

B

BROKEN ARROW PUBLIC SCHOOLS
Educating Today *Leading Tomorrow*

Contract Committee Review Request
 MUST BE COMPLETED IN FULL

Date:

Contract/Agreement Vendor: Cummin- Deanna McMullin

Name of Vendor & Contact Person
 deanna.mcmln@cummins.com
Vendor Email Address

Service and maintenance on generators at the warehouse and on the food truck

Describe Contract (Technology, program, consultant-prof Development, etc.)

Please use Summary below to fully explain the contract purchase, any titles, and details for the Board of Education to review.

CN

Reason/Audience to benefit

8/8/2022

BOE Date

\$ 5,036.40

Amount of agreement

Person Submitting Contract/Agreement for Review: Emily McNally

PLEASE SEND THROUGH APPROPRIATE APPROVAL ROUTING BEFORE SENDING TO BOARD CLERK

Principal &/or Director or Administrator: *Emily McNally*

Does this Contract/Agreement utilize technology? YES/NO

If yes, Technology Admin: NO

Leadership Team Member: *Roger Davis*

Funding Source: 022 000-5140-439-700-0000-000-022

Fund/Project OCA5 Coding

Consent

Action

Accept and approve the RENEWAL agreement between Broken Arrow Public Schools and Cummins to provide service and maintenance on the generators at the warehouse and on the food truck for the 2022-2023 school year. The approximate cost to the district will be \$5036.40 and will be paid with Child Nutrition funds pending Board approval.

Summary

This area must be complete with full explanation of contract

The Contract/Agreement should be received at least 2 weeks prior to a Board Meeting to ensure placement on the Agenda. The Contract Committee meets most Tuesdays at 8:00a.m. All Contracts/Agreements, regardless the amount, must be first approved by the Contract Committee and then presented to the Board of Education for approval and signature. The item will be placed on Electronic School Board for the board agenda by Janet Brown. By following this process, the liability of entering into an agreement is placed with the district rather than an individual.



Sales and Service

TULSA OK BRANCH
16525 EAST SKELLY DRIVE
TULSA, OK 74116
Phone: 918-234-3240

PLANNED MAINTENANCE AGREEMENT

<u>Customer Address</u>	<u>Customer Contact</u>	<u>Quote Information</u>
BROKEN ARROW ISD ACCOUNTS PAYABLE 701 S MAIN ST Broken Arrow, OK 74012	Contact: Luanne Goodacre Phone: 918 259-4565 Fax: 918 251-9095 Cust Id: 30417	Quote Date: 06-APR-22 Quote Expires: 06-APR-23 Quote Num: 20958 Quoted By: Scott E Baker Quote Term: 1 Year(s)

<u>Site Information</u>			
1	PMA-DETROIT SITE #1	1810 W DETROIT	BROKEN ARROW OK 74012

<u>Site</u>	<u>Unit Number</u>	<u>Manufacturer</u>	<u>Model</u>	<u>Prod Model</u>	<u>Serial Number</u>	<u>Type</u>
1	D060906265	ONAN	GEN SET	150.0DGFA	D060906265	150 KW

<u>Site</u>	<u>Unit Number</u>	<u>Service Event</u>	<u>Qty</u>	<u>Sell Price</u>	<u>Extended Price</u>
1	D060906265	FULL SERVICE/FUEL SAMPLE	1	867.40	867.40
		INSPECTION	11	379.00	4,169.00

Sent on behalf of: Scott Baker
PEM Sales Executive
Cummins Sales and Service
5800 West Reno
Oklahoma City, Oklahoma 73127
Office 405-948-2213
Cell 405-625-9705
Fax 405-946-3336
Scott.e.baker@cummins.com

July 2022 Renewal

Unless otherwise specified, first service is due to be performed within 30 days of PMA signature. Signature below acknowledges and accepts the Terms and Conditions on the back of this Agreement.

Purchase Order Number and Signature required.
Signature: _____ Print Name: _____
Purchase Order Number: _____
Please Provide name and e-mail address of each site contact:
Site: ___ Name: _____ E-Mail: _____

Accounts Payable Contact - Print Name: _____
Phone: _____ E-Mail: _____

Please indicate whether you wish to prepay the complete agreement or pay per event.
____ Prepay ____ Pay Per Event (Subject to credit approval)

***If paying per event select payment option preferred.
Cash/Credit Card ____ ACH/Wire ____ Credit Terms ____

PLANNED MAINTENANCE AGREEMENT TERMS AND CONDITIONS

These Planned Maintenance Agreement Terms and Conditions, together with the Quote on the front side and the Scope of Services, are hereinafter referred to as this 'Agreement' and shall constitute the entire agreement between the customer identified in the Quote ('Customer') and Cummins Southern Plains LLC ('Cummins') and supersede any previous agreement or understanding (oral or written) between the parties with respect to the subject matter of this Agreement. In the event of any inconsistency between this Agreement and any purchase order, terms and conditions or other document produced or delivered by Customer, the terms and conditions of this Agreement shall take precedence.

1. **SCOPE OF SERVICES; PERFORMANCE OF SERVICES.** Cummins shall perform the maintenance ('Services') on the equipment identified in the Quote ('Equipment') in accordance with the schedule specified in the Quote. The Services include those services defined in the 'Service Event' section of the Quote. No additional services or materials are included in this Agreement unless agreed upon by the parties in writing. Unless otherwise indicated in the Quote, Cummins will provide the labor and tools necessary to perform the Services and shall keep Customer's property free from accumulation of waste materials caused by Cummins' operations. Either party may terminate this Agreement with or without cause by providing thirty (30) days written notice to the other.
2. **CUSTOMER OBLIGATIONS.** Customer shall provide Cummins safe access to Customer's site and arrange for all related services and utilities necessary for Cummins to perform the Services. During the performance of the Services, Customer shall fully and completely secure all or any part of any facility where the Equipment is located to remove and mitigate any and all safety issues and risks, including but not limited to facility occupants, customers, invitees, or any third party and or property damage or work interruption arising out of the Services. Customer shall make all necessary arrangement to address and mitigate the consequences of any electrical service interruption which might occur during the Services. CUSTOMER IS RESPONSIBLE FOR OPERATING AND MAINTAINING THE EQUIPMENT IN ACCORDANCE WITH THE OWNER'S MANUAL FOR THE EQUIPMENT.
3. **PAYMENT TERMS.** Unless otherwise agreed to by the parties in writing and subject to credit approval by Cummins, payments are due thirty (30) days from the date of the invoice. If Customer does not have approved credit with Cummins, as solely determined by Cummins, payments are due in advance or at the time of supply of the Services. If payment is not received when due, in addition to any rights Cummins may have at law, Cummins may charge Customer eighteen percent (18%) interest annually on late payments, or the maximum amount allowed by law. Customer agrees to pay all Cummins' costs and expenses (including all reasonable attorneys' fees) related to Cummins' enforcement and collection of unpaid invoices, or any other enforcement of this Agreement by Cummins. Unless otherwise stated, the Quote excludes all applicable local, state, or federal sales and/or use or similar taxes which Cummins is required by applicable laws to collect from Customer and shall be stated on the invoice.
4. **DELAYS.** Any performance dates indicated in this Agreement are estimated and not guaranteed. Cummins shall not be liable for any delays in performance however occasioned, including any that result directly or indirectly from acts of Customer or causes beyond Cummins' control, including but not limited to acts of God, accidents, fire, explosions, flood, unusual weather conditions, acts of government authority, or labor disputes.
5. **WARRANTY.** Cummins shall perform the Services in a reasonable and workmanlike manner. Parts and components supplied under this Agreement are governed by the express written manufacturer's limited warranty. No other warranty for parts or components is provided under this Agreement. All Services shall be free from defects in workmanship for a period of ninety (90) days after completion of Services. In the event of a warrantable defect in workmanship of Services supplied under this Agreement ('Warrantable Defect'), Cummins' obligation shall be solely limited to correcting the Warrantable Defect. Cummins shall correct the Warrantable Defect where (i) such Warrantable Defect becomes apparent to Customer during the warranty period; (ii) Cummins receives written notice of any Warrantable Defect within thirty (30) days following discovery by Customer; and (iii) Cummins has determined that there is a Warrantable Defect. Warrantable Defects remedied under this provision shall be subject to the remaining warranty period of the original warranty of the Services. New parts supplied during the remedy of Warrantable Defects are warranted for the balance of the warranty period still available from the original warranty of such parts. The remedies set forth in this Section 5 shall not be deemed to have failed of their essential purpose so long as Cummins is willing to correct defective Services or refund the purchase price therefor.
6. **LIMITATIONS OF WARRANTIES AND LIABILITY.** THE REMEDIES PROVIDED IN THE LIMITED WARRANTY AND THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES PROVIDED BY CUMMINS TO THE CUSTOMER UNDER THIS AGREEMENT. EXCEPT AS SET OUT IN THE WARRANTY AND THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY LAW, CUMMINS EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, ENDORSEMENTS, AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY STATUTORY OR COMMON LAW IMPLIED REPRESENTATIONS, WARRANTIES AND CONDITIONS OF FITNESS FOR A PURPOSE OR MERCHANTABILITY. NOTWITHSTANDING ANY OTHER TERM OF THIS AGREEMENT, IN NO EVENT SHALL CUMMINS, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION DOWNTIME, LOSS OF PROFIT OR REVENUE, LOSS OF DATA, LOSS OF OPPORTUNITY, DAMAGE TO GOODWILL, AND DAMAGES CAUSED BY DELAYS) IN ANY WAY RELATED TO OR ARISING FROM CUMMINS' SUPPLY OF PARTS OR SERVICES UNDER THIS AGREEMENT. IN NO EVENT SHALL CUMMINS' LIABILITY TO CUSTOMER OR ANY THIRD PARTY CLAIMING DIRECTLY THROUGH CUSTOMER OR ON CUSTOMER'S BEHALF UNDER THIS AGREEMENT EXCEED THE TOTAL COST OF PARTS AND SERVICES SUPPLIED BY CUMMINS UNDER THIS AGREEMENT. BY ACCEPTANCE OF THIS AGREEMENT, CUSTOMER ACKNOWLEDGES CUSTOMER'S SOLE REMEDY AGAINST CUMMINS FOR ANY LOSS SHALL BE THE REMEDY PROVIDED HEREIN.
7. **INDEMNITY.** Customer shall indemnify, defend and hold harmless Cummins from and against any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, brought against or incurred by Cummins related to or arising out of this Agreement or the Services supplied under this Agreement (collectively, the 'Claims'), where such Claims were caused or contributed to by, in whole or in part, the acts, omissions, fault or negligence of the Customer. Customer shall present any Claims covered by this indemnity to its insurance carrier unless Cummins directs that the defense will be handled by Cummins' legal counsel at Customer's expense.
8. **CONFIDENTIALITY.** Each party shall keep confidential any information received from the other that is not generally known to the public and at the time of disclosure, would reasonably be understood by the receiving party to be proprietary or confidential, whether disclosed in oral, written, visual, electronic or other form, and which the receiving party (or agents) learns in connection with this Agreement including, but not limited to: (a) business plans, strategies, sales, projects and analyses; (b) financial information, pricing, and fee structures; (c) business processes, methods and models; (d) employee and supplier information; (e) specifications; and (f) the terms and conditions of this Agreement. Each party shall take necessary steps to ensure compliance with this provision by its employees and agents.
9. **GOVERNING LAW.** This Agreement and all matters arising hereunder shall be governed by and construed in accordance with the laws of the State of Indiana without giving effect to any choice of law provision. The parties agree that the courts of the State of Indiana shall have exclusive jurisdiction to settle any dispute or claim arising in connection with this Agreement.
10. **INSURANCE.** Upon Customer's request, Cummins will provide to Customer a Certificate of Insurance evidencing Cummins' relevant insurance coverage.
11. **ASSIGNMENT.** This Agreement shall be binding on the parties and their successors and assigns. Customer shall not assign this Agreement without the prior written consent of Cummins.
12. **INTELLECTUAL PROPERTY.** Any intellectual property rights created by either party, whether independently or jointly, in the course of the performance of this Agreement or otherwise related to Cummins pre-existing intellectual property or subject matter related thereto, shall be Cummins' property. Customer agrees to assign, and does hereby assign, all right, title, and interest to such intellectual property to Cummins. Any Cummins pre-existing intellectual property shall remain Cummins' property. Nothing in this Agreement shall be deemed to have given Customer a license or any other rights to use any of the intellectual property rights of Cummins.
13. **MISCELLANEOUS.** Cummins shall be an independent contractor with respect to the Services performed under this Agreement. All notices under this Agreement shall be in writing and be delivered personally, mailed via first class certified or registered mail, or sent by a nationally recognized express courier service to the addresses set forth in the Quote. No amendment of this Agreement shall be valid unless it is in writing and signed by the parties hereto. Failure of either party to require performance by the other party of any provision hereof shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver by a party of a breach of any of the provisions hereof constitute a waiver of any succeeding breach. Any provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms hereof.
14. **ON-CALL SERVICES.** Upon Customer's request, Cummins shall provide on-call services (repair, emergency work or other) on the Equipment ('On-call Services'). Any On-call Services shall be invoiced to the Customer at the Cummins current hour rate (including traveling) and shall be governed by the terms and conditions of this Agreement.



Sales and Service

April 6, 2022

Broken Arrow Isd
701 S Main St
Broken Arrow, OK 74012

Re: Planned Maintenance Quote

Attention : Luanne Goodacre

Cummins Sales and Service is a premier engine and power generation systems provider committed to delivering fast and proven solutions to our customers. We are pleased to offer you a Planned Maintenance Proposal for your review and approval. Due to the critical nature of your standby power system, this Agreement was developed based on your specific needs and equipment to ensure maximum performance and reliability.

Benefits of Planned Maintenance:

- Improves system reliability.
 - Maintenance performed by certified technicians specifically trained in power generation.
 - PM customers receive preferred service for unscheduled emergency repairs.
 - Creation of a service record for customer equipment.
 - Additional maintenance recommendations documented at that time.
- Scheduling managed by Cummins Sales and Service to ensure timely maintenance intervals.
- Eliminates administrative burden, covers equipment from multiple vendors.

Please sign, date and return the enclosed Agreement to our office along with any purchase documentation necessary so we can tend to your servicing needs. Planned Maintenance Agreements are "auto-renewed" annually prior to the end of your agreement. Should you have any questions or require additional information on this or any other subject relating to your equipment, please feel free to contact me. We look forward to the opportunity to earn your trust and business.

Sincerely,

Scott E Baker



Sales and Service

PLANNED MAINTENANCE AGREEMENT

<u>Customer Address</u>	<u>Customer Contact</u>	<u>Quote Information</u>
BROKEN ARROW ISD ACCOUNTS PAYABLE 701 S MAIN ST Broken Arrow, OK 74012	Contact: Luanne Goodacre Phone: 918 259-4565 Fax: 918 251-9095 Cust Id: 30417	Quote Date: 06-APR-22 Quote Expires: 06-APR-23 Quote Num: 20958 Quoted By: Scott E Baker Quote Term: 1 Year(s)

Please reference Cummins Southern Plains, LLC Planned Maintenance Agreement Scope of Work for further details.

OPTIONAL SERVICES AVAILABLE:

- Infra-Red Thermography (ATS/Gen/Switchgear/Distribution)
- Oil Sample Analysis - Fuel Sample Analysis
- Coolant Sample Analysis - Battery Replacement
- Air Filter Replacement - Remote Monitoring
- Diesel Fuel Polishing - Insulation Resistance Testing
- Loadbank Testing - Power Quality (recording/measuring)
- Vibration Testing

***All other work will be performed on a time and material basis.

Standard Agreement Amount	\$5,036.40
Proposal Total	\$5,036.40

THERE ARE ADDITIONAL CONTRACT TERMS AND CONDITIONS ON THE REVERSE SIDE OF THIS DOCUMENT, INCLUDING LIMITATIONS OF WARRANTIES AND LIABILITY, WHICH ARE EXPRESSLY INCORPORATED HEREIN. CUSTOMER ACKNOWLEDGES THAT THE CONTRACT TERMS AND CONDITIONS HAVE BEEN READ, FULLY UNDERSTOOD, AND ACCEPTED.

Customer Approval _____

CUMMINS SOUTHERN PLAINS LLC _____

Signature: _____

Signature: _____

Date: _____

Date: _____

PLANNED MAINTENANCE AGREEMENT TERMS AND CONDITIONS

These Planned Maintenance Agreement Terms and Conditions, together with the Quote on the front side and the Scope of Services, are hereinafter referred to as this 'Agreement' and shall constitute the entire agreement between the customer identified in the Quote ('Customer') and Cummins Southern Plains LLC ('Cummins') and supersede any previous agreement or understanding (oral or written) between the parties with respect to the subject matter of this Agreement. In the event of any inconsistency between this Agreement and any purchase order, terms and conditions or other document produced or delivered by Customer, the terms and conditions of this Agreement shall take precedence.

1. **SCOPE OF SERVICES; PERFORMANCE OF SERVICES.** Cummins shall perform the maintenance ("Services") on the equipment identified in the Quote ("Equipment") in accordance with the schedule specified in the Quote. The Services include those services defined in the 'Service Event' section of the Quote. No additional services or materials are included in this Agreement unless agreed upon by the parties in writing. Unless otherwise indicated in the Quote, Cummins will provide the labor and tools necessary to perform the Services and shall keep Customer's property free from accumulation of waste materials caused by Cummins' operations. Either party may terminate this Agreement with or without cause by providing thirty (30) days written notice to the other.

2. **CUSTOMER OBLIGATIONS.** Customer shall provide Cummins safe access to Customer's site and arrange for all related services and utilities necessary for Cummins to perform the Services. During the performance of the Services, Customer shall fully and completely secure all or any part of any facility where the Equipment is located to remove and mitigate any and all safety issues and risks, including but not limited to facility occupants, customers, invoices, or any third party and or property damage or work interruption arising out of the Services. Customer shall make all necessary arrangement to address and mitigate the consequences of any electrical service interruption which might occur during the Services. CUSTOMER IS RESPONSIBLE FOR OPERATING AND MAINTAINING THE EQUIPMENT IN ACCORDANCE WITH THE OWNER'S MANUAL FOR THE EQUIPMENT.

3. **PAYMENT TERMS.** Unless otherwise agreed to by the parties in writing and subject to credit approval by Cummins, payments are due thirty (30) days from the date of the invoice. If Customer does not have approved credit with Cummins, as solely determined by Cummins, payments are due in advance or at the time of supply of the Services. If payment is not received when due, in addition to any rights Cummins may have at law, Cummins may charge Customer eighteen percent (18%) interest annually on late payments, or the maximum amount allowed by law. Customer agrees to pay all Cummins' costs and expenses (including all reasonable attorneys' fees) related to Cummins' enforcement and collection of unpaid invoices, or any other enforcement of this Agreement by Cummins. Unless otherwise stated, the Quote excludes all applicable local, state, or federal sales and/or use or similar taxes which Cummins is required by applicable laws to collect from Customer and shall be stated on the invoice.

4. **DELAYS.** Any performance dates indicated in this Agreement are estimated and not guaranteed. Cummins shall not be liable for any delays in performance however occasioned, including any that result directly or indirectly from acts of Customer or causes beyond Cummins' control, including but not limited to acts of God, accidents, fire, explosions, flood, unusual weather conditions, acts of government authority, or labor disputes.

5. **WARRANTY.** Cummins shall perform the Services in a reasonable and workmanlike manner. Parts and components supplied under this Agreement are governed by the express written manufacturer's limited warranty. No other warranty for parts or components is provided under this Agreement. All Services shall be free from defects in workmanship for a period of ninety (90) days after completion of Services. In the event of a warrantable defect in workmanship of Services supplied under this Agreement ('Warrantable Defect'), Cummins' obligation shall be solely limited to correcting the Warrantable Defect. Cummins shall correct the Warrantable Defect where (i) such Warrantable Defect becomes apparent to Customer during the warranty period; (ii) Cummins receives written notice of any Warrantable Defect within thirty (30) days following discovery by Customer; and (iii) Cummins has determined that there is a Warrantable Defect. Warrantable Defects remedied under this provision shall be subject to the remaining warranty period of the original warranty of the Services. New parts supplied during the remedy of Warrantable Defects are warranted for the balance of the warranty period still available from the original warranty of such parts. The remedies set forth in this Section 5 shall not be deemed to have failed of their essential purpose so long as Cummins is willing to correct defective Services or refund the purchase price therefor.

6. **LIMITATIONS OF WARRANTIES AND LIABILITY.** THE REMEDIES PROVIDED IN THE LIMITED WARRANTY AND THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES PROVIDED BY CUMMINS TO THE CUSTOMER UNDER THIS AGREEMENT. EXCEPT AS SET OUT IN THE WARRANTY AND THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY LAW, CUMMINS EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, ENDORSEMENTS, AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY STATUTORY OR COMMON LAW IMPLIED REPRESENTATIONS, WARRANTIES AND CONDITIONS OF FITNESS FOR A PURPOSE OR MERCHANTABILITY. NOTWITHSTANDING ANY OTHER TERM OF THIS AGREEMENT, IN NO EVENT SHALL CUMMINS, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION DOWNTIME, LOSS OF PROFIT OR REVENUE, LOSS OF DATA, LOSS OF OPPORTUNITY, DAMAGE TO GOODWILL, AND DAMAGES CAUSED BY DELAYS) IN ANY WAY RELATED TO OR ARISING FROM CUMMINS' SUPPLY OF PARTS OR SERVICES UNDER THIS AGREEMENT. IN NO EVENT SHALL CUMMINS' LIABILITY TO CUSTOMER OR ANY THIRD PARTY CLAIMING DIRECTLY THROUGH CUSTOMER OR ON CUSTOMER'S BEHALF UNDER THIS AGREEMENT EXCEED THE TOTAL COST OF PARTS AND SERVICES SUPPLIED BY CUMMINS UNDER THIS AGREEMENT. BY ACCEPTANCE OF THIS AGREEMENT, CUSTOMER ACKNOWLEDGES CUSTOMER'S SOLE REMEDY AGAINST CUMMINS FOR ANY LOSS SHALL BE THE REMEDY PROVIDED HEREIN.

7. **INDEMNITY.** Customer shall indemnify, defend and hold harmless Cummins from and against any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, brought against or incurred by Cummins related to or arising out of this Agreement or the Services supplied under this Agreement (collectively, the 'Claims'), where such Claims were caused or contributed to by, in whole or in part, the acts, omissions, fault or negligence of the Customer. Customer shall present any Claims covered by this indemnity to its insurance carrier unless Cummins directs that the defense will be handled by Cummins' legal counsel at Customer's expense.

8. **CONFIDENTIALITY.** Each party shall keep confidential any information received from the other that is not generally known to the public and at the time of disclosure, would reasonably be understood by the receiving party to be proprietary or confidential, whether disclosed in oral, written, visual, electronic or other form, and which the receiving party (or agents) learns in connection with this Agreement including, but not limited to: (a) business plans, strategies, sales, projects and analyses; (b) financial information, pricing, and fee structures; (c) business processes, methods and models; (d) employee and supplier information; (e) specifications; and (f) the terms and conditions of this Agreement. Each party shall take necessary steps to ensure compliance with this provision by its employees and agents.

9. **GOVERNING LAW.** This Agreement and all matters arising hereunder shall be governed by and construed in accordance with the laws of the State of Indiana without giving effect to any choice or conflict of law provision. The parties agree that the courts of the State of Indiana shall have exclusive jurisdiction to settle any dispute or claim arising in connection with this Agreement.

10. **INSURANCE.** Upon Customer's request, Cummins will provide to Customer a Certificate of Insurance evidencing Cummins' relevant insurance coverage.

11. **ASSIGNMENT.** This Agreement shall be binding on the parties and their successors and assigns. Customer shall not assign this Agreement without the prior written consent of Cummins.

12. **INTELLECTUAL PROPERTY.** Any intellectual property rights created by either party, whether independently or jointly, in the course of the performance of this Agreement or otherwise related to Cummins pre-existing intellectual property or subject matter related thereto, shall be Cummins' property. Customer agrees to assign, and does hereby assign, all right, title, and interest to such intellectual property to Cummins. Any Cummins pre-existing intellectual property shall remain Cummins' property. Nothing in this Agreement shall be deemed to have given Customer a license or any other rights to use any of the intellectual property rights of Cummins.

13. **MISCELLANEOUS.** Cummins shall be an independent contractor with respect to the Services performed under this Agreement. All notices under this Agreement shall be in writing and be delivered personally, mailed via first class certified or registered mail, or sent by a nationally recognized express courier service to the addresses set forth in the Quote. No amendment of this Agreement shall be valid unless it is in writing and signed by the parties hereto. Failure of either party to require performance by the other party of any provision hereof shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver by a party of a breach of any of the provisions hereof constitute a waiver of any succeeding breach. Any provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms hereof.

14. **ON-CALL SERVICES.** Upon Customer's request, Cummins shall provide on-call services (repair, emergency work or other) on the Equipment ('On-call Services'). Any On-call Services shall be invoiced to the Customer at the Cummins current hour rate (including traveling) and shall be governed by the terms and conditions of this Agreement.