the Buyer of the Seller’s proposal, as shown on Schedule 2 of this contract.
- (h) “Eligible Country” means any country that applies with respect to the United States an agreement ensuring reciprocal access for United States products and services and United States suppliers to the markets of that country, as determined by the United States Trade Representative.

- (i) “Equipment” means collectively all of the equipment identified on Schedule 1 hereto, which must form the Project(s) listed therein, and which encompasses the subject matter of the Seller’s Proposal.
- (j) “Performance Requirements” means the minimum performance requirements of the Buyer as contained in the attached documents, attached hereto as Schedule 5.
- (k) “Placed in Service” means used by the Buyer to earn revenue.
- (l) “Project” means any equipment, including but not limited to switching, routing, access, video, and/or transport equipment, which will be used in the delivery of voice, video, or data services, which are listed under Column 2, “Equipment,” in Schedule 1 hereto. A Project will have a single delivery and completion schedule listed under Column 7 and Column 8. The Contract may consist of one or more Projects.
- (m) “Seller” means the Seller and its employees, agents, subcontractors, and contract employees, and a party to this Contract.
- (n) “Seller’s Proposal” means the Seller’s proposal to provide the Equipment listed on Schedule 1 hereto, at the prices and times indicated therein. The Seller’s Proposal also includes any Technical Proposals, equipment lists, system and feature descriptions, and other information submitted in response to the Buyer’s Performance Requirements and specifications.
- (o) “Software” means any computer program(s), including correction patches, revisions, or updates, contained on a tape, disc, semiconductor device or other memory device or system memory consisting of logic instructions and instruction sequences in machine-readable object code, which manipulates data in the specific equipment to perform path diagnostic and recovery routines, control call processing, transmission, and perform peripheral control, operations, administration, maintenance, and provisioning functions; as well as associated documentation used to describe, maintain, and use the programs provided under the Contract.
- (p) “U.C.C.” means the Uniform Commercial Code as in effect in the state of the Buyer.

ARTICLE II

PRICE

SECTION 2.1 *Contract Price.* The Seller will engineer, furnish, deliver to the delivery points, and install, if required under this contract, the Equipment described in the attached Performance Requirements for the total contract amount indicated in Schedule 2 hereto.

SECTION 2.2 Taxes. The Price herein set forth in Schedule 1, Seller's Proposal, does not include any amount estimated to be payable by the Seller or the Buyer on account of taxes imposed by any taxing authority upon the sale, purchase or use of the Equipment, or installation thereof. If any such tax is applicable to the sale, purchase or use of the Equipment or installation thereof, the estimated amount of such taxes is to be stated separately, added to the Price by inclusion as a line item on Schedule 2, Buyer's Acceptance, and paid by the Buyer. In the event that such amounts are collected and remitted to taxing authorities by the Seller, the Seller must invoice and the Buyer must pay such amounts per the partial and final payment terms of this contract.

SECTION 2.3 Changes in Project. The Buyer may from time to time during the performance of this Contract, make reasonable changes, to the Performance Requirements which are part of the Proposal, as conditions warrant. However, if changes in the Project require an extension of time, a reasonable extension will be granted if the Seller makes a written request therefor to the Buyer within thirty (30) days after notice of such change from the Buyer. Further, if the cost to the Seller must be increased or decreased by any such change, the parties hereto agree to negotiate in good faith an amendment to this Contract for an increase or decrease in the Contract price, which amendment must be approved by the Agency. No claim for additional compensation for any such change or add-on will be considered unless the Seller shall have made a written request to the Buyer prior to the commencement of work in connection with such change or addition.

ARTICLE III EQUIPMENT

SECTION 3.1 New Equipment . Unless otherwise specified by the Buyer, the Seller agrees to provide only new Equipment which is the most recent issue and manufacture as of the date of the Seller's Offer. The Seller must purchase all Equipment, or any component thereof, excluding software, outright and not subject to any conditional sales agreements, bailment lease or other agreement reserving unto any party (such as a manufacturer or supplier) any right, title or interest therein.

SECTION 3.2 Materials and Supplies . In the performance of this Contract, there must be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States or in any Eligible Country, and only such manufactured articles, materials, and supplies as have been manufactured in the United States or in any Eligible Country substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States or in any Eligible Country; provided that the articles, materials, or supplies may be used in the event and to the extent that the Agency must expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1936, as amended. The Seller agrees to submit to the Buyer such certificates, signed by the Seller and all subcontractors, with respect to compliance with the foregoing provision when required by the Agency.

SECTION 3.3 Relationship between Equipment List(s) and Specification . In the event that the Seller's proposal consists of, or includes, one or more lists of material, equipment and/or software

to be furnished by the Seller (“equipment list”), such equipment list(s) must not be construed to limit the material, equipment and/or software to be furnished by the Seller if the material, equipment and/or software listed therein is insufficient to comply with the Performance Requirements. By the submission of its proposal, and by its entry into the Contract, the Seller represents and warrants to the Buyer that the Seller’s proposal fully satisfies the Performance Requirements, except for those elements of the Performance Requirements to which the Seller’s proposal specifically sets forth a written exception, and then only to the extent of the exception so stated. In the event that any equipment list included in the Seller’s proposal omits any item of material, equipment or software necessary for the Project, when completed, to fully satisfy the Performance Requirements (subject only to the above-stated exception(s)), in addition to all other obligations of the Seller here under, the Seller must, at its sole expense, engineer, furnish and install the omitted item(s) of material, equipment and/or software.

ARTICLE IV

DELIVERY AND COMPLETION

SECTION 4.1 *Delivery and Completion Times* . The time of delivery of the Equipment and of Completion of the Project is of the essence of this Contract. The Seller must deliver the Equipment to the delivery point(s) stated in Schedule 1 within the number of calendar days specified under Column 7, “Delivery,” and complete the installation within the number of calendar days specified under Column 8, “Completion of Project” in Schedule 1, after the Administrator shall have approved this Contract in writing. Seller must select the carrier, bear all risks, and bear all costs of packaging, transportation, insurance, handling and any other costs associated with shipment and delivery of the Equipment to the delivery point(s) specified in Schedule 1.

The delivery and completion times must be extended for the same period as any reasonable delay not due to the fault of the Seller, including, but not limited to, acts of God, fires, strikes, floods, changes in the Contract as herein provided, and/or acts or omissions of the Buyer (hereinafter “Reasonable Delay.”) However, no such extension must be granted to the Seller for any Reasonable Delay, unless the Seller has made a request in writing to the Buyer within thirty (30) days after becoming aware of such cause for delay. If the cause for delay is within the Buyer’s knowledge, the Buyer must notify the Seller within fifteen (15) days. However, no such extension of time shall be granted the Seller unless within thirty (30) days after Seller becomes aware of the happening of any event relied upon by the Seller for such an extension of time the Seller shall have made a request therefor in writing to the Buyer. Further, no delay in such time for delivery of materials, equipment and software or Completion of Installation or in the progress of the work shall result in any liability on the part of the Buyer, except that the Buyer shall be responsible for and shall pay the Seller on demand all additional, supportable costs and expenses incurred by the Seller due to delays to the extent such delays are caused by the Buyer’s failure to perform its obligations under this Contract unless the Buyer’s failure to perform is caused by forces beyond its control.

SECTION 4.2 *Delivery of Possession and Control to the Buyer*. The Seller must deliver to the Buyer, and the Buyer must accept, full possession and control of the Project on the date of

Completion of the Project. However, at any time after payment by the Buyer to the Seller of ninety percent (90%) of the Total Base Price plus accepted alternates for that Project, but prior to Completion of the Project, the Buyer and Seller may agree in writing to an earlier date of delivery of possession and control.

SECTION 4.3 *Termination of Seller's Risks and Obligations* Upon such delivery of the possession and control of any Project, the risks and obligations of the Seller are terminated; provided however, that nothing herein relieves the Seller of its obligation of full performance under the Performance Requirements, or its liability with respect to defective workmanship or Equipment as specified in Section 7.2 hereunder. The equipment must not be placed in service until transfer of possession and control to the Buyer has been accomplished, as set forth herein.

ARTICLE V

INSTALLATION

SECTION 5.1 *Applicability of this Article* . This Article applies if the parties have agreed to installation of all, or any part of the Equipment, as indicated below.

- (a) The Seller is not required to perform installation of the Equipment under this Contract. However, all Equipment furnished hereunder is subject to the inspection, tests, and approval of the Buyer, and the Seller must furnish all information required concerning the nature or source of any Equipment and provide adequate facilities for testing and inspecting the Equipment at the plant of the Seller;
- (b) The Seller is required to perform installation, alignment, and testing of the Equipment or contract the installation, alignment, and testing to be performed under this Contract, making this Article V and the sections there under applicable to this Contract.

SECTION 5.2 *Installation* The Seller must install, align, and test the Equipment in accordance with the Performance Requirements.

SECTION 5.3 *Protection to Persons and Property*. At all times when the Equipment is being delivered and/or installed, the Seller is solely responsible for its own safety programs and the conduct of its employees, its agents, and its subcontractors with regard to safety and must exercise all reasonable precautions for the safety of employees and any sub-contractors on the job and of the public, and must comply with all applicable provisions of Federal, State, and municipal safety, building, and construction codes. All machinery and equipment and other physical hazards must be guarded in accordance with the latest edition of "Manual of Accident Prevention in Construction" of the Associated General Contractors of America, unless such instructions are incompatible with Federal, State, or municipal laws or regulations. The following provisions do not limit the generality of the above requirements:

- (a) The Seller must at all times keep the premises free from accumulations of waste material or rubbish caused by its employees or work, and at the completion of the work, the Seller must remove all rubbish from and about the Project(s) and all tools, scaffolding, and surplus materials and must leave its work "broom clean."
- (b) The installation from its commencement to completion, or to such earlier date or dates when the Buyer may take possession and control of said Equipment, must be under the charge and control of the Seller and during such period of control by the Seller all risks in connection therewith, and in connection with the Equipment to be used therein, must be borne by the Seller. The Seller must make good and fully repair all damages to the Equipment under the control of the Seller by reasons of any act of God, or any other casualty of cause whether or not the same has occurred by reason of the Seller's negligence. The Seller must hold the Buyer harmless from any and all claims for injuries to persons or for damage to property happening by the reason of any negligence on the part of the Seller or any of the Seller's agents, subcontractors or employees during the control by the Seller of the Project(s) or any part thereof. The Buyer must promptly notify the Seller in writing of any such claims received and, except where the Buyer is the claimant, must give to the Seller full authority and opportunity to settle such claims, and reasonably cooperate with the Seller in obtaining information relative to such claims. Monthly reports of all accidents must be promptly submitted by the Seller, giving such data as may be prescribed by the Buyer.

SECTION 5.4 Supervision.

- (a) The Seller must give adequate supervision to the work at the site of the Project(s), using the Seller's best skill and attention. The Seller must carefully study and compare all drawings, specifications, Performance Requirements, attached hereto as Schedule 5, and other instructions and must promptly report to the Buyer any error, inconsistency or omission which the Seller may discover. The Seller must keep on the Project(s) during its progress a competent superintendent (hereinafter the "Superintendent") and any necessary qualified assistants, all satisfactory to the Buyer. The Superintendent represents the Seller and all directions given to the Superintendent by the Buyer are as binding as if given to the Seller. When requested, such directions must be confirmed in writing.
- (b) The Buyer must make available during installation a competent representative to coordinate installation activities with the Seller.

SECTION 5.5 Inspection and Tests.

- (a) Upon Completion of Installation of each Project and notification to the Buyer in writing thereof, the Seller must provide the necessary test equipment and perform the inspections and tests specified in the Performance Requirements. The Seller must coordinate with the Buyer to provide the opportunity for the Buyer to witness all such tests. The Buyer must receive a copy of the results of all tests conducted

by the Seller. All Equipment furnished for the Project(s) must be subject to the inspection, test and approval of the Buyer. The Seller must furnish all pertinent information required concerning the nature or source of materials. The Buyer has the right to inspect pertinent records (other than manufacturing cost information) of the Seller and of any subcontractor relevant to the Project(s). The Buyer must provide all reasonable facilities necessary for such inspection and tests. Failure of the Buyer to make inspections does not release the Seller from performances required hereunder.

- (b) The Buyer must make inspections and determine if results of the tests for each Project comply with the Performance Requirements. The Buyer must notify the Seller, within 30 days after the receipt of written notification as stated in Section 5.5 above, of any deficiencies or corrective measures necessary and whether these corrections must be made by the Buyer or the Seller.
- (c) If, at the request of the Buyer, the Seller has commenced work prior to the completion of facilities over which the equipment is to operate or if arrangements with connecting companies for joint testing have not been completed and the Seller incurs additional expenses because of delays or additional work resulting from lack of completion of such facilities or arrangements, the Buyer must pay the Seller for such reasonable additional expense. The Buyer must also pay the Seller for such reasonable additional expenses for the corrections, realignment and retesting the Seller is required to perform due to the above conditions, including, if necessary, the added expense of returning to the Project. If tests subsequent to this are made necessary by the Seller's failure to satisfactorily resolve all such deficiencies or corrective measures, the Seller must pay the Buyer for the cost incurred by the Buyer for all such subsequent tests.

SECTION 5.6 Employees. The Buyer has the right to require the removal of any employee of the Seller from the Project site if, in the judgment of the Buyer, such removal is necessary to protect the interests of the Buyer.

SECTION 5.7 License. The Seller must comply with all applicable construction codes, and warrants the following information hereto below.

- (a) Seller or its agent, possesses contractor's license number _____, issued to him by the State of _____ in which the Project(s) is located, and said license expires on _____;
Or
- (b) No license is required in the State(s) in which the Project(s) is located.

SECTION 5.8 *Insurance*. When the contract includes installation, during the Seller's performance hereunder the Seller must take out and maintain fully paid insurance providing not less than the minimum coverage required by 7 CFR Part 1788, subpart C.

- (a) The Buyer has the right to require public liability insurance and property damage liability insurance greater than the amounts specified in 7 CFR 1788, Subpart C. If this requirement is included in the Performance Requirements, the added costs, if any, must be included in the Alternates/Options price in Schedule 1 hereto. If the requirement is added after the Contract is approved, the additional premium or premiums, if any, payable solely as the result of such additional insurance must be added to the Contract price, by Contract amendment.
- (b) Upon request by the Buyer, the Seller must furnish to the Buyer a certificate in such form as the Buyer may prescribe evidencing compliance with the foregoing requirements.
- (c) When a Contractors Bond is required for major construction of facilities per 7 CFR Part 1788, Subpart C, for purposes of RUS financing of equipment contracts that include installation, installation of equipment is not considered to be "construction" when the installation is insignificant (constitutes 20% or less of the cost of the equipment to be installed). When the installation meets this criterion, a bond is not required. RUS would consider installation costs to be insignificant only when the Seller's responsibility to engineer, furnish, deliver, install, align and test the equipment, materials, and software described in the specifications does not include associated construction such as grounding field, construction of towers, earth station antennas, placement of equipment huts, or site work such as driveways, etc., or other related construction works. If the Contractors Bond is not required by the preceding criterion, the Buyer may require, at its option, a Contractors Bond. When this is the case, the Buyer should indicate this in the Notice and Instructions to Sellers (Scheduled 8) or Performance Requirements (Schedule 5), and the added costs, if any, must be included in the Alternates/Options price in Schedule 1 hereto.

ARTICLE VI

PAYMENTS AND RELEASE OF LIEN

SECTION 6.1 *Partial Payment*. The Buyer must pay the Seller the amounts indicated below which include the cost of applicable taxes and accepted alternatives as follows:

- (a) The Buyer must pay the Seller upon delivery of the Equipment to the site of each Project, on the basis of the prices listed for each Project listed on Schedule 1, the following percentages of such equipment: (i) forty-five percent (45%) when at least fifty percent (50%) of the Equipment for each Project has been delivered at the site of the Project(s), and (ii) ninety percent (90%) when all of the Equipment required for each Project has been delivered at the site of the Project(s). If early delivery of

certain Equipment of a Project is requested by the Buyer and such request is agreed to by the Seller, the Buyer must pay the Seller upon such early delivery, ninety percent (90%) of the price of such Equipment. Payments for early delivery of Equipment requested by the Buyer may exceed forty five percent (45%) of Project equipment cost but must not cause total payment to exceed ninety percent (90%) of the Equipment price until conditions of Payment of Balance are met.

- (b) When installation is included in the contract, the Buyer must pay the Seller upon Completion of Installation of each Project ninety percent (90%) of the price listed for installation of each project in Schedule 1.

SECTION 6.2 *Payment of Balance* . Upon the Completion of Contract, the Buyer must make a final inspection of all Equipment. If said Equipment is found to be in accordance with the Performance Requirements and provisions hereunder, the Buyer must pay the final invoice with the balance due including applicable taxes and accepted alternates; provided however that such final payment must be made not later than sixty (60) days after Completion of the Contract unless approval of the Certificate of Completion for the Contract by the Agency is withheld or delayed due to the Seller's actions or failure to act. The Certificate of Completion for the Contract, approved and signed by the Buyer shall be conclusive evidence as to the fact of Completion of the Contract and the date thereof.

SECTION 6.3 Partial Closeout of *Contracts with Multiple Projects* . When the following box is checked by the Buyer, notwithstanding other provisions of this section, the Seller, must, at its request in writing, receive payment in full for each Project upon Completion of Installation, if required, and upon all of the following:

- (a) Completion of the final acceptance tests of such Project as certified on the Certificate of Completion (RUS Form 395(a), for contracts including installation by the Seller or RUS Form 395(b) for contracts not including installation), and approved by the Buyer.
- (b) For contracts that includes installation, submission to the Buyer of the Certificate of Seller and Indemnity Agreement (RUS Form 395c), in respect of such Project.
- (c) Upon the Completion of Project, the Buyer must make a final inspection of all Equipment. If said Equipment is found to be in accordance with the Performance Requirements and provisions hereunder, the Buyer must pay the final invoice with the balance due for the Project including applicable taxes and accepted alternates; provided however that such final payment must be made not later than sixty (60) days after Completion of the Contract unless approval of the Certificate of Completion for the Contract by the Agency is withheld or delayed due to the Seller's actions or failure to act. The Certificate of Completion for the Project, approved and signed by the Buyer shall be conclusive evidence as to the fact of partial Completion of the Contract for such specific project(s) and the date thereof.

SECTION 6.4 *Releases of Lien*. Upon the Completion of the Project(s) by the Seller, but prior to

the payment to the Seller of any amount in excess of ninety percent (90%) of the total contract Price, the Seller must deliver to the Buyer the *Certificate of Seller and Indemnity Agreement* (RUS Form 395c for contracts including installation) to indemnify the Buyer harmless against any liens arising out of the Seller's performance hereunder which may have been or may be filed against the Buyer, and the Buyer must execute *Certificate of Completion* (RUS Form 395a or 395b).

SECTION 6.5 Interest on Unpaid Amounts . Payment on undisputed invoices submitted by the Seller shall be due 30 days after receipt. Any amounts of these invoices not paid when due shall accrue interest at a rate 1.5 percent higher than the "Prime Rate" published in the Wall Street Journal in its first issue of the month in which payment becomes due and changing each subsequent month with the first issue published in the respective month.

ARTICLE VII

PARTICULAR UNDERTAKINGS OF THE SELLER

SECTION 7.1 Possession and Control. Equipment purchased under this Contract must be under the charge and control of the Seller, until the Buyer takes possession and control. During such control by the Seller, all risks in connection therewith, except those caused by the Buyer's fault, must be borne by the Seller. The Seller must make good and fully repair all damages to the Equipment under its control.

SECTION 7.2. General Warranty Throughout the warranty period defined below, the Seller must,

- (a) The warranty start date for each Project is the actual date of "Completion of the Project." The warranty period is for a minimum period of twelve (12) months from the warranty start date. When a Warranty period greater than 12 months is required by the Buyer, the number of months from the warranty start date is indicated below.

Warranty
Period: _____ Months

- (b) The Seller must correct all deficiencies within thirty (30) days from the date of receipt by the Seller of written notice of such deficiencies from the Buyer. An extension of this thirty (30) day period may be permitted only if agreed to by the Buyer. It is the Seller's obligation to insert and thoroughly test, at no charge to the Buyer, any software alteration provided to satisfy the obligations of this Section 7. If a deficiency is detected or a correction made within the final ninety (90) days of the warranty, the warranty must be extended to a date ninety (90) days after the deficiency has been corrected.

- (c) This warranty is not limited or altered by the acceptance of workmanship or Equipment, or by the issuing of any certificate with respect to the Completion of the Project.
- (d) This warranty does not cover defects in Equipment that are caused by modifications to or abuse of such Equipment by the Buyer.
- (e) The Buyer must bear the cost and risk of shipping defective Equipment, or components thereof, to the Seller's designated repair center. The Seller must bear the cost and risk of shipping new or repaired replacement Equipment, or components thereof, to the Buyer.

SECTION 7.3 Service and Support of Equipment. Should the Seller refuse to service the Equipment after it has ceased its manufacture or offering for sale, Seller agrees to waive the confidentiality requirements of Section 10.1 hereunder for the sole purpose of repair.

SECTION 7.4 Compliance with Federal Statutes and Regulations.

- (a) The Seller certifies that, as required by Executive Orders 12549 and 12689, *Debarment and Suspension* (codified respectively at 51 Fed. Reg. 6370 and 54 Fed. Reg. 34131) and the United States Department of Agriculture's regulations concerning the same at 7 C.F.R. part 3017, it has not been suspended or debarred by the federal government, which certification is attached hereto as Schedule 6.
- (b) The Seller represents that, if required, it has submitted an Employer Information Report EEO-1, Standard Form 100, found at <http://www.eeoc.gov/eeo1survey/>, for the prior reporting year, which is required generally of employers with 100 or more employees, pursuant to Title VII of the Civil Rights Act of 1964.
- (c) If this Contract exceeds \$100,000, the Seller represents that, to the extent required, it has complied with the requirements of Pub. L. 101-121, Section 319, 103 Stat. 701, 750-765 (31 U.S.C. § 1352), entitled "Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions" and any rules and regulations issued pursuant thereto, and has submitted to the Buyer a duly executed certification, attached hereto as Schedule 7.

SECTION 7.5 Patent, Copyright, Trademark and Trade Secret Infringement. The Seller shall hold harmless and indemnify the Buyer from all claims, suits, and proceedings for the infringement of any patent, copyright, trademark or violation of trade secrets covering any equipment, materials, software, supplies or installation methods used in the work, except for items of the Buyer's design or selection. If the Buyer's use of equipment or software is

agrees to permit Seller to do so) defend any suits which may be instituted by any party against the Buyer for alleged infringement of patents, copyright, trademark or violation of trade secrets relative to the Seller's performance hereunder. Either party shall notify the other promptly of any such claims, and the Buyer shall give to the Seller full authority and opportunity to settle such claims, and shall reasonably cooperate with the Seller in obtaining information relative to such claims.

ARTICLE VIII

SOFTWARE LICENSE

SECTION 8.1 *Applicability of this Article.* This Article applies when the Seller requires a software license agreement, as indicated by checking the appropriate box below.

- (a) The Seller does not require a software license for the Equipment under this Contract; or
- (b) The Seller requires a software license for the Equipment under this Contract making this Article VIII and the sections thereunder applicable to this Contract.

SECTION 8.2 *Grant of License.* Seller grants, for as long as Buyer uses the Software in the manner provided herein, an indivisible, nonexclusive, nontransferable, non-sublicenseable license to use the Software that is being provided by Seller to Buyer under this Agreement. This license is limited to use of the object code programs and related documentation only and does not apply to any of the corresponding source code or program listings.

SECTION 8.3 *Licensed Uses.* Subject to the conditions provided herein, Buyer may: (1) use the Software solely to operate the Equipment on which it is being installed and for no other purpose; (2) install the Software onto a permanent storage device; and (3) make and maintain back-up copies, in whole or in part, provided they are used only for back-up purposes, and provided that Buyer reproduce all proprietary notices, including the copyright notices of Seller or its licensors, which appear on or are encoded within the software in the form or forms in which the Software is received from Seller, upon all copies, and further provided that Buyer maintain possession of all back-ups.

SECTION 8.4 *Unlicensed and Prohibited Uses.* Buyer may neither authorize nor permit any others to: (1) make copies of the Software, except as permitted above; (2) rent, lease, sub-license, time-share, or grant a security interest in or otherwise transfer Buyer's rights to the Software under this license, except that transfers may be made with Seller's prior written authorization; (3) lend, distribute, publish, upload, permit downloading, or display the Software, and (4) alter, adapt, enhance, revise, modify, decompile, reverse engineer, reverse compile, disassemble, or reverse assemble all or any portion of the Software, or make attempts to unlock or bypass initialization used on initialized disks, except as directed by Seller; nor (5) merge, link, combine, or compile the Software or any part thereof with other computer program materials to form a derivative work.

Buyer agrees to indemnify Seller for any losses or damages arising out of the breach of the terms of these license provisions.

SECTION 8.5 *Proprietary Rights* . Buyer agrees that Seller retains all copyright, patent, trade secret, trademark and trade name rights in the Software, copies thereof, and all related materials, including but not limited to all methodologies, designs, engineering, details, and other data pertaining to the Software, and that Buyer has no right, title, or interest therein, including any right, title or interest in any changes, modifications and adaptations made by Buyer to the Software, copies thereof, and all related materials. Buyer agrees that it will not at any time during or after the term of this Contract assert or claim any interest in, or do anything which may adversely affect the validity or enforceability of, any trademark, trade name, copyright or logo belonging to or licensed to Seller (including any act, or assistance to any act, which may infringe or lead to the infringement of any proprietary right in the Software, copies thereof, and all related materials). The Buyer will not remove or obscure any proprietary rights notice contained on or incorporated in the Software, copies thereof, and all related materials.

SECTION 8.6 *Confidential Information*. Buyer acknowledges that the Software and all related materials are and/or contain trade secrets, and agrees to treat the same as confidential information. Buyer must treat the Software, copies thereof, and all related materials in confidence using reasonable care to protect it from disclosure to third parties. Information regarding the Software, copies thereof, and all related materials may only be disclosed to third parties solely for the purpose of operating or maintaining, for or on behalf of Buyer, the Equipment or the Software for which writing must be provided to Seller) to the same conditions contained in this Article respecting use and disclosure of the Software, copies thereof, and all related materials. No obligation of confidentiality, however, applies to any information that the Buyer already rightfully possesses without obligation of confidentiality, develops independently without access to information regarding the Software and/or related materials, or rightfully receives without obligations of confidentiality from a third party. No obligation of confidentiality also applies to any information that is, or becomes, publicly available without breach of any obligation of confidentiality.

SECTION 8.7 *Patent, Copyright, Trademark, and Trade Secret Infringement* . The Seller shall hold harmless and indemnify the Buyer from all claims, suits, and proceedings for the infringement of any patent, copyright, trademark or violation of trade secrets covering the Software, or any part thereof, except in the case of the Buyer's alteration thereof. If the Buyer's use of the Software is enjoined, the Seller shall promptly, at its own expense, modify or replace the infringing Software so that it no longer infringes but remains functionally equivalent, or obtain for the Buyer a license or other right to use. This shall be in addition to any other rights or claims which the Buyer may have. The Seller shall, at its own cost, defend any suits which may be instituted by any party against the Buyer for alleged infringement of patents, copyright, trademark, or trade secrets relative to the Seller's performance hereunder. Either party shall promptly notify the other of any such claims. The Buyer shall give the Seller full authority and opportunity to settle such claims and shall reasonably cooperate with the Seller in obtaining information relative thereto.

SECTION 8.8 *License Compliance*. Seller must be given reasonable access to Buyer's premises to verify compliance with the terms of the Software license granted hereunder.

SECTION 8.9 *License Modifications or Upgrades*. Notwithstanding any other provision hereof, in the event Seller develops or makes, or has developed or made, modification(s) to the software which represent, in Seller' sole judgment, value added to the equipment or which represent an improvement of performance of the equipment, Seller reserves the right to market the modification(s) as a separate offering requiring payment of an additional right to use fee and which, at Seller' option, may require the Licensee to execute a new license. No rights in or to source code are granted hereunder.

SECTION 8.10 *Effective Date*. This Software license must become effective upon delivery of the Equipment and Software.

SECTION 8.11 *Termination*. Both Seller or Buyer have the right to terminate this Software in the event of any default by the other party which the defaulting party fails to correct within a period of thirty (30) days after the receipt of notice thereof from the non-defaulting party, or immediately and without notice in the event that any bankruptcy arrangement for the benefit of creditors or insolvency proceedings are commenced by or against the Buyer, or in the event of the appointment of an assignee for the benefit of creditors or a receiver of the Buyer. No termination hereunder prejudices any of the non-defaulting party's rights arising prior thereto or limits in any way the other rights or remedies available in law or equity to the non-defaulting party. In the event of termination through default of the Buyer, Buyer must immediately cease its use of the Software, and must immediately return all Software, copies thereof, and related materials to Seller.

ARTICLE IX

REMEDIES

SECTION 9.1 *Completion on Seller's Default* . If Seller defaults in performance of any of the work or the Equipment furnished hereunder, the Buyer may, without limiting its legal or equitable remedies, serve upon the Seller a written notice requesting such default to be corrected forthwith. If the Seller has not cured such default within thirty (30) days following service of notice, or arranged for other correction thereof that is satisfactory to the Buyer, the Buyer may finish the Seller's performance hereunder, seek another party to finish the Seller's obligations, or sue for specific performance, and the Seller shall be liable to the Buyer for any cost or expense in excess of the Contract Price occasioned thereby. In such event, the Seller assigns, transfers, and sets over to the Buyer the right to exercise any claim or demand the Seller may have against third parties in connection therewith.

SECTION 9.2 *Damages for Untimely Completion* – Timely Completion of the Project is of the essence of this Contract. The Buyer must select either Liquidated Damages or Consequential Damages as the exclusive remedy for untimely completion by checking appropriate box below.

(a) **Liquidated Damages.** Should the Seller neglect, refuse or fail to complete the Project within the time herein agreed upon in Column 8, “Completion of Project” in Schedule 1 hereto, after giving effect to extensions of time, if any, herein provided, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the Buyer, so long as the subject Project has not been placed in service, has the right to deduct from and retain out of such monies which may be then due, or which may become due and payable to the Seller, the sum specified in Schedule 3 hereto, per day for each and every day that such completion is delayed beyond the specified time for Completion of the Project, plus any extension of time thereto due to Reasonable Delay, as liquidated damages and not as a penalty. Days after which any such Project has been Placed in Service must be excluded from the calculation of liquidated damages. If the amount due and to become due from the Buyer to the Seller is insufficient to pay in full any such liquidated damages, the Seller must pay to the Buyer the amount necessary to effect such payment in full; provided however, that the Buyer must promptly notify the Seller in writing of the manner in which the amount retained, or claimed as liquidated damages was computed. The Seller must pay to the Buyer the amount necessary to effect such payment in full. Such payment is not to be reduced by the value of any partial performance by the Seller. In no event may the Seller’s total liability for untimely completion, regardless of the method of calculation, and for all other consequential damages,, except for personal injury or tangible property damage, exceed the amount of the total Contract Price, as amended.

Or

(b) **Consequential Damages** . If the parties hereto wish not to seek remedies through liquidated damages as set forth above, and have indicated as much by leaving blank Schedule 3, hereto, and completing Schedule 4 hereto the parties must instead be bound by the damages for untimely completion set forth by this section.

(1) In no event may the Seller’s total liability for untimely completion, regardless of the method of calculation, and all other consequential damages, except for personal injury or tangible property damage, exceed the amount of the total Contract Price, as amended.

(2) Notwithstanding the limitation stated in Section 9.2(b)(1), the Seller hereby acknowledges the known consequential and other potential damages of its failure to perform in a timely manner, listed in Schedule 4 hereto.

(c) In no event may the parties hereunder, seek damages for untimely completion pursuant to both Sections 9.2(a) and 9.2(b) herein.

SECTION 9.3 *Cumulative Remedies.* Every right or remedy herein conferred upon or reserved to the Buyer must be cumulative and must be in addition to every right and remedy now or hereafter existing at law or in equity or by statute, and the pursuit of any right or remedy must not be

construed as an election; provided however, that the provisions of Section 9.2 hereunder must be the exclusive measure of damages for the failure by the Seller to have effected the Completion of Project within the time herein agreed upon.

ARTICLE X

MISCELLANEOUS

SECTION 10.1 *Confidentiality*. All information supplied by either party to this Contract to the other, bearing a legend or notice restricting its use, copying, or dissemination, except insofar as such information may be in the public domain through no acts attributable to the receiving party, must be treated as confidential information (hereinafter “Confidential Information.”) The Buyer must not reproduce such Confidential Information except for internal use, archival backup, in-house training, operating, maintenance, and administrative purposes, and in conjunction with use of the Equipment furnished hereunder, or as authorized by this Contract. The Seller must not reproduce or use such Confidential Information except for its performance under this Contract. The foregoing restrictions do not apply to information which is independently developed by the receiving party or which is lawfully received by the receiving party free of restriction from another source having a right to so furnish such information, or is already known to the receiving party at the time of disclosure free of restriction. Notwithstanding the foregoing or other provisions of this contract, if the Seller has failed to, or cannot, provide continuing equipment support as described in Section 7.3, the Buyer is permitted to share only such Confidential Information as is necessary to ensure that its Equipment is put back in working order and maintained.

SECTION 10.2 *Entire Agreement*. The terms and conditions of this Contract supersede all prior oral or written understandings between the parties. There are no understandings or representations, expressed or implied, not expressly set forth herein.

SECTION 10.3 *Application of U.C.C.* In the event terms or conditions are not addressed or are unclear in this Contract, and to the extent such provisions do not conflict with the obligations stated herein, the parties agree that the provisions of the U.C.C. as adopted in the State of the Buyer apply to this Contract; provided however, that such provisions must not be inconsistent with Choice of Law provision in Section 10.8 herein.

SECTION 10.4 *Survival of Obligations*. The rights and obligations of the parties which by their nature would continue beyond the termination, cancellation, or expiration of this Contract, must survive such termination or expiration.

SECTION 10.5 *Non-Waiver*. No waiver of any term or condition of this Contract, nor the failure of either party to strictly enforce any such term or condition on one or more occasions, is to be construed as a waiver of the same or of any other term or condition of this Contract.

SECTION 10.6 *Releases Void*. Neither party may require releases or waivers of any personal rights from representatives or employees, of the other party in connection with visits to its premises, nor may such parties plead such releases or waivers in any action or proceeding.

SECTION 10.7 *Non-assignability of Contract.* The Seller must not assign this Contract, or any part hereof, or enter into any contract with any person, corporation, or other entity for performance of the Seller's obligations hereunder, or any part hereof, without the approval in writing of the Buyer and, if the contract is bonded, the Surety. However, the Seller may subcontract the whole or any part of the installation work to be performed under this contract provided that: (a) the Seller must be responsible for the performance thereof; and (b) if the contract is bonded, the Seller must obtain the consent of the Surety to such subcontract.

SECTION 10.8 *Choice of Law.* The rights and obligations of the parties and all interpretations and performance of this Contract must be governed in all respects by the laws of the State of _____ except for its rules with respect to the conflict of laws.

SECTION 10.9 *Acceptance Not Waiver.* Acceptance by the Buyer of Equipment or workmanship while the Seller is in default under any provision of this Contract must not be construed as a waiver by the Buyer of any rights hereunder including, without limitation, any rights to liquidated or consequential damages by virtue of Article IX, Section 9.2.

SECTION 10.10 *No Third party Beneficiary.* This Contract is exclusively between the Seller and the Buyer. Notwithstanding any language or provision herein to the contrary, this Contract does not and is not intended to create any privity of contract with RUS, nor to imply a contract in law or fact. Any funds advanced by RUS to the Buyer are intended to finance the Buyer's project and not this Contract. Any approvals given by RUS to the Buyer are solely for the benefit of RUS. RUS is not obligated to advance loan funds to the Seller for this Contract, nor intends to assume, at any time, direct obligations for payment for work, goods, or other performance under this Contract. The obligation to pay any amounts due under this Contract is solely the responsibility of the Buyer. Nothing herein, express or implied, is intended to, or shall confer upon, any other person any right, benefit, or remedy of any nature whatsoever under or by reason of the Loan Documents between RUS and the Buyer. It is expressly understood by the Seller that nothing contained herein or any approvals provided by RUS to the Buyer is intended to be relied upon by the Seller. Moreover, no communications by RUS with respect to the Seller or the underlying project of the Loan between the RUS and Seller are intended to be relied on as encouraging performance of the Buyer. Buyer understands that it shall look solely to the Seller for payment and performance under this Contract.

SECTION 10.11 *Approval of the Agency.* The acceptance of this proposal by the Buyer does not create a contract unless such acceptance is approved in writing by the Agency within 90 days after the date of the Seller's Proposal:

(Seller's Company Name)

Attest:

By _____ By _____
(Seller's Signature) (Signature of Secretary)

(Print or Type Name)

(Title)

(Date of Proposal)

The Proposal must be signed with the full name of the Seller. If the Seller is a partnership, the Proposal must be signed in the partnership name by a partner. If the Seller is a corporation, the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

SCHEDULE 2
BUYER'S ACCEPTANCE

Subject to the approval of the Agency, the Buyer hereby accepts the Proposal of
for the total contract price, including accepted alternates and options indicated below:

ITEM	ITEM COST (\$)
Base Cost (without taxes)	_____
Alternate No. 1 (add)(deduct)	_____
Alternate No. 2 (add)(deduct)	_____
Alternate No. 3 (add)(deduct)	_____
Alternate No. 4 (add)(deduct)	_____
Alternate No. 5 (add)(deduct)	_____
Alternate No. 6 (add)(deduct)	_____
Alternate No. 7 (add)(deduct)	_____
Alternate No. 8 (add)(deduct)	_____
Spare Parts	_____
Extended Warranty	_____
Other	_____
Other	_____
Other	_____
Sub-Total (\$)-	_____
Estimated Taxes to be paid by Seller	_____
Estimated Taxes to be paid by Buyer	_____
Total Contract Price (\$)-	_____

(Buyer's Company Name)

Attest:

By _____
(Buyer's Signature)

By _____
(Signature of Secretary)

(Print Name)

(Title)

(Date of Acceptance)

SCHEDULE 3

LIQUIDATED DAMAGES

Liquidated Damages for each Project listed in Schedule 1 in the amount of shown below per day must be paid to the Buyer in the event the Seller breaches Section 9.2 hereto. Add rows as needed.

If the Buyer elects to seek consequential damages for failure to complete project(s) on time in lieu of Liquidated Damages for failure to complete project(s) on time and has indicated such election by checking Section 9.2(b), the following table may be left blank which shall have the same effect as marking all cells of the table as NOT APPLICABLE.

SCHEDULE 4

CONSEQUENTIAL DAMAGES

Consequential Damages (List details of losses, including monetary value, if known below).

Apart from any injury to person or property proximately resulting from any breach of Contract by the Seller, the following loss(es), which cannot reasonably be prevented, will result from the Seller's breach of this Contract with respect to untimely completion:

SCHEDULE 5
PERFORMANCE REQUIREMENTS

(Insert performance requirements in this section.)

The Specifications listed below are attached and are a part of this Contract.

1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12.	

SCHEDULE 6
SUSPENSION AND DEBARMENT CERTIFICATION

*(After this page insert the current Debarment Lower Tier form available
at <http://www.rd.usda.gov/files/AD1048-F-01-92.PDF>.)*

SCHEDULE 7
LOBBYING CERTIFICATE

*(After this page insert the current certificate available at
http://www.rd.usda.gov/files/UTP_Lobbying_Certification.docx.)*

SCHEDULE 8
NOTICE TO THE SELLERS

(This schedule is required to be inserted in contract documents only when Sealed Competitive Bidding is to be used as the procurement method.)

NOTICE AND INSTRUCTIONS TO SELLERS
EQUIPMENT PROJECT

1. Sealed Proposals for the engineering, furnishing, delivery to the locations specified, and, if applicable, installation of equipment, materials and software for

(hereinafter called the "Buyer")

which is to be part of the system designated by RUS

as _____ to be financed by the Rural

Utilities Service (hereinafter called the Agency) will be received by the Buyer on or before

as _____ o'clock, _____ ,

at _____

at which time and place the Proposals will be publicly opened and read.

2. The Bid Documents (composed of plans, specifications and drawings), together with all necessary forms and other documents for Sellers, may be obtained from the Buyer or from the Engineer, at the latter's office at

The Specifications may be examined at the office of the Buyer or at the office of the Engineer. A copy of the loan contract between the Buyer and the Government may be examined at the office of the Buyer.

Each set of Bid Documents will have a serial number, assigned by the Engineer, and the number of each set with the name of the Seller will be recorded by the Engineer. Bids will be accepted only from original Sellers, or from some other qualified Seller to whom such a set has been transferred by the original Seller with the approval of the Engineer prior to the pre-bid technical session.

3. A pre-bid technical session will will not be held with each Seller during the week of

_____, 20_____, at _____ ,

for the purpose of receiving the Seller's written Technical Proposal, discussing details of the Project(s), and considering suggestions from Sellers. The Buyer shall attach to this Notice a list of the information required in the Seller's Technical Proposal. Each Seller will be given a specific time period for the pre-bid technical session. At the pre-bid technical session, the Seller shall fully describe to the Buyer, in writing, any exceptions to the Specifications the Seller may request. In addition, the Seller shall identify, in writing, all features and capabilities that are not fully developed or do not have a verifiable satisfactory field performance record. If the Buyer decides to incorporate any changes into the Specifications, the Buyer shall furnish all prospective Sellers a copy of the Specifications containing such revisions (the "Revised Specifications") and all Bids shall be made on the basis of the Revised Specifications. No bid shall be accepted from a Seller who fails to attend the pre-bid technical session or fails to demonstrate to the Buyer that its equipment meets the requirements of the Plans and Specifications.

4. A minimum of three (3) signed copies of the Seller's proposal shall be submitted on the forms furnished by the Buyer and must be delivered in a sealed envelope addressed to the Buyer. The name and address of the Seller, its license number, if a license is required for bidding on a project by the State, and the date and hour of the opening of bids must appear on the envelope in which the Proposal is submitted. Proposals must be in ink or typewritten. No alterations or interlineations will be permitted, unless made, initialed, and dated before submission.

5. Prior to the submission of the Proposal, the Seller shall make and shall be deemed to have made a careful examination of the Specifications, forms of Seller's Proposal and Acceptance, and Contractor's Bond attached hereto, and shall become informed as to the location and characteristics of the proposed central office and remote terminal installations, features and services, the transportation facilities, the kind of facilities required before and during the delivery and installation of the equipment and materials, the general local conditions and all other matters that may affect the cost and the time of completion of the installations. Sellers will be required to comply with all applicable statutes, codes, and regulations, including those pertaining to the licensing of contractors and the "Anti Kick-Back Acts," as amended, (40 U.S.C. 276c; 41 U.S.C. 51 *et seq.*) and regulations issued pursuant thereto, and 18 U.S.C. 287, 874, 1001, as amended.

6. A Bid Bond is , is not , required. When required each Proposal must be accompanied by a Bid Bond on RUS Form 307 or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Buyer, in an amount equal to ten percent (10%) of the maximum possible bid price. The maximum possible bid price is the sum of the total base cost, spare parts, and all positive amounts for alternates. Each Seller agrees that, if its Proposal is one of the three low Proposals, its Bid Bond or check shall be held by the Buyer until a Proposal is accepted and Contractor's Bond, when required, is furnished by the successful Seller, or for a period not to exceed ninety (90) days from the date hereinbefore set for the opening of Proposals whichever period shall be the shorter. If such Proposal is not one of the three

low Proposals, the Bid Bond or check will be returned to the Seller within a period of thirty (30) days.

7. A Contractor's Bond is is not required. When a Contractor's Bond is required, Surety companies providing contractors' bonds shall be listed as acceptable sureties in the U.S. Department of Treasury Circular No. 570. The circular is maintained through periodic publication in the Federal Register and is available on the Internet at <http://www.fms.treas.gov/c570/c570.html> . When required the successful Seller will be required to furnish to the Buyer a Contractor's Bond in conformance with the requirements of 7 CFR Part 1788 Subpart C, Insurance for Contractors, Engineers, and Architects.

8. Should the successful Seller abandon the Proposal; or should the successful Seller fail or refuse to furnish a Contractor's Bond within thirty (30) days after written notification of the award of the Contract by the Buyer, the Seller will be considered to have abandoned the Proposal. In such event, the Buyer shall be entitled (a) to enforce the Bid Bond in accordance with its terms, or (b) if a certified check has been delivered with the Proposal, to retain from the proceeds of the certified check the difference (not exceeding the amount of the certified check) between the amount of the Proposal and such larger amount for which the Buyer may in good faith contract with another party to construct the Project(s). The term "successful Seller" shall be deemed to include any Seller whose Proposal is accepted after another Seller has previously refused or has been unable to execute the Contract or to furnish a Contractor's Bond.

9. If requested by the Buyer, the Seller shall furnish evidence, satisfactory to the Buyer, that the Seller has the necessary facilities, ability, and financial resources to perform the Contract.

10. The Contract, when executed, shall be deemed to include the entire agreement between the parties thereto and neither party shall claim any modification thereof resulting from any representation or promise made at any time by any officer, agent, or employee of the other or by any other person.

11. The Buyer reserves the right to waive minor irregularities or minor errors in any Proposal, if it appears to the Buyer that such irregularities or errors were made through inadvertence. Any such irregularities or errors so waived must be corrected on the Proposal in which they occur prior to the execution of any Contract which may be awarded thereon. Failure to provide a Bid Bond or check as specified in item six (6) above is not a minor irregularity.

12. The Buyer reserves the right to reject any or all Proposals.

13. The equipment to be furnished for all sites included in the Proposal is to be of one and the same basic design. A Proposal submitted on any other basis will not be considered.

Buyer's Company Name)

(Signature)

(Print Name)

(Title)

(Date)