

# CITY CLERK ORIGINAL

**smiths detection**  
 bringing technology to life  
**Danyel DeVoe**  
**Service Sales Manager**  
 2202 Lakeside Blvd  
 Edgewood, MD 21040  
 Direct Phone (908) 334-9871 Fax (410) 510-9500  
 danyel.devoe@smithsdetection.com

## SERVICE AGREEMENT

**C-8442-1**  
**07/02/2014**

This service agreement is by and between the following parties.

<b>BUYER</b>	Company <b>City of Glendale</b>	Contact <b>Valeri Eddings</b>
	Address <b>11550 West Glendale Avenue</b>	Telephone <b>623 772-7114</b>
	<b>Glendale, Arizona 85307</b>	Facsimile
		Email <b>VEddings@GLENDALEAZ.com</b>
<b>SELLER</b>	Company <b>Smiths Detection, Inc</b>	Contact <b>Katie Guckert</b>
	Address <b>2202 Lakeside Blvd</b>	Telephone <b>410-612-2541</b>
	<b>Edgewood, MD 21040</b>	Facsimile <b>410-510-9500</b>
		Email <b>katie.guckert@smithsdetection.com</b>

For the period beginning **5/24/14** and ending **5/23/16**, Smiths Detection will provide parts and/or service as described herein. All applicable service for the equipment specified below shall be provided during Smiths normal working hours as requested by the Buyer, unless Agreement provisions stipulate otherwise.

Agreement Type	Standard Two Year Partnership	
Price, Duration, and Payment Terms	Price \$9,120	Duration as shown above (2 years)
	Payment Terms Net 30 Days	
Coverage Type	Standard Partnership	

Covered Equipment	Serial Number(s)
GasID	G002930109D

Agreement does not include service required for moving unit, damage caused by external sources or acts of God, Buyer's negligence or abuse, special modifications; damage to equipment which has been dropped, bumped, abused by Buyer or for any damage caused by Buyer other than ordinary use.

Smiths shall not be liable for special or consequential damages of any nature arising out of or with respect to any items or services sold, delivered, rendered, or any failure to meet delivery schedules unless those damages are caused through the fault or negligence of Smiths.

Estimated sales tax is included in this agreement and will be added to the invoice. If you are tax exempt, please provide an exemption certificate and sales tax will be omitted.

Smiths Detection, Inc.

SIGNATURE



By Danyel DeVoe  
 Title Service Sales Manager  
 Date 6/9/14

(Buyer)

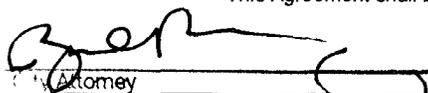
SIGNATURE



By Brenda S. Fisher  
 Title City Manager  
 Date 7/1/14

Approved as to form

*This Agreement shall become effective when signed by authorized officials of both parties – Price valid for 90 Days*



SMITHS DETECTION, INC. 2202 LAKESIDE BLVD

EDGEWOOD, MD 21040

**ATTEST:**



T: 410-612-2541  
 City Clerk

F: 410-510-9500

June 6, 2014

City of Glendale  
11550 West Glendale Avenue  
Glendale, Arizona 85307

Ms. Eddings:

Thank you for your interest in extending your partnership program. Attached is information and pricing for our Partnership Programs.

**There are several reasons to extend the Partnership Program:**

In the event of instrument malfunction, downtime is minimized according to the loaner agreement and all shipping charges are paid by Smiths Detection.

All parts and labor are covered under warranty.

You have continual access to Reachback for technical and analytical support as documented in the attached Application Note. This service can be especially vital during an actual incident.

Your system remains eligible for current version software and standard library databases.

To initiate coverage immediately, please call me or complete the Service Agreement Acceptance Form, which follows, sign where indicated and return to my attention. I will send to you a formal Service Agreement, which must be executed and returned to us together with payment for the term desired.

Should you need additional clarification on the enclosed, or if I can provide you with any other information, including information on our various training programs for your Smiths Detection equipment, please feel free to contact me at 410.612.2541 or by email at: [Katie.Guckert@smithsdetection.com](mailto:Katie.Guckert@smithsdetection.com)

We appreciate your continued interest and look forward to further supporting you.

Best Regards,

**Katie Guckert**  
Service Sales Agent



**SERVICE AGREEMENT TYPES****PRIORITY ON-SITE SERVICE AGREEMENT**

- ✓ On-Site Service Coverage – Extended Hours, evenings and weekends
- ✓ Typical Response Time, within 24 hours
- ✓ Includes all Labor, Travel Time and Travel Expenses
- ✓ Covers all parts (x-ray tube/generator included)
- ✓ Reachback™-ReachbackID™ – 24 hour by 7 day Call Center Support
- ✓ One Annual Preventative Maintenance check Complete operational and calibration procedure performed
- ✓ Preferred Customer Status – 25% Discount on Instructor Led Training

**ON-SITE SERVICE AGREEMENT**

- ✓ On-Site Service Coverage – 8.00a m – 5.00p m , Monday-Friday excluding holidays
- ✓ Typical Response Time; within 36 hours
- ✓ Includes all Labor, Travel Time and Travel Expenses
- ✓ Covers all parts (x-ray tube/generator included)
- ✓ Reachback™-ReachbackID™ – 24 hour by 7 day Call Center Support
- ✓ One Annual Preventative Maintenance check, Complete operational and calibration procedure performed
- ✓ Valued Customer Status – 15% Discount on Instructor Led Training

**DEPOT REPAIR SERVICE AGREEMENT**

- ✓ Repairs performed at Service Depot
- ✓ Freight out expense included (freight in to be covered by the customer)
- ✓ Includes all Labor required
- ✓ Covers all parts
- ✓ Reachback™-ReachbackID™ – 24 hour by 7 day Call Center Support
- ✓ Valued Customer Status – 20% Discount on Instructor Led Training
- ✓ Loaner option available at additional cost

**STANDARD PARTNERSHIP**

- ✓ Free software updates
- ✓ All parts & labor to repair system
- ✓ Free loaner in the US (delivered by overnight carrier)
- ✓ 24/7/365 ReachBack™ and ReachBackID™ access to Ph D. chemists, engineers, and application scientists for spectral interpretation assistance and/or technical support
- ✓ Regional refresher training class for one person per year
- ✓ Valued Customer Status – 15% Discount on Instructor Led Training

**PAYMENT**

- **Payment terms are Net 30 Days from the date of receipt of the invoice.** Applicable state and local taxes are included in the price specified on this Agreement and will be added to all invoices *Please make all checks payable to Smiths Detection or contact your representative for electronic transfer details*

**MISCELLANEOUS**

- All service shall be performed between the hours of 8 00 a m and 5:00 p m , local time, Monday through Friday, exclusive of Smiths' published holidays, unless work outside these hours is approved in advance by Smiths or where the customer will be responsible for payment at the then-current Smiths billable rates
- Unless otherwise noted, the prices specified are for equipment coverage for 12 months
- If the equipment is not currently covered by a Smiths Service Agreement, equipment must be inspected by an authorized Service representative and must be deemed in good working condition. We will only offer coverage to units which are in good working order
- Replacement parts may be new or refurbished and carry a ninety (90) day warranty or the remainder of the coverage of the Service Agreement, whichever is longer
- SMITHS DETECTION reserves the right to refuse coverage of any unit for any reason.
- Service Agreements which have been priced at the Multi-System or Multi-Year discount shall revert to the full, non-discounted price should an interruption of the Agreement occur
- Cancellation Policy, 1) If this Service Agreement is cancelled by the customer, without cause, a 25% cancellation fee will be charged. 2) If no service has been provided, a refund will be prorated from the cancellation notification date and will **not** be subject to the 25% cancellation fee 3) If service has been provided, the greater of the following amounts shall be the customer's responsibility, (a) The prorated amount of the contract or (b) The value of all service rendered to include all parts, labor, travel and expenses during contract term The prices for parts and labor are calculated using Smiths standard T&M rates while the prices for travel and expenses are calculated at actual cost A 25% cancellation fee applies to both 3a and 3b This cancellation policy only applies to prepaid services and does not apply to Fixed Rate Repairs
- Any on-site vendor, authority or other location fees shall be borne by Buyer
- This Service Agreement does not cover products that have been highly contaminated by foreign substances Products returned to Smiths Detection for repair are assumed to be free of contamination If any product is believed to be contaminated, it is the customer's responsibility to have the product decontaminated prior to returning the product to Smiths
- Buyer agrees to accept all responsibility for ensuring the safe and timely return of any loaner equipment provided under this agreement The Products must be returned to Smiths Detection as of the date specified in the agreement or immediately upon request from Smiths Detection Customer shall be charged current pricing in effect for Products not received at Smiths Detection's designated facility within ten (10) days of the date agreed to Customer shall be responsible for any damage or loss to the Products, normal wear and tear excepted The Products must be returned to Smiths Detection in the proper packaging to avoid damage during shipping.
- Smiths Detection sales terms and conditions are hereby incorporated in this agreement and any purchase order that may result from this agreement will be in accordance with these terms and conditions These terms and conditions can be located at the following Smiths Detection Website: [www.smithsdetection.com/eng/US\\_terms\\_conditions.php](http://www.smithsdetection.com/eng/US_terms_conditions.php)

**1. DEFINITIONS**

- (a) "Company" means Smiths Detection Inc , 2202 Lakeside Boulevard, Edgewood, MD 21040, USA
- (b) "Equipment" means all components, spare parts, goods, equipment, or materials of any kind, which have been supplied by the Company under a Company Purchase Order
- (c) "liability whatsoever" shall include, without prejudice to the generality of the expression, liability in tort and in contract, including liability for consequential loss (including loss of revenue or profit) or damage of any kind howsoever caused or arising
- (d) "ICC Incoterms" means the International Chamber of Commerce's Incoterms as published from time to time and "Ex Works" and "FCA" shall have the meanings given them by ICC Incoterms from time to time save where such meanings are inconsistent with the terms hereof
- (e) "Losses" means losses, claims, causes of action, suits, damages, liabilities, expenses (including, without limitation, fees and disbursements of legal counsel and expenses of litigation) or other obligations
- (f) "Operator" means the operator or user of Equipment
- (g) "Order" shall mean the agreement between the Company and the Purchaser (individually "Party" and collectively "the Parties") for the sale and purchase of the Equipment/Services, referencing the Terms and Conditions of Sale and any other contemporaneous writing, signed by both Parties
- (h) "Purchaser" means the company, firm or individual who has bought, or agreed to buy, the Equipment and/or Services
- (i) "Purchaser Delays" means any delay by Purchaser in performing any contractual obligations or any other circumstances for which Purchaser is responsible, including, without limitation, delays to attend testing (if required), take delivery, arrange shipment or import licences, or be available for Company technicians attendance at Purchaser's locations
- (j) "Quotation" means the quotation addressed to the Purchaser by the Company
- (k) "Service Agreement" means the agreement between the Parties for the sale and purchase of the Services, referencing the Terms and Conditions of Service herein and any other contemporaneous writing, signed by both Parties
- (l) "Services" means all services, including maintenance and installation services, and operator training where applicable, provided under the Service Agreement

**2. GENERAL**

- (a) The Quotation does not constitute an offer to supply any Equipment or Services and no contract exists unless and until there has been an acceptance by the Company in writing of the Service Agreement
- (b) The acceptance of the Service Agreement whether or not based on a Quotation from the Company shall, unless otherwise specifically agreed by the Company in writing, be deemed to be subject to the terms and conditions herein contained which shall apply to the exclusion of any other provisions contained in any other document issued by the Purchaser at any time before or after this contract and, in particular, but without prejudice to the generality of the foregoing, contained in any order by the Purchaser
- (c) Unless otherwise stated in writing all descriptions, specifications, drawings and particulars of weights and dimensions submitted by the Company or otherwise contained in the Company's handbooks, manuals, catalogues, brochures, price lists and other published matter are approximate only and none of these form part of any contract or gives rise to any independent or collateral liability upon the part of the Company being intended merely to present a general idea of the Equipment as described therein
- (d) The performance figures in respect of the Equipment included in the Company's specifications, product brochures and other published matter are indicative only and based on results obtained by the Company representative testing. The Company accordingly represents only that the Equipment met or demonstrated those performance standards or characteristics which are specifically attributed thereto in such specifications made available by the Company to the Purchaser and the Company gives no warranty that the Equipment will be suitable for any particular use to which the Purchaser may put them or how they will perform in such use or application
- (e) The Purchaser shall ensure that any of its employees, agents or representatives or other person to whom the Purchaser shall provide the Equipment shall receive a copy of any operator manual in respect of the Equipment which is available from the Company

**3. PRICE**

- (a) The price of the Services is current as of the date of the Quotation and valid for a period of 90 days thereafter, unless stated to the contrary by the Company in writing
- (b) The Services shall be those specified in the Service Agreement as confirmed by the Company's acceptance in writing and the Company reserves the right to increase the price if the Purchaser requests an alteration to the Service Agreement or requests any modification to the Equipment
- (c) Unless otherwise agreed in writing the price for the Services excludes VAT and all applicable taxes and duties the cost of which shall be determined as at the date of the invoice and shall be payable by the Purchaser
- (d) The cost of any special packaging shall be determined at the date of invoice and shall be payable by the Purchaser
- (e) The Purchaser shall not be entitled to make any deduction from the price of the Services in respect of any set-off or counter-claim unless both the

validity and the amount thereof have been expressly admitted by the Company in writing

**4. PAYMENT**

- (a) The Purchaser shall, except where other payment arrangements are specifically agreed in writing, make full payment in US Dollars for the Services not later than 30 days after the date of the invoice relating thereto or, if earlier, on the day which a receiver of the Purchaser's undertaking is appointed or upon which any act is done or event occurs which is related to the insolvency of the Purchaser. If payment for the Equipment is not made when due the Company may charge interest thereon at the rate of one and a half per cent (1.5%) per month or the maximum rate allowable by law. Time of payment shall be of the essence
- (b) Any failure to pay the price or any part thereof and other moneys payable by the Purchaser hereunder when due will also entitle the Company to refuse to provide the Services under this contract or under any other contract with the Purchaser and without incurring any liability whatsoever to the Purchaser for any delay
- (c) The Company shall, in the event of the Purchaser being insolvent or failing to pay the Service price due under any other contract with the Company, be entitled to a general lien on all goods of the Purchaser in the Company's possession for the unpaid price of the Equipment sold and delivered to the Purchaser by the Company under this or any other contract. In the case of repairs or overhauls performed pursuant to this Service Agreement, the Purchaser hereby grants to the Company a perfected security interest in all Equipment retained in possession of the Company upon which any repair or overhaul services have been performed by the Company. To the extent that the Company maintains possession of Equipment under repair, the Purchaser agrees that the Company is a secured creditor of the Purchaser and has all the rights of a secured creditor. Any such liens or security interests granted herein may not be subordinated by the Purchaser
- (d) No defect in the Services shall operate to interfere with the terms of payment
- (e) The Company reserves the right to change the terms of payment whenever it reasonably appears that Purchaser's financial condition requires such changes, and may demand assurance of the Purchaser's ability to pay whenever it reasonably appears that such ability is in doubt. Such demand shall be in writing and the Company may, upon making such demand, stop production and/or suspend shipments hereunder without any liability whatsoever to the Purchaser

**5. DELIVERY**

- (a) Unless otherwise agreed in writing and to the extent applicable (i) all shipments of Equipment made by The Company shall be Ex-Works Company's Designated Facility (INCOTERMS 2010), (ii) notwithstanding the foregoing, all shipments exported outside of the United States shall be FCA Company's Designated Facility (INCOTERMS 2010)
- (b) Unless otherwise stated in writing any time or date for the delivery shall run from the date communicated to the Purchaser
- (c) Delivery and the Purchaser's acceptance of the Equipment shall be deemed to have taken place at the earliest point in time at which risk passes to the Purchaser under the ICC Incoterms. Signature of any delivery note by any agent, employee or representative of the Purchaser or by any independent carrier shall be conclusive proof of the delivery and the Purchaser's acceptance of the Equipment. Notwithstanding such delivery, the Company shall have a general and particular lien over the Equipment for all claims by the Company against the Purchaser and all monies owing by the Purchaser to the Company howsoever arising
- (d) Without prejudice to any rights of the Company hereunder, if the Purchaser shall fail to give on or before the agreed date of delivery all instructions reasonably required by the Company and all necessary documents, licences, consents and authorities (which the Purchaser is obliged under these terms and conditions or by law to obtain) for forwarding the Equipment or if there is any other Purchaser Delay, the Purchaser shall pay to the Company all storage and insurance costs and any other out of pocket expenses incurred arising from such delay
- (e) The Purchaser shall be obliged to take delivery of the Equipment and/or Services when they are delivered or tendered for delivery. Where the Purchaser refuses or is unable (for any reason) to accept delivery of the Equipment and/or Services or if there is any other Purchaser Delay, the Company shall have the right (without prejudice to its other rights) to invoice the Purchaser in respect thereof (payment to be made within 30 days of the invoice date) and the Equipment and/or Services shall be deemed Delivered. The Company shall be entitled to invoice the Purchaser for the reasonable costs of re-delivery, storage and all other handling costs arising directly or indirectly therefrom and the Purchaser shall make payment to the Company within 30 days of the invoice date
- (f) Purchaser Delays shall be considered excusable delays for the Company and result in a corresponding automatic extension of any agreed upon time for the performance of the Company's obligations under this Service Agreement. The Company shall not be liable to the Purchaser under any circumstances whatsoever for any penalty, damage or loss resulting directly or indirectly from any Purchaser Delays
- (g) Unless otherwise stated in writing the Company shall be entitled to make partial deliveries by instalments and (where the Company has agreed to be responsible for delivery of the Equipment to the Purchaser) to determine the route and manner of delivery of the Equipment and shall be deemed to have the Purchaser's authority to make such contract with any carrier as the Company may deem reasonable. If the route involves

sea transit the Company shall not be obliged to give the Purchaser any notice

- (h) Where delivery of the Equipment is made in instalments, each instalment shall be construed as constituting a separate agreement to which all the provisions of these conditions shall (with any necessary alterations) apply
- (i) Time shall not be of the essence for delivery
- (j) In the event of any delay in delivery or installation whether attributable to cause outside the Company's control or not the Company shall be under no liability whatsoever to the Purchaser

## 6 TERMS OF SERVICE

- (a) The Company shall not be required to provide Services in the event of any of the following moving of the Equipment, damage to the Equipment caused by external sources or Force Majeure, Buyer's negligence or abuse, special modifications including, without limitation, tunnel extensions, connect of units to custom or non-Company-provided Baggage Handling System, or UPS, damage to equipment which has been dropped, bumped, or abused by Buyer, or for any damage caused by Buyer other than ordinary use System Regeneration requirements, where applicable, are not included in this agreement
- (b) All Services shall be performed between the hours of 8 00 a m and 5 00 p m, local time, Monday through Friday, exclusive of the Company's published holidays, unless work outside these hours is approved in advance by Smiths or where the customer will be responsible for payment at the then-current Company billable rates
- (c) Unless otherwise specified in a given Service Agreement, the prices specified are for equipment coverage for 12 months
- (d) Equipment not currently covered by a Company Services Agreement must be inspected by an authorized Company Services representative and must be deemed in good working condition prior to inclusion in a Services Agreement Inspection fees may apply The Company will only offer coverage to units in good working order The Company reserves the right to refuse coverage of any Equipment for any reason
- (e) When required, replacement parts may be new or refurbished Replacement parts carry a standard Company warranty for 90 days from installation, or for the remainder of the coverage of the Service Agreement, whichever is longer
- (f) Service Agreements which priced at the Multi-System or Multi-Year discount shall revert to the full, non-discounted price in the event of an authorized cancellation or other interruption of the Agreement
- (g) Cancellation If this Service Agreement is cancelled by the customer, without cause, a 25% cancellation fee will be charged, the Purchaser must provide at least 30 days prior written notice to the Company to cancel this Service Agreement without cause If no Services have been provided, the Company will provide a prorated refund from the cancellation notification date and will not be subject to the 25% cancellation fee If service has been provided, the greater of the following amounts shall be charged to the Purchaser (i) The prorated amount of the contract or, (ii) The value of all service rendered to include all parts, labor, travel and expenses during contract term The prices for parts and labor are calculated using Company standard time and material rates, prices for travel and expenses will be calculated at cost A 25% cancellation fee shall apply in the event of cancellation under Sections 6(g)(i) and (ii), respectively This cancellation policy only applies to prepaid services and does not apply to fixed rate or flat fee repairs
- (h) Any on-site vendor, certification, regulatory authority, or other applicable fees shall be borne by Buyer
- (i) This Service Agreement does not cover Equipment that has been highly contaminated by foreign substances Equipment returned to the Company for repair is assumed to be free of contamination If the Company has any reason to believe that any Equipment is contaminated, it is the Purchaser's responsibility to have the product decontaminated prior to returning the product to Smiths The Purchaser shall be fully and solely liable to the Company in the event of any damages or illness caused by the Purchaser's failure to abide by this Section 6(i) and shall indemnify and hold the Company harmless accordingly, consistent with the terms of Section 8 herein
- (j) Buyer agrees to ensure the safe and timely return of any loaned Equipment provided under this agreement The loaned Equipment must be returned to the Company within two days after Customer's receipt of the repaired equipment or immediately upon request from the Company Buyer shall be charged current pricing in effect for Products not received at the Company's designated facility within 30 days of the agreed return date Buyer shall be responsible for any damage or loss to the Equipment, normal wear and tear excepted The Equipment must be returned to the Company in the proper packaging to avoid damage during shipping

## 7 LIMITATION OF LIABILITY

- (a) The Purchaser is relying on its own skill and judgement in relation to the Services supplied under this contract and the Company accepts no liability whatsoever for any knowledge it or its employees, agents or representatives may possess as to the purpose for which the Services are provided

(b) The Purchaser acknowledges and agrees that

- (i) The Equipment is intended to be used as security screening equipment, in order to assist in the detection of illegal and/or hazardous materials,
- (ii) The degree of success with which the Equipment will fulfill their intended use is dependent on numerous factors, including without limitation the sophistication of efforts to conceal illegal and/or hazardous materials, the chemical identity and quantity of such materials, the skill, diligence and qualifications of the Operator (where applicable) and environmental conditions, and
- (iii) No security screening equipment is capable of detecting every threat, and neither the Purchaser nor the Operator has any expectation that the Equipment are capable of detecting, or that they will detect, all illegal and/or hazardous materials (this being the case whether the Equipment are operated with or without Operator supervision, and regardless of the degree of diligence with which services of the Company, if any, are or have been performed)
- (c) The Company makes no guaranty or warranty as to the results that will be achieved through the use of the Equipment and it is agreed that the sole responsibility for such results shall be borne by Purchaser
- (d) **The remedies provided in Clause 7 above shall be the Purchaser's sole remedy under the Terms of Service and all further remedies are hereby expressly excluded**
- (e) **Neither the Company nor any of its affiliates shall be under any liability whatsoever to the Purchaser for indirect or consequential loss (including, but without limitation, loss of profit, loss of revenue, loss of goodwill, special, consequential, incidental, exemplary or other damages, including damages resulting from substitute procurement, loss of use, loss of data, loss of savings, loss of business, failure or delay in performance, even if the Company or its affiliates have been advised of the possibility of any such damages and whether or not arising out of any liability of the Purchaser to any other person) and all conditions, warranties or other terms whether express or implied, statutory or otherwise, inconsistent with the provisions of this Section, are hereby expressly excluded.**
- (f) **The aggregate liability of the Company and its affiliates taken together in respect of the direct consequences and, in the event that the Company is not entitled (for any reason) to rely on the provisions of paragraph (d) above, the indirect consequences (including but without limitation loss of profit, revenue or goodwill and whether or not arising out of any liability of the Purchaser to any other person) resulting from any breach of contract, breach of a duty of care, statutory duty, product liability or otherwise howsoever suffered shall be limited to the lesser of: (i) the amount of the Service Agreement to which the Equipment relate or (ii) US\$500,000, and all conditions, warranties or other terms whether express or implied, statutory or otherwise, inconsistent with provisions of this Section are hereby expressly excluded**
- (g) All, if any, statements, recommendations and advice given by the Company or the Company's servants or agents to the Purchaser or its servants or agents as to any matter relating to the Services are given without responsibility and shall not give rise to any liability whatsoever on the part of the Company and the Purchaser hereby represents and warrants to the Company that no representation has been made to it by or on behalf of the Company that has in any way induced the Purchaser to enter into the contract with the Company
- (h) Should these Conditions apply to a consumer transaction the Purchaser's statutory rights shall not be affected by this Section 8

## 8. INDEMNITY

To the fullest extent permitted by applicable law, the Purchaser shall defend, indemnify, and hold harmless the Company and its affiliates from and against any and all Losses and threatened Losses to the extent they result from or in connection with the use and/or operation of Equipment by Purchaser or Operator, including but not limited to any of the following (i) the death or bodily injury of any agent, employee, customer, business invitee, or business visitor or other person, and the damage, loss, or destruction of any real or tangible personal property, (ii) any action taken by or on behalf of Purchaser and/or Operator in the performance of this Agreement that causes the Company or its affiliates to be obligated to indemnify, defend, and/or hold harmless any third party, (iii) any claim, demand, charge, action, cause of action, or other proceeding resulting from an act or omission of the Purchaser, its employees, agents, or subcontractors acting in its or their capacity as an employee or potential employer with respect to the claimant, and (iv) any claim by the Purchaser or the Operator, whether based on warranty or other contract breach, negligence or other tort, for matters disclaimed in subsection 8(d) above The Purchaser shall fully indemnify and completely hold harmless the Company and its affiliates as provided above, whether or not negligence or other fault of the Company or any of its affiliates contributed to, or is claimed or alleged to have contributed to, the claim, action, damage, loss, cost, liability or expense Nothing in subsection 8(g) or this Section 9 shall exclude or limit the liability of the Company or its affiliates, or require the Purchaser to defend, indemnify or hold harmless the Company or its affiliates, in circumstances where the Losses claimed are alleged to have resulted from (i) wilful misconduct or gross negligence of the Company and/or its affiliates, (ii) any fraud or fraudulent conduct on the part of the Supplier the Company and/or its affiliates, or (iii) any other liability that cannot be excluded by law, and where (in each case) such fault on the part of the Company

and/or its affiliates or liability is adjudicated to be the cause of the Losses

#### 9 COMPLIANCE WITH APPLICABLE LAW

The Purchaser shall comply with all applicable laws, treaties, regulations and codes of practice including, without limitation, the laws of the United States, and shall be solely liable for obtaining and maintaining any licenses, permits, or approvals that may be required for the purchase and operation of the Equipment

#### 10. EXPORT AND IMPORT CONTROLS

- (a) In the case of exports direct to Purchaser's designated location, all import duties, charges and assessments shall be paid by the Purchaser and the obtaining of any necessary import licences in respect of the Equipment shall be the sole responsibility of the Purchaser and the Company shall be under no liability whatsoever to the Purchaser in respect of goods exported without the necessary import licences. The number and expiry date of any import licence shall be furnished to the Company with the shipping instructions at least one month prior to the delivery date. If the import licence expires before the Equipment has been made available the Purchaser shall be responsible for its renewal. The Company shall not be liable for any expense or loss caused by a Purchaser Delay in obtaining such licence or the renewal thereof
- (b) When the export of the goods from the United States is subject to control, the contract will be conditional on the grant of an export licence. Applications for this licence will be made by the Company only when the Company is responsible for shipment. In all other cases the Company may assist the Purchaser in the procurement of such licence, but without being under any legal liability to do so
- (c) The sale, resale or other disposition of the Equipment and any related technology or documentation are subject to the export control laws, regulations and orders of the United States and may be subject to the export and/or import control laws and regulations of other countries. The Purchaser agrees to comply with such laws, regulations and orders and shall not permit its employees, distributors, customers, brokers, freight forwarders, and/or agents to export or re-export any of the Equipment or any technology to any foreign person without complying with the applicable laws. To the fullest extent permitted by applicable law, the Purchaser shall defend, indemnify, and hold harmless the Company and its affiliates from and against any and all Losses and threatened Losses to the extent they result from a breach of this Section 11

#### 11 INTELLECTUAL PROPERTY RIGHTS

In the event of any claim being made or action being brought or threatened in respect of infringement of patents, copyright, trade marks, trade names, registered designs or any other intellectual property rights in respect of the Equipment or Services, the Purchaser will make no admission in respect thereof and will notify the Company thereof forthwith and the Company shall be entitled to conduct all negotiations and take all necessary proceedings to dispute the same in its own name and in the name of the Purchaser and the conduct of all proceedings and negotiations shall be completely at the discretion of the Company. In such event the Purchaser will execute all such documents and do all such things and render all such assistance to the Company as the Company shall require and the Purchaser shall indemnify the Company against all costs, expenses, loss or damage incurred by the Company in respect of any claim being made or action brought or threatened as a result of work done in relation to the Equipment by the Company in accordance with the Purchaser's specification or by the use to which the Equipment are put by the Purchaser

#### 12. SUB-CONTRACTS

The Company reserves the right to sub-contract the performance of the contract or any part thereof

#### 13 ASSIGNMENT

The Purchaser shall not assign or transfer or purport to assign or transfer any contract to which these Conditions apply or the benefit thereof to any other person whatsoever without the consent of the Company

#### 14 CONFIDENTIALITY

- (a) The Parties agree that in the course of performance of the contract to which these Conditions apply, it may be necessary and desirable for them to exchange confidential information. For example, all Services, updates, repairs, replacements, fixes, modifications, and other changes to the Equipment shall be considered the Company's proprietary information. To accomplish this confidentiality, the parties agree as follows. Purchaser shall not disclose confidential information of the Company to any person outside its employ, except when authorized by the Company. Purchaser shall use the same level of care in preserving the confidential nature of the confidential information as it uses to protect its own confidential information but not less than reasonable care
- (b) **PROPRIETARY INFORMATION STATEMENT** The Quotation contains information confidential and proprietary to the Company. No part of this information may be reproduced or transmitted in any form without the prior written permission of the Company. The Quotation supersedes all previous quotations and is valid for 90 days from date of issue, unless otherwise stated

#### 15 GOVERNING LAW

The Service Agreement and these Terms and Conditions of Sale shall be governed by and construed in accordance with the laws of New York State without reference to its conflicts or choice of laws provisions. Any legal action shall be brought in the exclusive venue of the federal and state courts of New York State in Manhattan, New York, NY. The Company and the Purchaser hereby irrevocably waive the right to a jury trial to the extent permissible by law. **THIS SERVICE AGREEMENT SHALL NOT BE GOVERNED BY THE 1980 U.N CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.** Notwithstanding the foregoing, the federal laws of the United States of America shall be the governing laws, to the extent appropriate, with respect to issues involving patent, copyright, or trademark

#### 16 CHANGES AND TERMINATION

- (a) Company shall have the right, in its sole discretion, to terminate the Service Agreement if the Purchaser
  - (a) is unable to pay its debts generally as and when they become due,
  - (ii) is the subject of a legal process declaring it insolvent,
  - (iii) ceases or threatens to cease carrying on its business,
  - (iv) commits any breach of the Service Agreement which is (a) incapable of remedy (as reasonably determined by the Company), or (b) not remedied within 14 days of the date of the breach
- (b) Purchaser may make a written request for amendment, modification, or termination. If a request for amendment or modification is accepted by the Company, and any changes cause an increase or decrease in the cost of, or the time required for, the performance of any work under the Service Agreement an equitable adjustment shall be made in the price or delivery schedule, or both, and the Service Agreement shall be modified in writing accordingly. Wherever the cost of property made obsolete as a result of the change is included in the price adjustment, Purchaser shall have the right to prescribe the manner of disposition of such property. If request for termination is accepted by the Company, equitable provision shall be made to The Company for a recoupment of all costs incurred under the Service Agreement and for reasonable profit based on time and costs expended. The Service Agreement shall continue in effect until such time as payment is received. A written request as specified herein shall give The Company adequate reason to demand written assurance of Purchaser's ability and intent to carry out the Service Agreement

#### 17 FORCE MAJEURE

The Company shall not be liable to the Purchaser for any loss or damage arising due to delay or non-performance of its obligations under this Agreement arising from any cause beyond its reasonable control including, without limitation, any of the following act of God, exceptional adverse weather conditions, flood, lightning or fire (except if the cause of fire originates from the Equipment), strike or lockout, terrorist and/or insurgent activity, armed conflict, large scale organized criminal activity, the act or omission of Government or administrative or other competent authority, war, military operations or not. The Company shall be permitted to suspend its obligations under the Service Agreement for the duration of any force majeure event

#### 18. SOFTWARE

To the extent that the Equipment contain or are software, or that the Services include software, Company hereby grants to Purchaser a non-exclusive, non-transferable, personal license to use the software and related documentation solely with the Equipment. Purchaser's use of the Equipment conclusively evidences its acceptance of this license and these Terms and Conditions, including this Section 22. Title to the software shall at all times remain with Company. Purchaser agrees that the software, all enhancements, related documentation, and derivative works are, and will remain, the sole property of the Company and includes valuable trade secrets. Purchaser agrees to treat the software and related documentation as confidential and to not copy, reproduce, sub-license, or otherwise disclose the software and related documentation to third parties. Purchaser agrees to not disassemble, decompile, reverse engineer, create derivative works from, attempt to derive the source code or otherwise translate, customize, localize, modify, add to, or in any way alter, rent, or loan the software or related documentation

#### 19 X-RAY BODY SCANNER

- (a) Purchaser is hereby notified that the exposure of human beings to x-ray radiation may be harmful. Purchaser acknowledges that the safe operation of the Equipment is entirely the Purchaser's responsibility and that the Company shall have no liability relating to the use or operation of the Equipment by Purchaser or anybody acting on the Purchaser's behalf. Purchaser undertakes to exercise such care and to adopt and follow such procedures in the use and operation of the Equipment as may be necessary to eliminate or minimize the hazards referred to in this section. Without limiting the generality of the foregoing, Purchaser undertakes to use the Equipment in full compliance with Company' maintenance procedures and operator manuals, to comply with the requirements of all applicable environmental or occupational health and safety laws, radiation safety laws and industry standards relating to radiation safety for personnel security screening systems using x-rays,

and to operate the Equipment within the radiation dose limits established by such laws and standards

- (b) Purchaser is further notified that the use of x-ray Equipment on human beings for non-medical purposes may be prohibited in some states or require registration with governmental authorities. Purchaser undertakes to comply with all such prohibitions and registration requirements.
- (c) Purchaser covenants that the use and operation of the Equipment by or on behalf of the Purchaser shall comply with all applicable privacy and data protection laws.
- (d) To the fullest extent permitted by applicable law, Purchaser shall defend, indemnify, and hold harmless Company and its affiliates and their respective officers, partners, directors, employees, agents, successors, and assigns from and against any and all actual or threatened Losses to the extent they arise from any non-compliance with the undertakings in paragraphs (a) to (c).

## **20 COMPLIANCE AND ETHICS**

The Company is an Equal Opportunity Employer and is committed to conducting its business ethically and lawfully. To that end, Company maintains a Code of Business Ethics and mechanisms for reporting unethical or unlawful conduct. Company expects that the Purchaser also will conduct its business ethically and lawfully. Company Code of Business Ethics is available at <http://www.smiths-group.com/responsibility-code-of-business-ethics.aspx>

## ADDENDUM

Smith's Detection Incorporated ("Contractor") further agrees as follows:

### **I. Immigration Law Compliance.**

- A. Contractor, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- B. Any breach of warranty under subsection (A) above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- C. City of Glendale ("City") retains the legal right to inspect the papers of Contractor or subcontractor employee who performs work under this Agreement to ensure that Contractor or any subcontractor is compliant with the warranty under subsection (A) above.
- D. City may conduct random inspections, and upon request of the City, Contractor shall provide copies of papers and records demonstrating continued compliance with the warranty under subsection (A) above. Contractor agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this Section I.
- E. Contractor agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon itself and expressly accrue those obligations directly to the benefit of the City. Contractor also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
- F. Contractor's warranty and obligations under this Section I to the City are continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- G. The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

**II. Conflicts.** This Agreement is subject to cancellation for conflicts of interest under the provisions of A.R.S. § 38-511.

**III. Public Records.** Notwithstanding anything to the contrary in the US Terms and Conditions of Service (Rev. August 2013) regarding confidentiality, Contractor acknowledges that the City of Glendale must comply with Arizona's public records law,

A.R.S. § 39-101 et seq., pursuant to which all documents provided to the City may be subject to disclosure by laws related to open public records. Contractor specifically acknowledges that pricing information is not confidential.

In the event the City receives a request for disclosure that is reasonably calculated to incorporate information that might be considered confidential by Contractor, City will provide Contractor with notice of that request, which will be deemed given when deposited by City with the USPS for regular delivery to the address specified for notices in this Agreement.

Within ten (10) days of receipt of the City's notice, Contractor will inform the City in writing of any objection to the disclosure of the requested information and the failure to object timely will be deemed to waive any objection and any remedy against the City for disclosure.

In the event Contractor objects to disclosure within the time specified, Contractor agrees to handle all aspects related to request, including properly communicating with the requestor and timely responding with information the disclosure of which Contractor does not object thereto.

Contractor shall indemnify and hold harmless the City from any claims, actions, lawsuits, or any other controversy or remedy, in whatever form, that arises from the failure to comply with the request for information and the laws pertaining to public records, including defending the City in any legal action and payment of any penalties or judgments.

This provision will survive the termination of this Agreement.

