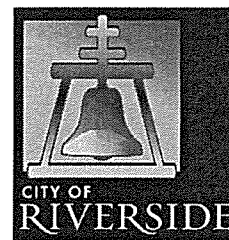


DATE: March 16, 2017

PARTIES: BABCOCK & WILCOX POWER GENERATION  
GROUP, INC.

PROJECT DESCRIPTION/BID NO.: Software Service Order Quote  
S2016\_115r5



*City of Arts & Innovation*

Approved by [City Council] [Agency] on  
☒ Anticipated [City Council] [Agency] future agenda of April 10, 2017  
No [City Council] [Agency] action required

Insurance required:	Bonds required:	CFO Signature required:
<input checked="" type="checkbox"/> No	No	No
Yes	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Yes

Type of Insurance required (unless waived by the Risk Manager):  
Commercial General Liability  
Automobile Liability  
Professional Liability  
Workers' Compensation  
Additional Insured Endorsement  
Other:

Business Tax Certificate Required:  
☒ Yes  
No

Agreement date(s):  
[City Council] [Agency] Approval Date:  
☒ Date City/Agency Executes  
Other:  
☒ Agreement Expiration Date: June 24, 2020

Comments:

Department: Public Utilities  
Contact person: James Perez  
Approved as to form by: Susan Wilson  
CA #: 16-1648

c: Purchasing/Risk  
Originating Department

*Department Head Approval:*  
Attached/Signature Page  
Requested

*Finance Approval:*

## **AUTHORIZED SIGNATURES ON TRANSACTION DOCUMENTS**

### **I. FOR CORPORATIONS (Corporations Code §313)**

A. A corporation requires two (2) signatures, one from an officer in A and B below:

**-A-**

**One from either the:**

- President
- Any Vice President
- Chairman of the Board

**AND**

**-B-**

**One from either the:**

- Secretary
- Any Assistant Secretary
- Chief Financial Officer
- Any Assistant Treasurer

B. If unable to obtain two signatures as set forth above, then a Corporate Resolution is required. A Corporate Resolution grants specific (or general) signing authority to a named individual, officer, director, etc., for a stated transaction and is signed by the Secretary of the corporation.

### **II. LIMITED LIABILITY COMPANIES (Corporations Code §§17704.07 et. seq.)**

A copy of the Operating Agreement is required, which grants specific signing authority to individuals to sign on behalf of the LLC. Please provide a copy of the Operating Agreement to the City Attorney's Office for determination of required signatures.

### **III. LIMITED OR GENERAL PARTNERSHIPS (Corporations Code §§16301 et. seq.)**

Obtain a copy of the documents identifying the General Partner(s) authorized to execute documents on behalf of the partnership. This requirement will be the same for both General and Limited Partnerships.

### **IV. OTHER**

Contact the City Attorney's Office to review other forms of title ownership or business entities.



## The Babcock and Wilcox Company

► 2849 sterling drive ► hatfield, pa 19440 usa  
► phone 215.996.9200 ► fax 330.860.8982 ► www.babcock.com

City of Riverside  
5901 Payton Avenue  
Riverside, California 92504

Software Service Quote: S2016\_115r5

Quote Date		Payment Terms	Proposal Validity
February 15, 2017		Net 30 Days from date of invoice	120 Days
Item	Description	Basic Plan	
1	<p>The Babcock and Wilcox Company (Seller) will provide 24 Hour/Day and 7 Day/Week Technical Software Support Services, as specified in the attached scope of work to Riverside Public Utility Generation (Buyer) for the City of Riverside (Site) as listed on the Definition of Coverage Agreement attached herein as Appendix A.</p> <p>Coverage as follows:</p> <p>RERC \$7,700 per year Springs \$6,380 per year Clearwater \$6,050 per year</p> <p><b>PLEASE NOTE: This Proposal is for 3 years per customer request. Term of contract: 6/25/17 through 6/24/20. Support Contract covers RERC, Springs and Clearwater. ** City of Riverside can opt out each year with 60 days written notice.</b></p>	\$60,390	
2	<p>The Babcock and Wilcox Company ("Seller") will provide <b>Quarterly Electronic Data Reporting ("EDR") Generation Services</b> as specified in the attached Scope of Work for one (1) EDR source at the City of Riverside facility ("Site"). EDR Generation will be provided for four (4) calendar quarters.</p> <p>Buyer must complete and return a signed copy of the Definition of Coverage Agreement included as Appendix A.</p>	\$26,400 (payable @ \$2,200 per quarter)	

The attached Terms and Conditions shall apply herein and are incorporated in this contract by reference



## The Babcock and Wilcox Company

► 2849 sterling drive ► hatfield, pa 19440 usa

► phone 215.996.9200 ► fax 330.860.8982 ► www.babcock.com

### Appendix A Definition of Coverage Agreement

This document outlines all systems covered under the referenced software service agreement. Only those systems identified herein will be provided coverage under the service agreement. If changes to the units, computers, or any connected equipment are required, a revision to this document must be negotiated between the customer and Babcock & Wilcox

Customer: Riverside Public Utility Generation Division  
Site: City of Riverside

#### DAHS Details:

Computer Name	Unit Description	Connected CEMS Controller	Regulations	Duration
	RERC	4	Part 75, Part 60 RECLAIM	6/25/17 through 6/24/20
	Springs	4	Part 60, RECLAIM	6/25/17 through 6/24/20
	Clearwater	1	Part 60, RECLAIM	6/25/17 through 6/24/20



The Babcock and Wilcox Company

► 2849 sterling drive ► hatfield, pa 19440 usa

► phone 215.996.9200 ► fax 330.860.8982 ► www.babcock.com

## DAHS Software Support Packages

	Preventive	Basic	Plus
NetDAHS Software Updates (bug fixes)	✓	✓	✓
NetDAHS Software Updates (enhancements)		✓	✓
New NetDAHS Software Products (Smart Reports, etc.)			✓
Access to online web community, including knowledge base	✓	✓	✓
Access to web-based training sessions with no tuition fees		2	unlimited
Seats at regional training sessions with no additional tuition fees		2	2
Telephone & email based technical support (business hours)	✓	✓	✓
Emergency, after-hours technical support (24 x 7)		✓	✓
Regular review calls with support staff (quarterly or as needed)			✓
EDR troubleshooting, investigation and error remediation		✓	✓
Monitoring Plan revision assistance			✓
Assistance to install NetDAHS Software Updates (business hours)		✓	✓
DAHS Server Rebuild Assistance (business hours)	✓	✓	✓
Support customer's backup, spare DAHS server (24 x 7)		✓	✓
Temporary DAHS server use while primary server is repaired (repair costs are extra)			✓
Support changes in required 3 <sup>rd</sup> party software (Windows OS, MS SQL)	✓	✓	✓
Support changes in Acid Rain air regulations (ECMPS Updates, Policy Manual Rev.)	✓	✓	✓
Assistance to install operating system, Internet Browser, and anti-virus software updates			✓
Support new federal air regulations (GHG, NSPS)			✓
Support changes in current state/local air regulations/definitions		✓	✓
Support new state/local air regulations			✓
Support air permit modifications		✓	✓
Support regulatory based system changes (range changes)		✓	✓
Support non-regulatory based configuration changes (analyzer diagnostic channels)			✓
Support configuration changes needed for equipment changes			✓
Transferable software license for DAHS server	✓	✓	✓

**B&W PROPRIETARY AND CONFIDENTIAL**

Copyright © 2016 The Babcock & Wilcox Company

All rights reserved.



The Babcock and Wilcox Company

► 2849 sterling drive ► hatfield, pa 19440 usa

► phone 215.996.9200 ► fax 330.860.8982 ► www.babcock.com

## Brief Summary of Coverage Options

**Preventive Plan Coverage** provides minimum coverage to remain compliant with changing regulations. This coverage is designed for the super user who is familiar with NetDAHS software and able to remain self sufficient, or users whose regulatory needs are simple and unchallenging.

**Basic Coverage** adds value for the NetDAHS user who will interact more frequently with our service team. This plan includes enhancements to the NetDAHS software that are designed to make the software perform better or add user value. This coverage is designed to meet the needs of most customers, while acknowledging that occasional system changes may require a purchase order.

**Plus Coverage** is our premium option for customers who want to know that almost all scenarios are covered. It provides investment in the software development team to create new products with the knowledge that those products will be provided to the customer with no additional license fees.

## Definition of Service Support Package

All units covered under the service agreement must be listed in the definition of coverage document. The customer is only entitled to coverage for the identified computer server(s), contract duration and reporting requirements. Support for additional units, customer owned spare computer servers, modification to units, etc., is not provided under this software service agreement unless the units are specifically called out on the definition of coverage sheet.

B&W's responsibilities under the software service agreement are limited to providing assistance in the use of the covered software products to enable our customers to meet their air emissions regulatory obligations. B&W is not liable to modify the software in any way if a suitable solution is available that will allow customers to remain compliant with the regulations. Software enhancement suggestions will be solicited and ranked according to B&W processes to determine which updates will be developed and the development timeframe.

Coverage is offered solely for the programs listed on the definition of coverage document. Any external systems, which may include scripts, Excel macros, database queries, etc., are specifically excluded from the software service agreements. B&W cannot guarantee future compatibility with any external systems, and will not be responsible to replace any external systems with alternative solutions should they be rendered non-functional by an update of the covered software product.

### Regulation Interpretation:

The customer is responsible for interpreting regulations and permit requirements, and necessary QA to determine compliance. B&W will provide a good faith effort to help interpret applicable regulations and permit requirements, review, audit and / or provide guidance for modifying the configuration of the NetDAHS, in order to help facilitate the customer's regulatory obligations or business objectives. Modifications to NetDAHS, its configuration or time spent reviewing regulatory or permit requirements may be at an additional charge if it is determined to go beyond the scope of work defined within this contract.

### Scheduling:

To receive timely support, the customer must contact B&W following proper procedures. The i-Site service request feature will facilitate the requests. All cases will be assigned a priority based on the severity of the issue and any upcoming deadlines. Cases will be handled according to the priority assigned to provide the best level of service to all customers. Requests to complete a service request in a specific manner may require additional costs and may not be possible to oblige.

***B&W PROPRIETARY AND CONFIDENTIAL***

*Copyright © 2016 The Babcock & Wilcox Company*

*All rights reserved.*



The Babcock and Wilcox Company

► 2849 sterling drive ► hatfield, pa 19440 usa

► phone 215.996.9200 ► fax 330.860.8982 ► www.babcock.com

The customer is an integral partner in resolving support requests in a timely fashion. Customer responsibilities include: providing accurate data about the issues, assisting with collection of information about the system and settings, debugging and troubleshooting steps as directed by B&W, etc

Customers who decline to purchase a service agreement may be afforded software service at published rates for T&M service; however, any service to customers without service agreements will be done at a lower priority level than customers with service agreements. During critical high-usage times, customers without service agreements may face significant waiting time before their request may be addressed, regardless of any pending deadlines or operational issues.

Customers choosing to reinstate lapsed service agreements or increase the level of purchased service may be required to purchase additional items to initiate the new service agreement. These items may include, but are not limited to: license fees for software version updates to current level, equipment upgrades, payment of a reinstatement fee, etc.

### **Customer Changes:**

The covered software products are designed and tested on specific settings and environments for the operating system, security settings, etc. If the customer alters any settings within the computer environment, including but not limited to: security settings, anti-virus settings, users and passwords, service may stop until such time the customer restores all settings to the requirements as originally configured by B&W.

### **Software Obsolescence:**

From time to time, older versions of the software products may become obsolete and support will be discontinued for such versions. The existence of a service agreement will not alter B&W's right to declare obsolescence and stop support for older versions. Should this occur, B&W will offer an alternative solution or upgrade path proposal.

### **Connectivity:**

The provided services under this agreement include work done at a location of B&W's choosing. The customer is responsible to provide suitable, secure remote connectivity to all covered computer servers. This remote access must be of sufficient speed to allow remote troubleshooting and diagnostics. Many modem and phone line connections show degraded performance and would not qualify as a sufficient connection. Additional fees may be required for expenses related to any unusual requirements to obtain or maintain this remote connection. Such expenses may include: requirement to perform background checks on B&W employees to gain access, requirements for maintenance logins to satisfy security timeouts, requirements for any specific hardware, software or services for B&W to remain connected.

B&W will be notifying the customer in writing of the existence of a non-suitable remote connection, including details of how the connection fails to meet minimum requirements. If the customer fails to provide a response and remediation plan after 60 days of receiving notice, B&W's obligations to provide service may be terminated.

### **Additional Fees:**

B&W may impose additional fees for providing on-site service, service of an unusually high demand level when compared to other users of similar products in the B&W users group, and any services not specifically included in the service agreement.

On-site service requests may face a significant delay in scheduling the individual with the proper level of skills, and would involve additional charges for travel and site time plus expenses, regardless of the reason that on-site service is requested.

***B&W PROPRIETARY AND CONFIDENTIAL***

*Copyright © 2016 The Babcock & Wilcox Company*

All rights reserved.



The Babcock and Wilcox Company

► 2849 sterling drive ► hatfield, pa 19440 usa

► phone 215.996.9200 ► fax 330.860.8982 ► [www.babcock.com](http://www.babcock.com)

### **Training:**

The customer is responsible for ensuring their staff members are qualified to perform their job objectives, including ensuring staff members have adequate training and experience. B&W is not obligated to provide training to customers to perform their job duties. B&W may offer training courses at additional cost to bring the customer knowledge up to necessary levels.

Various types of on-line or regional training courses may be offered throughout the year. Depending on the support package selected, these may be attended free of charge. Additional customized training courses can also be offered as requested.





The Babcock and Wilcox Company

► 2849 sterling drive ► hatfield, pa 19440 usa

► phone 215.996.9200 ► fax 330.860.8982 ► www.babcock.com

## Definition of Terms

### Software Updates

B&W continually updates and enhances the NetDAHS product for many reasons, including: bug fixes, new features, performance or usability improvements, and updates to stay current with third party revisions (ECMPS updates and new check specs). Software updates are released in the form of incremental versions or update releases. These updates are made available with no additional software license fees to customers with the appropriate service contract via downloadable software update packages.

### NetDAHS Software Updates

Bug fixes will correct identified defects in the software that prevent it from working as intended. Software bugs are identified through internal software testing, as well as external customer experiences. Once a bug is identified, it will be evaluated for potential impact, including severity and number of customers affected. The solution to all software bugs will be given priority based on the above considerations. B&W will address all software bugs through a modification of the covered software or developing a suitable workaround solution. When software defects are corrected, the updated software will be released as a software update. These updates will be available to customers with service agreements with no licensing or access fees.

Enhancements are any updates to the NetDAHS software that are not considered bug fixes. This can include performance improvements, new features and changes to maintain compliance with continual regulatory updates. These enhancements may result from customer suggestions or internal continuous improvement practices. Potential enhancements are evaluated according to benefits level, number of customers that may benefit, and level of complexity required to implement. Enhancements will be included in new software versions or updates and will be enabled at no additional cost for customers with the proper level of service agreement. Customers with base level service agreements may receive software enhancements for an additional fee per release.

### New NetDAHS Software Products (Smart Reports or other products)

New products are occasionally released to provide additional functionality to the NetDAHS software product. Any time a new product for the DAHS server is released, customers with the appropriate level of service contract will receive the new product with no additional licensing fees. New products are typically not required to remain compliant with regulatory drivers, but rather expand the features or usability of the DAHS for accessing emissions data. Note that only new products that are installed on the DAHS server itself are subject to this provision. If a new product is designed and released to run on hardware other than the DAHS server, the product and any additional hardware needed would be subject to additional charges.

B&W will provide the new product and instructions for standard configuration of the product if necessary. Any customization of the configuration to meet customer's specific needs will be the customer's responsibility.

B&W may design and produce a new software product for a significantly different market or functionality than the customer's configuration at the time. In such cases, sales of the new product and its inclusion into the software service agreement would be subject to additional fees, providing the customer the option to purchase this product if desired. Customers will not be eligible to receive any or all new software products created by B&W regardless of the software service agreement level.



## The Babcock and Wilcox Company

► 2849 sterling drive ► hatfield, pa 19440 usa

► phone 215.996.9200 ► fax 330.860.8982 ► www.babcock.com

### **Access to online web community, including knowledge base**

B&W's web community provides a centralized area for:

- NetDAHS Software Downloads
- Database of Tech Tips / Knowledge Center
- Product Announcements
- Customer forums to share information
- Product Enhancement Requests

Customers with valid service contracts are provided access to the web community to enhance the experience of using NetDAHS software.

### **Priority access to web-based training seminars**

B&W will design and hold regular training seminars available to attend via remote meetings. To ensure organization and proper attention to the material, these training sessions will be limited in size according to B&W's discretion. Customers with the proper service level will be given priority access to the seats in web-based training classes. There will be no tuition fees for the training classes for these customers up to the number of attendees specified according to the level of service purchased.

### **Priority access to regional training seminars**

B&W will hold regional training sessions, including sessions at major industry conferences. Session locations and topics will be chosen to provide the best value to the most customers. Similar to web-based training, seats at these sessions will be limited and will be provided to customers with the proper level of service contract on a priority basis. No class tuition fees will be charged up to the number of seats according to the level of service purchased.

While we welcome suggestions for seminar locations or training class subjects, there is no guarantee on the frequency or content of the training classes. Class subjects will be chosen to benefit the most customers possible. B&W will design the training to attract a variety of customers across varying industries. B&W will reserve the right to reschedule, postpone or cancel training events if attendance or business goals will not be met.

### **Telephone and Email based technical support (business hours)**

Customers with service contracts may contact the software service team via email or phoning into the software service hotline during normal business hours of 8:00 am to 5:00 pm ET, excluding weekends and holidays.

B&W will create a Service Request based on the initial inquiry. Details about the case will be collected and a priority for the case established. Priorities are defined according to this methodology:

- **Priority 1 – Emergency** (see Emergency, after-hours technical support on page 8)  
Data Loss – Computer crash, data collection device issues, data is Comm Fail, actual or imminent loss of data  
Immediate deadline – Regulatory deadline within 5 days
- **Priority 2 – Non Emergency**  
All other covered requests will be covered in the order they are received while taking into consideration any approaching deadlines, operational issues, etc.
- **Priority 3 – Scheduled**  
Any case that is given a scheduled date for completion due to scope of the request, resource limitations, site schedule issues, etc.

***B&W PROPRIETARY AND CONFIDENTIAL***

*Copyright © 2016 The Babcock & Wilcox Company*

*All rights reserved.*



## The Babcock and Wilcox Company

► 2849 sterling drive ► hatfield, pa 19440 usa  
► phone 215.996.9200 ► fax 330.860.8982 ► www.babcock.com

All cases are worked in accordance with their priority, initial reported time and target delivery time, while taking customer's urgency under consideration.

High priority cases may have partial work done to solve the urgent situation. If additional work remains after the urgent work is completed, the case may be held open, but re-prioritized to a lower level to match the remaining work on the request.

Cases will be closed when B&W technicians have identified the source of the issue and provided a solution to the customer. The solution may include:

- Guidance on steps needed to be taken by customer's representative to edit data, answer episodes or work in the NetDAHS software in other ways
- Changes to customer configuration or system information to produce the desired result
- Instructions for customer to comply with minimum system requirements for computer system (domain settings, etc.)
- Update the NetDAHS or iNet CEMS Controller to the latest software versions
- Steps by customer representative to remove or alter any third party software or equipment
- Recommendation that customer purchase specific services from B&W such as training, engineering consultation, etc.

### **Emergency, after-hours technical support**

Customers may call the 24 x 7 hotline for support services around the clock, including weekends and holidays. The B&W technician will review the situation and confirm an emergency case exists. All calls to the emergency hotline should be Priority 1 cases dealing with actual or imminent loss of data conditions. Once confirmed, steps will be taken to find a solution to the emergency condition. If the urgent situation can be corrected, but other work remains, the case may be left open and re-prioritized to a lower level. Work on the remaining issues would resume when possible during normal business hours.

The customer agrees to follow these critical portions of the after-hours emergency support plan:

- Only customers with current, valid service contracts for 24 x 7 support are entitled to contact B&W on this hotline
- The hotline phone number will not be disclosed to anyone without a direct need to support equipment after-hours
- Routine cases will be handled during normal business hours and not reported to the after-hours number

### **Regular review calls with support staff**

B&W will make available organized times with the software support staff for conference call meetings to review all outstanding issues and discuss operation of the software. Such meetings will be scheduled to accommodate the operational needs of the customer and availability of the support staff. Quarterly meetings via conference calling is considered the normal frequency.

***B&W PROPRIETARY AND CONFIDENTIAL***

*Copyright © 2016 The Babcock & Wilcox Company  
All rights reserved.*



The Babcock and Wilcox Company

► 2849 sterling drive ► hatfield, pa 19440 usa

► phone 215.996.9200 ► fax 330.860.8982 ► www.babcock.com

## **EDR Debugging & Troubleshooting**

Generation of Electronic Data Reports for the Acid Rain program will result in a full representation of all data collected by the DAHS in the quarter. Once generated, the EDR file must be error checked through the US EPA's ECMPS software. The evaluation may produce errors in the file due to a number of reasons, not limited to: incorrect method of evaluating files, incorrect data entry, issues with minute data such as online status matching, software bugs, etc.

For customers with the appropriate level of coverage, B&W will provide assistance with debugging and troubleshooting any error messages that are displayed once EDR files are evaluated in ECMPS, regardless of the root cause of the error. The resolution of such issues may include instructions to evaluate quality assurance files, and then re-evaluate emissions files, correcting entries in the DAHS software, or editing data on the DAHS.

It is possible to correct some issue through manual revision of the information in the xml format EDR. B&W may provide instructions to the end user in how this must be done if there is no other solution to the situation.

For customers with lower level service agreements, the customer must use ECMPS software and the XML EDR files to perform this debugging, or may request B&W's assistance subject to the standard T&M rate sheets. If the error is caused by NetDAHS software not being compliant with the latest ECMPS release, the diagnostic and troubleshooting time to determine the root issue will only be covered for customers with the proper level of service agreement.

## **Monitoring Plan Revision Assistance**

Normal operation of the CEMS and DAHS will require periodic evaluation and modification of the monitoring plan. This may include performing span evaluations, evaluating operational patterns, modifying operational bin limits, etc. Assistance with these tasks will be provided to customers with the proper level of coverage. If this service is not included in the customer's service agreement, the customer is responsible to use the software tools to accomplish these requirements.

B&W may recommend and offer training for the customer to familiarize them with the steps in performing these tasks. Any in depth training as typically required to fully train replacement personnel would be offered with additional training costs.

## **Assistance to Install NetDAHS Software Updates**

If requested by the customer, B&W technicians will download and install any NetDAHS software updates when the updates are released. To make use of this service, the NetDAHS server must be installed on the customer network with sufficient access to B&W's web portal for downloading the software update file(s). If the file(s) cannot be downloaded from the web portal, the customer will be required to download the files and move them to the server using an alternative method.

Software update installation will be done during normal business hours within four weeks of the release of any software update package as well as receipt of the request for B&W to install the software update. Any unusual requirements to apply software updates may prevent delivery of this service item. Notification to the plant control room that a reboot will occur shortly is customary. The software update installation will be verified by checking the system after the update is applied. This check will include a brief functionality evaluation to ensure that no obvious issues have arisen during the installation of the software.



The Babcock and Wilcox Company

► 2849 sterling drive ► hatfield, pa 19440 usa

► phone 215.996.9200 ► fax 330.860.8982 ► www.babcock.com

### **DAHS Server Rebuild Assistance (business hours)**

B&W will provide assistance with rebuilding the DAHS computer server if the server has failed. This assistance may include remote services, or may require the computer server to be returned to a location chosen by B&W for rebuilding. The customer is responsible for round trip freight charges if the computer must be shipped for repair.

Server rebuilding assistance will be done during normal business hours only. It may be necessary to reload software that was originally provided with the NetDAHS server, such as the Windows Operating System or SQL Server. If this is required, the customer may need to provide the license key information from the original installation. If the license key is unavailable, the customer may provide a new license key, or B&W may have new licenses available for purchase at an additional cost.

The ability to recover from computer server failure depends on a strong disaster recovery plan, which is the responsibility of the customer. The customer must validate the backup strategy including backup media, settings of backups, checking backups, and storage of backup media in a safe location. B&W will not be responsible for loss of data related to improperly set up backup strategy, damaged backup image files, damage of backup media, file corruption, etc.

### **Support for customer's backup, spare DAHS server (24 x 7 coverage)**

B&W can provide assistance to bring a customer's spare DAHS server online in the event of primary computer server failure. To activate this service, the customer's spare DAHS server must be listed as a covered asset under the maintenance agreement and the customer is responsible to maintain software updates and functionality of the spare DAHS server. B&W will extend services to apply updates to the backup server according to the service level. This will require the backup server be powered up and accessible by remote connection when the updates are to be applied.

Support for the spare DAHS server in emergency conditions is limited to assistance with restoring backup images to the spare computer, updating the configuration to match the latest available backup image and establishing data collection with the iNet CEMS Controller to the backup computer.

B&W is not responsible for the quality or completeness of the backup images. If no suitable backup image is available to restore to the backup server, it may not be possible to make use of the spare server. The customer must ensure that timely backups are completed, the backups are complete and the backup images stored properly to ensure availability in case of primary computer server failure.

Identification of a suitable computer and maintenance of the computer is a critical component to the disaster recovery strategy. The customer is responsible to identify the spare computer and ensure that it is up to date on all updates. B&W cannot setup a new spare computer or convert a non-DAHS server into a working spare DAHS server during emergency conditions. The spare computer must be capable of accepting the configuration image if an emergency occurs. Creating a new spare computer or fixing a neglected spare computer that is out of date will be done during business hours only and at additional cost.

***B&W PROPRIETARY AND CONFIDENTIAL***

*Copyright © 2016 The Babcock & Wilcox Company*

*All rights reserved.*



## The Babcock and Wilcox Company

2849 sterling drive • hatfield, pa 19440 usa

phone 215.996.9200 • fax 330.860.8982 • www.babcock.com

### **Temporary DAHS server use while primary server is repaired**

In the event of a full DAHS server failure requiring repair services for the computer, the system CEMS controller will capture and log data to remain compliant with most regulatory requirements. If the customer is uncomfortable operating in this manner with limited or no visibility to the emissions data, the customer may request a temporary DAHS server be provided. B&W will verify the condition of the primary DAHS server and must agree that a temporary computer is appropriate considering the expected duration of the primary computer repair services. B&W will provide a suitable, functional spare computer to be installed at the site and used while the primary computer is being repaired.

Temporary computers will be loaded with B&W standard software packages and will not be eligible to join to the customer's domain, or run customer specific anti-virus software, etc. B&W will ship the computer to the customer's location by overnight service. Once powered up and accessible via remote connection, B&W will load information from the customer's backup images onto the spare computer and establish data collection with the system CEMS Controller.

Upon completion of the primary DAHS server repair, B&W will transfer any data to the repaired server and decommission the temporary computer. The customer is responsible for timely return of the spare computer to B&W's offices, including return shipping and insurance. Any delays in returning the spare computer in as shipped condition would result in additional charges.

If the customer repairs the primary DAHS computer or is purchasing a new computer, arrangements must be made regarding the duration of service for the temporary DAHS server. Temporary DAHS servers are not to be used for longer than two weeks unless such delay is caused by B&W in repair of the primary server. Use for longer than two weeks may require rental charges to be paid by the customer so that temporary server computers may remain available for the installed fleet.

The installed conditions for the temporary server must be suitable to maintain a functioning computer throughout its use period up to its return to B&W. If the temporary computer is damaged in use, customer may be responsible for repair costs up to replacement costs for a new temporary server.

Temporary computer delivery depends entirely on availability of the computers. B&W can make no guarantees on lead time before a temporary server will be dispatched to the site. If no temporary computers are available when a disaster scenario occurs, the customer will be notified that no temporary computers are available while their primary computer is being repaired.

### **Support changes in required supplied 3<sup>rd</sup> party software**

For any 3<sup>rd</sup> party software provided or required by B&W in setting up the NetDAHS, B&W will guarantee compatibility with changes and updates released by the 3<sup>rd</sup> party. This typically includes the Operating System, database engine, etc. Whenever the 3<sup>rd</sup> party releases an update, B&W will evaluate the updates and ensure NetDAHS software remains functional. If required, B&W will provide a solution path towards keeping the NetDAHS functional after the 3<sup>rd</sup> party updates are applied.

B&W will not provide any 3<sup>rd</sup> party software licenses under the software service agreement unless expressly listed otherwise. The customer is responsible for all license fees, subscription fees, etc. for 3<sup>rd</sup> party software.

As changes to NetDAHS may require a software update, B&W may advise that updates from 3<sup>rd</sup> parties are not applied until the NetDAHS software can be updated. B&W cannot guarantee response time, even if the 3<sup>rd</sup> party update relates to security vulnerabilities.

**B&W PROPRIETARY AND CONFIDENTIAL**

Copyright © 2016 The Babcock & Wilcox Company

All rights reserved.



The Babcock and Wilcox Company

► 2849 sterling drive ► hatfield, pa 19440 usa

► phone 215.996.9200 ► fax 330.860.8982 ► www.babcock.com

### **Install Operating System, Internet Browser and Anti-Virus software updates**

The NetDAHS server must remain up to date with software updates from companies other than B&W. This is critical to maintain NERC compliance. For customers with the proper level of service contract, B&W will remotely access the NetDAHS server on a monthly basis. During these monthly checkups, all critical security updates for the operating system and web browser will be applied.

B&W will provide an annual software license for Anti-Virus software under this service. If the customer's corporate policy requires a specific solution for anti-virus software, B&W will not be responsible for the software license or configuration of the anti-virus software. B&W will check the anti-virus software during the regular checks and notify the customer of any problems with outdated anti-virus software. For customers holding service contracts without this item included, the customer is responsible for all license and/or subscription fees for anti-virus software.

Such routine checks and updates to the software will require rebooting of the NetDAHS server. This service will be done during normal business hours only, and the customer must allow the reboot to occur in order for the service to be completed. Upon initial contact to arrange for performance of this service, customer may request an alternate time frame for the update within seven (7) days of the proposed time by B&W. If the service cannot be performed within seven days of the proposed time, or the second attempt is stopped by the customer due to operational issues, the monthly update will be skipped and no refund provided for services that were not completed.

### **Support changes in Acid Rain air regulations (ECMPS)**

Due to constant changes in regulations and interpretations in the emissions reporting industry, today's software solution may no longer be acceptable tomorrow. Our service plans enable the customer to stay current with all regulatory requirements and stay ahead of any changes to ensure full compliance at all times.

B&W guarantees that the NetDAHS software will be kept up to date with any changes or updates in the Acid Rain air regulations. This includes any updates released for the EPA's Emissions Collection and Monitoring Plan System (ECMPS). Software updates to remain compliant will be made available for download by customers with service agreements with no additional license or download fees.

Support will be provided such that the covered software products are capable to produce a report output file that is in compliance with all requirements at the time. If changes in the regulations require new items to be configured, that configuration is the responsibility of the customer. Configuration services for such changes may be made available at additional cost by B&W.

### **Support new federal air regulations (GHG)**

New federal air regulations references any new laws that are promulgated after the beginning of the customer's service agreement term, and the new regulations must go into affect prior to the end of the service agreement term. B&W will provide a software solution to meeting the new regulations with no licensing or download fees for customers with service agreements. The solution may include new software modules, new reports, instructions for modifying the software, etc. To achieve compliance with new regulations, it may be required that the NetDAHS configuration be updated or modified. B&W will provide instructions to the customer for any required modifications. If the customer has not achieved sufficient aptitude with the NetDAHS product to complete these modifications, B&W may recommend additional training, or allow the option to provide the configuration services at additional cost.

The methodology of providing new products to remain compliant will be determined by B&W and no specific method is guaranteed. Manual steps may be required by the customer to translate data made available on the NetDAHS server into any reporting tool to meet new requirements. If the new regulations require addition of equipment or signals, any potential hardware costs for new analyzers, additional I/O cards, etc. would be subject to additional costs.

***B&W PROPRIETARY AND CONFIDENTIAL***

*Copyright © 2016 The Babcock & Wilcox Company*

*All rights reserved.*



The Babcock and Wilcox Company

► 2849 sterling drive ► hatfield, pa 19440 usa

► phone 215.996.9200 ► fax 330.860.8982 ► www.babcock.com

### **Support changes in current state/local air regulations/definitions**

Changes to state or local air regulations or definitions refer to any requirements that were active at the beginning of the service agreement term. If the local or state agency releases information to change the requirements, B&W will provide services or product updates to remain compliant with the new regulations. For that customer with the appropriate service agreement, no license or download fees will be imposed for these software updates and products. Any changes covered by this section must include a formal notification from the state or local agency of the change in the requirements.

If the changes require new equipment, signals or modification to the configuration of the NetDAHS server, B&W will ensure that the software is capable of providing a solution and may provide instructions to the customer to complete configuration modifications. Configuration services by B&W may be made available at additional cost.

### **Support new state/local air regulations**

New state or local air regulations would include any requirements that are promulgated after the beginning of the service agreement term and go into effect prior to the end of the service agreement term. B&W will provide a solution to be compliant with new regulations. It may require configuration modification or updates, and this may be the responsibility of the customer using B&W provided instructions.

If the local or state agency significantly changes the regulations and/or the reporting requirements, it would be considered "new" regulations for the purposes of this section. This would apply with the PA DEP change to CSMM Revision 8 for example.

If the new regulations require addition of equipment or signals, any potential hardware costs for new analyzers, additional I/O cards, etc. would be subject to additional costs.

### **Support air permit modifications**

Coverage for air permit modifications will be provided to customers with the proper level of service agreement. Upon receipt of an updated air permit, B&W will provide a new permit review, and comparison to the old version. For any changes to the NetDAHS that are required, B&W will provide products or services to be compliant with the new permit.

If compliance with the new permit requires new hardware or signals, any new equipment would be subject to additional costs.

To complete the permit modification services, the customer must provide full copies of both the old and new versions of the air permit.

***B&W PROPRIETARY AND CONFIDENTIAL***

*Copyright © 2016 The Babcock & Wilcox Company*

*All rights reserved.*





The Babcock and Wilcox Company

► 2849 sterling drive ► hatfield, pa 19440 usa

► phone 215.996.9200 ► fax 330.860.8982 ► www.babcock.com

### **Support regulatory based system changes (range changes)**

In the course of operating the CEMS and DAHS, certain conditions may trigger necessary changes to the equipment to remain compliant with the regulations. This includes range changes after a span evaluation is done, monitoring plan updates for like kind analyzer usage, etc. For any required NetDAHS configuration changes caused by these regulatory drivers, B&W will provide products or services to covered customers, with no charges for the labor involved to modify the system configuration. B&W may provide instructions to the customer on how the change can be made without requiring B&W technicians to actually connect to the NetDAHS system

### **Support non-regulatory based configuration changes (analyzer diagnostics)**

For any other configuration changes that are not directly tied to regulations, B&W offers coverage to customers with the appropriate service agreement. These configuration changes typically deal with CEMS configurations, usability, or access to emissions data. This includes but is not limited to:

- Reorganization of calibration sequence (changed gas cocktails)
- Logic changes
- Scaling changes to signals output from the DAHS
- Reports used for operations, trending, analysis (not reported to agencies)
- Predictive emissions channels
- Channels to display analyzer diagnostic data (PMT voltages, etc.)

All requests for configuration modifications are handled in the order they are received, and with lower priority than cases dealing with regulatory items. A large backlog of configuration requests may lead to significant delay time in addressing any new cases.

Note that this item does not extend to a full reconfiguration of the DAHS. Each request should be possible to handle with services that do not extend beyond four (4) hours per request. For any requests that exceed four (4) hours per request, such as a request for modifications throughout a customer's fleet, it may be necessary to set a schedule for reasonable delivery or quote the work for larger scale issues so they may be done all at once. Breaking up fleet issues to a series of smaller requests to stay below the four (4) hour limitation is not allowed. Each customer can have no more than three (3) configuration modification requests open at any one time.

**B&W PROPRIETARY AND CONFIDENTIAL**

Copyright © 2016 The Babcock & Wilcox Company

All rights reserved.



The Babcock and Wilcox Company

► 2849 sterling drive ► hatfield, pa 19440 usa

► phone 215.996.9200 ► fax 330.860.8982 ► www.babcock.com

## **Support configuration changes needed for equipment changes or replacements**

As CEMS equipment ages, it becomes necessary to update the system with new equipment as the functional end of life is reached. For customers with the proper level of service contract, B&W will provide products or services to support changes as equipment must be updated. Such services will not include any new analyzers, components, or other CEMS hardware.

In a normal installation, B&W would expect a customer to change the analyzers for new models about once every ten years. In this case, B&W will provide services to update the DAHS configuration for the new analyzers.

Note that support to operate the new and old analyzers in parallel for a proving period is not included in this offering. If local regulations require such a parallel operation period, it may be subject to additional charges to cover the need for greater configuration labor hours.

If the new analyzers require additional I/O cards, such I/O cards will be offered at additional costs.

All wiring and installation shall be the responsibility of the customer. This section does not include coverage for adding new CEMS equipment, such as installation of an SCR Inlet monitoring analyzer when the stack CEMS will remain unchanged. This section also does not cover major CEMS retrofits where the sampling system is significantly changed. Review of the proposed CEMS changes to interpret whether it is a major CEMS retrofit will be at B&W's sole discretion.

## **Transferable software license for DAHS Server**

The license for NetDAHS software is limited for installation and use on the specific computer server that the software is installed on. Only customers with active software service agreements are entitled to transfer the software license and install NetDAHS on another computer without paying for a new software license. This provision only applies to transfers for the sake of using a new primary computer as the NetDAHS server.

Once a software license is transferred, the original computer should be decommissioned and not used for any purposes. This provision does not entitle the customer to configure any number of additional computer servers by installing NetDAHS software. If a customer wishes to set up spare computers, or create a test system, or have any other active operating additional NetDAHS installations, the customer must purchase additional software licenses for those additional computer servers.

***B&W PROPRIETARY AND CONFIDENTIAL***

*Copyright © 2016 The Babcock & Wilcox Company*

*All rights reserved.*



The Babcock and Wilcox Company

► 2849 sterling drive ► hatfield, pa 19440 usa

► phone 215.996.9200 ► fax 330.860.8982 ► www.babcock.com

## **Exclusions**

B&W's sole responsibility under this agreement is to provide assistance to the customer in use of the software products listed in the definition of covered systems included with the agreement. B&W shall not be liable for the customer's compliance obligations, nor any financial consequences related to compliance status.

Customers will be provided access to download and install software updates through automated installation packages. The installation package will run and perform all necessary processes to apply the update. Assistance will be provided as requested for customers with the proper level of service contract.

B&W will provide reasonable effort to resolve any technical issues raised by the customer during the term of the service agreement. This does not obligate B&W to add features or functionality to the software product. All suggested enhancements or changes to the software will be processed through a cost and benefit determination, regardless of the source of the proposed change and any regulatory implications of the change.

***B&W PROPRIETARY AND CONFIDENTIAL***

*Copyright © 2016 The Babcock & Wilcox Company*

*All rights reserved.*



The Babcock and Wilcox Company

• 2849 sterling drive • hatfield, pa 19440 usa

• phone 215.996.9200 • fax 330.860.8982 • www.babcock.com

## SCOPE OF WORK

### EDR GENERATION SERVICE

- **EDR Generation Service with Weekly Remote Query of CEMS Operation:** EDR Generation Service means the weekly and quarterly services provided by Seller to Buyer, regarding the preparation, submission and analysis of Electronic Data Reports (EDRs) for submission by buyer through Emissions Collection and Monitoring Plan System (ECMPS). Seller shall provide to Buyer the following EDR Generation Service:
  - Seller will provide weekly checks of the Data Acquisition and Handling System ("DAHS") data via remote access to assist the Buyer in identifying CEMS operating problems, determining where missing data is located and providing an explanation as to why such data is not available.
  - To facilitate timely submission of correct EDRs, it is necessary that Buyer provide critical information to Seller including CEMS QA test results, fuel analysis information, etc. Buyer must also register Seller's designees as retrieval agents with the US EPA so Seller may retrieve Buyer's data from the EPA host system through ECMPS.
  - Buyer is responsible to download and install all NetDAHS software updates made available by Seller. Software updates are available to download via Internet connection, and contain critical updates to ensure generation of correct EDRs.
  - Buyer shall provide test data for any CEMS certification tests that have been performed for the reporting quarter. All test data must be provided to Seller immediately when data is available, but no later than the fifteenth (15<sup>th</sup>) day of the last month included in the reporting quarter (March, June, September, December), unless the test occurs later than this date. If Buyer is unable to provide required test data to Seller by this deadline, Seller may delay the contractual due date of the EDR in accordance with section 1.12 below. Buyer shall have the option to create the necessary test records in the DAHS software, or Seller may provide assistance for Buyer performing this data entry.
  - Buyer shall provide all fuel analysis data for inclusion in the EDR to Seller. All fuel analysis data must be provided to Seller immediately when data is available, but no later than the fifteenth (15<sup>th</sup>) day of the last month included in the reporting quarter (March, June, September, December). If no fuel analysis data is provided to Seller, Seller shall have the option to generate the EDR using default fuel analysis values for the purposes of on-time delivery of EDR to Buyer, or the EDR delivery due date may be delayed in accordance with section 1.12 below. Such use of default fuel analysis values may result in higher emissions reported than if actual fuel analysis data was included. Buyer will be able to enter actual fuel analysis data and regenerate EDRs, or request Seller to enter fuel analysis data and regenerate EDRs at additional costs.
  - Seller will perform flow to load and fuel flow to load applications on the data and collaborate with Buyer to review the quarterly data to determine if there is off-normal data that can be excluded or what corrective action is required in the event that the data does not pass the performance specification.
  - Buyer will provide information to Seller on any QA Certification Events that have occurred during the quarter and must be reported in the EDR. Seller will enter any monitoring system re-certification, maintenance, or other QA Certification Events after the event has taken place and appropriate measures have been taken.
  - Seller will have each EDR created and reviewed by Emissions Collection and Monitoring Plan System (ECMPS). Seller will provide assistance to correct any Buyer entry errors. If Seller determines that data is missing, Seller will notify Buyer, and Buyer shall immediately provide such missing data to Seller.
  - Seller will prepare quarterly EDRs for an initial review by Buyer's Support Contact within fifteen (15) business days after the end of each calendar quarter.

**B&W PROPRIETARY AND CONFIDENTIAL**

Copyright © 2016 The Babcock & Wilcox Company

All rights reserved.



**The Babcock and Wilcox Company**

► 2849 sterling drive ► hatfield, pa 19440 usa

► phone 215.996.9200 ► fax 330.860.8982 ► www.babcock.com

- Seller will generate each final quarterly EDR to achieve a status such that no Critical Errors are included when evaluated using ECMPS software. Seller will provide guidance to Buyer on necessary steps to correct any informational errors that may exist in the final EDR, but
- 
- clearing informational errors will be the responsibility of the Buyer, as these errors are acceptable for meeting regulatory submission deadlines.
- In the process of error checking the EDR, Seller may discover an error message that does not appear correct. In such cases, Seller will notify Buyer in writing of the error and reasoning behind deeming the error message as incorrect. Buyer will be responsible for contacting the EPA or it's affiliate to confirm correctness of error messages and development of a recovery plan as needed to complete submission of the EDR to the regulatory agency.
- For any factors affecting delivery of the EDR, the EDR submittal deadline in section 1.9 above shall be extended in a day for day fashion until such factors have been corrected. Delay factors may include, but are not limited to:
  - Remote access to the DAHS becoming inoperative or otherwise non-functioning
  - Any prevention of Seller being recognized as Buyer's retrieval agent in ECMPS
  - Delivery of certification or fuel analysis data by Buyer to Seller in accordance with deadlines above
  - NetDAHS system not having the latest software applied
- Any delay in EDR submittal deadline will require Seller to notify Buyer in writing of the delay factor, recovery plan, and confirmation that the deadline is being delayed by said factor.
- **Delivery:** It is agreed that Seller will not be liable for any loss or expense of any nature due to a failure to meet a specified delivery schedule. Seller shall make a good faith effort to comply with all EPA mandated deadlines or extensions including but not limited to dedicating the necessary resources, staff, and overtime as needed.

**B&W PROPRIETARY AND CONFIDENTIAL**

Copyright © 2016 The Babcock & Wilcox Company  
All rights reserved.



**EMISSIONS MONITORING EQUIPMENT SUPPLY AND SERVICES  
TERMS AND CONDITIONS OF SALE**

B&W's proposal is based solely on the pricing and terms and conditions included in B&W's proposal and the following terms and conditions. B&W's proposal, together with these terms and conditions, constitute the complete and final agreement between Buyer and B&W in respect to this transaction. None of the terms and conditions contained herein may be added to, modified, superseded or otherwise altered except by a written instrument signed by an authorized representative of B&W and delivered by B&W to Buyer, and the Work received by Buyer from B&W shall be deemed to be delivered or performed only upon the terms and conditions contained in this document, except as they may be so added to, modified, superseded or otherwise altered in B&W's proposal.

**1. Definitions.** The following terms have meanings given below. Words importing persons include corporations. Words importing the singular include the plural and vice versa when the context requires.

- 1.1.** "B&W" means Babcock & Wilcox Power Generation Group, Inc., a Delaware, USA corporation with offices at 20 South Van Buren Avenue, Barberton, Ohio 44203-0351.
- 1.2.** "B&W Software/Firmware" means Software/Firmware that is proprietary to B&W.
- 1.3.** "Buyer" means the person, Company or Corporation to whom B&W has submitted its proposal or who has issued an order for the Work.
- 1.4.** "Change" means an addition, reduction or modification to Work.
- 1.5.** "Contract" means the mutually acceptable agreement signed by authorized representatives of B&W and Buyer for the performance of the Work.
- 1.6.** "Equipment" means all the equipment, parts, materials, supplies, and accessories to be furnished by B&W, including the physical media, if any, on which Software/Firmware is delivered.
- 1.7.** "Other Software/Firmware" means Software/Firmware that is not proprietary to B&W.
- 1.8.** "Proprietary Information" means B&W's proposal, in addition to any drawings and information provided to Buyer in connection with the Contract.
- 1.9.** "Services" mean the services provided under the Contract.
- 1.10.** "Site" means the facility where the Equipment will be delivered or where the Services will be performed.
- 1.11.** "Software/Firmware" means any software or firmware, whether furnished as a separate deliverable or installed on or delivered with any Equipment, in object code form only, to be furnished by B&W.
- 1.12.** "Work" means the Equipment, Services and Software/Firmware to be provided under the Contract and accompanying documents and the carrying out of all duties and obligations imposed therein.

**2. Proposal Information.** B&W shall furnish only that Equipment expressly identified in B&W's proposal. The dimensions, proposal drawings, typical illustrations, weights, materials, and details included herein, while representing the best information available at the time of the issuance of B&W's proposal, may vary from that set forth during the development of the final design under terms of Contract. Such drawings as are included in B&W's proposal are intended only to illustrate the arrangement of Equipment and are not to be construed as defining the extent and scope of the material B&W proposes to furnish.

**3. Proprietary and Confidential Information.**

- 3.1.** Proprietary Information is provided under terms of confidentiality and contains confidential information. Proprietary Information incorporates knowledge and special techniques, among other things, in the arts and sciences which were developed, acquired or accumulated by B&W at its own time and expense and which will be employed by B&W to benefit Buyer under the Contract.
- 3.2.** Buyer may retain Proprietary Information and may make copies thereof as necessary solely for Buyer's internal use in connection with B&W's performance of Services or with the operation, maintenance and repair of Equipment furnished under the Contract. Buyer shall maintain the confidentiality of the Proprietary Information by not disclosing



the Proprietary Information to any third party without B&W's prior, written consent, provided however, that nothing herein will restrict Buyer's right to disclose any information provided hereunder which, as evidenced by written documentation: (a) was furnished to Buyer by B&W prior to the Contract without restriction; (b) becomes part of the public domain; (c) was received by Buyer without restriction and without breach of the Contract from a third party who had the lawful right to disclose such information; or (d) is required to be disclosed by law, including The California Public Records Act (Govt. Code section 6250 et. seq).

- 3.3. On the condition that Buyer and its representatives maintain the confidentiality of the Proprietary Information as described above, B&W grants to Buyer a paid-up, nonexclusive, nontransferable, indefinite term license, without the right to sublicense, to use the Proprietary Information provided to Buyer in connection with the Contract solely for the purpose of operating, maintaining, or repairing the Equipment furnished under the Contract and for no other purpose. The license granted in the preceding sentence will terminate upon Buyer's disclosure of any of the Proprietary Information to any third party without B&W's prior, written consent.

#### **4. Shipping Points/Transportation Charges.**

- 4.1. For shipments within the country of origin or manufacture and for U.S. exports, B&W shall deliver Equipment to Buyer EXW B&W's facility or place of manufacture. Buyer shall pay all delivery costs and charges. Partial deliveries will be permitted. Should Buyer elect to include transportation charges in the Work scope of supply to the delivery point specified by Buyer, then transportation charges will be paid by Buyer. In any event, upon arrival of Equipment on board carrier at destination, Buyer is responsible for any demurrage, towboat, or ship standby service, and any transshipment. Further, Buyer is responsible for any additional cost resulting from changes in currently existing facilities and clearances. B&W shall determine routing and type of transportation. Unless otherwise specified all deliver terms are Incoterms 2010.

- 4.2. If Equipment delivered do not correspond in quantity, type or price to those itemized in the invoice for the shipment, Buyer will so notify B&W within 10 days after receipt. B&W may deliver any or all Equipment in advance of the delivery schedule. Delivery times are approximate and are dependent upon prompt receipt by B&W of all materials, Payment Security and information necessary to proceed with the Work without interruption.

#### **5. Delay in Performance.**

- 5.1. B&W is not liable for any expense, loss or damage resulting from delay or prevention of performance caused by fires, floods, acts of God, strikes, labor disputes, labor shortages, lack of or inability to obtain materials, fuel, supplies or other equipment, riots, acts of terrorism, thefts, accidents, transportation delay, acts or failure to act of government or Buyer, delay in obtaining licenses, major equipment breakdown, or any other cause whatsoever, whether similar or dissimilar to those enumerated above, beyond the reasonable control of B&W. In the event of any delay arising by reason of the foregoing, the time for performance will be extended by a period of time equal to the time lost by reason of such delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay, and other affected provisions of the contract, including price, will also be equitably adjusted. If B&W is delayed by any acts or omissions of Buyer, or by the prerequisite work of Buyer's other contractors or suppliers, B&W shall be entitled to an equitable price and schedule adjustment.

- 5.2. Should fabrication, field services, or shipment of the equipment be delayed or postponed for any causes beyond the control of B&W, Buyer shall arrange for storage of such equipment other than at the works of B&W and shall protect the equipment against damage from the weather or other causes; Buyer shall assume and hold harmless B&W against risk of loss or damage to such equipment and shall be responsible for any charges in connection with storage or reconditioning.

#### **6. Warranty.**

- 6.1. B&W warrants that the Equipment (exclusive of Software/Firmware) will be free from defects in workmanship and materials for a period of one (1) year from the date of first use or eighteen (18) months after shipment of Equipment, whichever occurs first. B&W shall, at its option, modify, adjust, repair or replace, to the delivery point specified in the Contract, any part or parts of the Equipment which are proven to not conform to this warranty. B&W is not liable for any transportation charges on parts returned for modification, adjustment, repair or replacement or any costs or charges associated with the removal or reinstallation of any such part or parts, nor shall B&W supply any labor for removal or reinstallation unless installation was included in B&W's original scope of Work. This warranty does not cover the effects of normal wear, tear, deterioration or abuse of the Equipment; or the effects of abrasion, erosion, or corrosion; or the effects of improper storage or erection (if not within B&W's scope of Work); or operation or maintenance not in accordance with B&W's operating instructions and other conditions of service specified, and in accordance with generally accepted utility practice. B&W is not responsible for equipment or parts furnished by

others or repairs or work done by others unless the same is specifically ordered by B&W.

- 6.2. B&W warrants that the Services (exclusive of Software/Firmware) will be performed in accordance with B&W's standards, using qualified personnel in a good and professional manner. If within one (1) year for any Services, such Services are proven by Buyer to be not in accordance with this warranty, then B&W will re-perform the nonconforming Services and will bear any associated B&W travel and living expense. Any and all technical information, recommendations, and/or reports that may be furnished or provided by B&W to Buyer in the course of or as part of the Contract will be furnished or provided **AS IS** and do not purport to set forth all discrepancies or hazards nor indicate other discrepancies or hazards do not exist. **B&W ASSUMES NO LIABILITY WITH RESPECT TO THE USE OF, OR FOR DAMAGES RESULTING FROM THE USE OF, ANY INFORMATION, METHOD, OR PROCESS DISCLOSED IN ANY INFORMATION, RECOMMENDATION OR REPORT ISSUED UNDER THE CONTRACT.**
- 6.3. B&W warrants that the B&W Software/Firmware will meet the B&W specifications therefor in effect on the date of shipment when operated in the manner and on the Equipment prescribed. If, within ninety (90) days after shipment, such B&W Software/Firmware is proven by Buyer to be not in accordance with this warranty, then B&W will modify the nonconforming B&W Software/Firmware or replace same with conforming B&W Software/Firmware and will bear any associated B&W expense. This warranty is voided if any modifications, changes, or additions are made to the B&W Software/Firmware by the Buyer or any third party or if the B&W Software/Firmware is used in a manner not in accordance with the B&W specifications or on equipment not prescribed by B&W. This warranty does not apply to Other Software/Firmware. B&W will, however, pass on to the Buyer **AS IS** those warranties which are provided by the suppliers of such Other Software/Firmware. The Buyer has the responsibility of registering or taking whatever actions are required by Other Software/Firmware suppliers to activate those warranties in Buyer's favor. In the absence of a written agreement covering the purchase of updates or upgrades to B&W Software/Firmware, all updates and upgrades to B&W Software/Firmware are provided **AS IS**.
- 6.4. If B&W cannot or does not perform such modification, adjustment, repair, replacement or re-performance within a reasonable time after written notice of such defect is received by B&W, or if an emergency exists rendering it impossible or impracticable for Buyer to have the work performed by B&W, then Buyer, after written notice to B&W, may make or cause to be made such modification, adjustment, repair or replacement, in which case B&W will reimburse Buyer for the reasonable cost thereof.
- 6.5. **The sole liability of B&W and the exclusive remedy of Buyer arising out of the manufacture, sale or furnishing of the Equipment, Services or Software/Firmware hereunder or use thereof, whether arising under contract, tort (including negligence), strict liability, or otherwise, is the modification, adjustment, repair, replacement or re-performance as set forth above. IN CONSIDERATION OF THE ABOVE EXPRESS WARRANTY AND THE PERFORMANCE GUARANTEE(S), IF ANY, ALL OTHER WARRANTIES AND GUARANTEES, OTHER THAN TITLE, EITHER EXPRESSED OR IMPLIED, WHETHER ARISING UNDER LAW OR EQUITY OR CUSTOM OF THE TRADE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED FROM THE CONTRACT.**

**7. Indemnity For Other Than Design Professional Liability.** Consultant agrees to indemnify, protect and hold harmless the Buyer from and against any claim for damage, charge, lawsuit, damage, cost, expense (including counsel and expert fees), judgment, or losses which may be recovered against or from Buyer by reason of any damage to third-party property or bodily injury, including death, sustained by any person or persons whomsoever and which damage, injury or death occurs during Consultant's performance of the Services, work, activities, operations or duties of the Consultant, or anyone employed by or working under the Consultant or for services rendered to Consultant in the performance of this Agreement while on the jobsite, and only to the extent resulting from Consultant's, or anyone employed or working under the Consultant negligence, or willful misconduct. . In no event will this indemnity apply to damage, injury or death resulting from the negligence of Buyer. In the event of the joint or concurrent negligence of the parties, each party shall be liable in proportion to their respective share of negligence. For purposes of this Indemnity, Buyer's customer and the ultimate user of the Work are not considered third parties.

## **8. Patent Indemnity.**

8.1 B&W shall defend at its own expense any suit or action brought against Buyer based on a claim that any individual piece of Equipment designed by B&W and furnished hereunder, constitutes direct infringement of any patent of the United States granted prior to the date of submission of B&W's proposal, and B&W shall also pay all costs and damages awarded therein against Buyer. In case such B&W-designed Equipment is in such suit held to constitute infringement and its use is enjoined, B&W shall at its own expense either procure for Buyer the right to continue using said Equipment or replace same with non-infringing Equipment; or modify it so it becomes non-infringing; or remove said Equipment and refund the contract price.



8.2 Where Buyer has given written instructions to B&W which direct (1) a specified manner or performance of the Contract or (2) a specific design or arrangement of the Equipment or a part or parts thereof to be furnished hereunder, Buyer shall defend at its own expense any suit or action based on a claim that the Equipment or a part thereof furnished hereunder constitutes infringement of a United States patent, where such infringement results from such written instructions, and Buyer shall also pay all costs and damages awarded therein against B&W. The foregoing sets forth the entire liability of B&W with respect to patent infringement.

8.3 Neither Buyer nor B&W shall have the right to claim indemnity under this paragraph unless prompt notice of the assertion of any claim for which indemnity is sought is given in writing and unless the party seeking indemnity makes available to the other party all other needed information, assistance, and authority it possesses for the defense of any suit or proceeding in which such claim is asserted.

- 9. Intellectual Property Rights.** Each party retains ownership of all confidential information and intellectual property it had prior to the Contract. All intellectual property conceived, created, or provided by B&W, whether alone or with any contribution from Buyer or its personnel, will be owned exclusively by B&W. B&W owns exclusively all rights in ideas, inventions, works of authorship including derivative works, strategies, plans, data, and other intellectual property created in or resulting from the Contract, including but not limited to all patent rights, copyrights, moral rights, rights in proprietary information, database rights, trademark rights and other intellectual property rights. To the extent that Buyer may acquire any right or interest therein, Buyer irrevocably assigns all such right and interest exclusively to B&W and shall execute assignments and other documentation as necessary to achieve that result. Nothing in the Contract will be deemed to grant a license directly or by implication, estoppel, or otherwise, to any such intellectual property, although the parties may provide for such a license in a separate written agreement.
- 10. Software/Firmware License.** In the absence of a separate written agreement (including a shrink-wrap or click-through) that covers Buyer's rights in any B&W Software/Firmware, B&W grants Buyer a personal, non-exclusive, nontransferable, license to use B&W Software/Firmware on the Equipment only. Title to B&W Software/Firmware will remain exclusively with B&W, with the Buyer having only a right to use same consistent with this license. Buyer has no right to sub-license, reproduce, reverse engineer, decompile, analyze, modify, prepare derivative works based on, or distribute B&W Software/Firmware. Buyer shall hold B&W Software/Firmware in strict confidence. If at any time, Buyer is in breach of the Contract and/or this License, the foregoing right to use B&W Software/Firmware will terminate automatically and without the requirement of any notice to Buyer. The foregoing grant of license shall have no application in this Contract if Other Software/Firmware has been provided to Buyer by B&W and the third party supplier thereof has included a separate, written agreement (including a shrink-wrap or click-through) that defines or describes the Buyer's rights in any such Other Software/Firmware.
- 11. Title to Equipment and Services.** Title to and a security interest in each item of Equipment furnished hereunder is hereby reserved in B&W until full payment for such item has been made. Title to Services passes to Buyer as performed.
- 12. Risk of Loss or Damage.** Risk of loss of or damage to the Equipment passes to Buyer upon delivery of the Equipment in accordance with the Incoterm set forth in the Contract. From the date that risk of loss of or damage to the Equipment passes to Buyer as provided above, and until the Contract price is paid in full and all obligations of B&W hereunder have terminated, Buyer shall, by insurance or otherwise, assume the complete risk of loss of or damage to the Equipment no matter how caused and shall hold B&W harmless from any such liability.
- 13. Taxes.** The Contract price includes the present taxes levied in the United States on wages and/or salaries paid to B&W's United States employees. All other present and all future taxes, duties, tariffs, fees and other charges, including but not limited to, excise, import, purchase, sales, use, turnover, value added, consular, gross receipts, gross wages, ex-patriot or foreign country income taxes, taxes of any kind on transportation, off-loading, storage or any services of any kind including design engineering, or technical assistance and any other assessments, whether similar or dissimilar, imposed by the United States government (or the government of any country through which any equipment furnished by B&W must pass en route from the country of origin to the country of destination) of any subdivision thereof or any taxing authority or any agencies therein with respect to the Contract or the subject matter thereof, are the obligation of Buyer. Any such items paid by B&W will be added to the Contract price and Buyer shall reimburse B&W for the amount of such taxes, duties, tariffs, fees and other charges and expenses incidental thereto upon presentation of an invoice therefor.
- 14. Terms of Payment.**
- 14.1** Buyer shall pay Progress Payments within 30 days from date of invoice. Buyer shall pay a monthly late payment charge computed at the rate of 1.5%, or the maximum interest rate permitted by applicable law, whichever is less, on any past-due amount for each calendar month (or fraction thereof) that the payment is overdue and all costs of B&W's collection efforts including reasonable attorney's fees.

**14.2** Should a milestone payment remain unpaid beyond 60 Days, B&W may suspend its performance of the contract pending receipt of past due invoices.

**15. B&W Insurance.** B&W shall provide and maintain during the term of this Contract the following forms of insurance with insurance carriers maintaining an AM BEST Rating of A-/7 or better.

	Type of Coverage	Limits of Liability
(1)	Workmen's Compensation Employer's Liability	Statutory \$2,000,000
(2)	Commercial General Liability	\$2,000,000 each occurrence \$5,000,000 aggregate
(3)	Automobile Liability: Bodily Injury & Property Damage	\$2,000,000 combined single limit

Certificates evidencing that the above insurance is in force will be forwarded to Buyer upon execution and annual thereafter. With respect to subsections 15(2) and 15(3) above, B&W shall include Buyer as additional insured, but only to the extent of any insured contractual indemnity obligations expressly assumed by B&W in this Contract. Buyer and B&W agree that Buyer's rights as an additional insured are not intended to and shall not derogate from the division of risk and indemnity obligations set out under this Contract. All claims brought under insurance provided by B&W shall be handled exclusively through B&W or its designated representative. Such additional insured will not be covered under or entitled to assert a claim against B&W's insurance with respect to liabilities and losses that result from the negligence of the additional insured or with respect to liabilities and losses that are assumed by the additional insured or as to which the additional insured indemnifies B&W under this Contract. Such insurance shall provide a waiver of subrogation in favor of Buyer, but only to the extent of any contractual indemnity obligations expressly assumed by B&W in this Contract and state that such additional insured coverage is primary to any other valid insurance available to the additional insured Buyer and allow cross liabilities.

**16. Limitation of Liability.**

16.1 Neither B&W nor its subcontractors will be liable, whether arising out of contract (including the failure of essential purpose of any remedies), tort (including negligence), strict liability, or any other cause of or form of action whatsoever, for loss of anticipated profits, loss by reason of plant or other facility shutdown, non-operation or increased expense of operation, service interruption, cost of purchased or replacement power, claims of Buyer's customers, subcontractors, vendors or suppliers, cost of money, loss of use of capital or revenue, fines or penalties assessed or levied against Buyer by any governmental agency based on the operation, non-operation, or use of the Work or for any special, incidental or consequential loss or damage of any nature, whether similar or dissimilar to those enumerated above, arising at any time or from any cause whatsoever.

16.2 The total liability of B&W and its subcontractors, whether arising out of contract, tort (including negligence), strict liability, or any other cause of or form of action, will not exceed the date of sale Contract price.

16.3 Except as to warranty of title to any Equipment furnished, all B&W liability terminates upon the expiration of the warranty period specified in the Contract, provided, however, that Buyer may enforce a claim of such liability by an action timely commenced in a court of competent jurisdiction in accordance with the applicable statute of limitations and/or statute of repose, but in no event later than one (1) year after expiration of the warranty period.

16.4 The provisions of this Article apply notwithstanding any other provisions of the Contract and will survive completion, expiration or termination of the Contract.

**17. Operation of Equipment.** B&W's personnel are authorized only to advise and consult with Buyer and are not licensed or authorized to operate Buyer's equipment. All operation of Buyer's equipment, including testing, will be performed by, under the control of, and at the expense of Buyer.

**18. Changes.** No Change is effective unless set forth in a written agreement signed by B&W and Buyer. Such agreement must set forth any adjustment of the Contract price, delivery date, and any other terms of the Contract which may be affected by such Change.

**19. Nuclear Hazard.** Work sold by B&W is not intended for use in connection with any nuclear facility or activity without the



written consent of B&W. Should Work hereunder be incorporated into a nuclear facility, neither B&W nor any of its suppliers assume any liability whatsoever for any form of injury or damage, whether to persons, property, or the Work furnished hereunder, caused directly or indirectly by nuclear incident and whether arising out of the performance of the Contract or the use of the Work and Buyer and/or ultimate user hereby indemnifies and shall hold harmless B&W, its suppliers and subcontractors against all losses, claims, damages or liabilities arising out of or based upon personal injury (including death at any time resulting therefrom) and loss of or damage to any property located on or off the Site whenever or wherever occurring. Buyer and/or the ultimate user and their insurers hereby waive any rights of recovery or subrogation which Buyer, ultimate user, or insurer might have or acquire against B&W.

**20. Permits.** Where federal, state, municipal or other regulatory authorities, laws, ordinances and regulations require permits to install or operate Equipment or the approval of the plans and specifications for the installation of Equipment, Buyer will secure such permits and approvals from the proper authorities and for paying any required fees. If any Changes are required to meet such requirements, Buyer shall so inform B&W, and if such Changes can be practicably accomplished, B&W and Buyer shall proceed as set forth in Article 18 (Changes).

**21. Codes and Regulations.** B&W represents that it will perform Work in compliance with applicable fair labor standards laws, occupational safety and health laws, and laws related to non-segregation and equal employment opportunity. The Contract price, delivery and performance dates and any performance guarantees (if any) will be equitably adjusted to reflect additional costs or obligations incurred by B&W resulting from a change in industry specifications, codes, standards, applicable laws or regulations after the date of B&W's proposal.

**22. Health and Safety.**

**22.1** Buyer shall take all necessary precautions, at all times, for the health and safety of B&W personnel at the Site, including but are not limited to: providing to B&W for review, and instructing B&W's personnel regarding, Buyer's safety practices; proper and safe handling of, and protection of B&W's personnel from exposure to, Hazardous Materials; confined spaces; energization and de-energization of all power systems (electrical, mechanical and hydraulic) using safe and effective lock-out/tag-out (LOTO) procedures including physical LOTO or a mutually agreed-upon alternative method; and conducting periodic safety meetings. Buyer will remain responsible for providing a work environment that is safe and that complies with all applicable legal requirements. Buyer will make its local medical facilities and resources available to B&W personnel who need medical attention, for the duration of their needs. Under no circumstance will B&W personnel be required to work more than any maximum time periods allowed by applicable law.

**22.2** Before B&W commences performance of the Work, Buyer shall advise B&W in writing of all applicable Site-specific rules, regulations, safety codes, and laws that apply to the Work. Buyer shall indemnify and save B&W, its employees and agents, harmless from expense and liability (including reasonable attorneys' fees) incurred by or imposed upon B&W, its employees and agents, based upon exposure to Hazardous Materials, injury to persons (including death) or damage to property resulting from operation of Buyer's equipment at the Site.

**23. Site Access and Conditions**

**23.1** Buyer shall provide B&W access to the Site and any other facilities required for performance of the Work free of charge, including the operating and network environment and information. Prior to B&W's commencement of Work at the Site, Buyer shall (i) provide documentation that identifies any existing Hazardous Materials on or about the Site, and (ii) allow B&W, at its option, access to Site to perform or have performed a Site evaluation, including without limitation, a review of applicable documents and visual examination of the Site. B&W will have no responsibility or liability for existing Site conditions, and in no event will B&W's evaluation or failure to evaluate the Site result in the imposition of liability upon B&W for existing Site conditions.

**23.2** In the event that B&W encounters (i) any hazardous chemicals, toxic waste, underground storage tanks or other substances deemed to require special handling or disposal under OSHA or EPA regulations or (ii) other conditions previously unknown to B&W, including without limitation the condition and location of Buyer's existing facilities and equipment ("**Latent Physical Conditions**"), B&W may cease any and all Work for whatever time necessary. B&W will not be liable for any expenses, loss, or damage resulting from the delay, and the time for performance of the Contract will be extended by a period of time equal to the time lost by reason of such delay, and any other affected provision of the Contract will be equitably adjusted. Buyer is solely responsible for any removal, handling or correction such Latent Physical Conditions and shall defend, indemnify, and hold B&W harmless from and against all damages, liabilities, claims, losses and/or expense out of, or resulting from, or in any way connected with such latent physical conditions.

**24. Assignment.** Neither B&W nor Buyer may assign all or any part of the Contract without the prior written consent of the other party unless such assignment is made to a parent company or to a successor by way of merger, consolidation or the acquisition of substantially all of the assets of the assigning party. In the event of an assignment, the assignee must expressly assume the

obligations of the assigning party in writing. Any assignment in violation of this Article is null and void.

**25. Waiver.** No waiver of any breach of any provision of the Contract by either party will be considered as a waiver of any other or subsequent breach.

**26. Termination.**

**26.1** Buyer may terminate the Contract only upon sixty (60) days written notice and upon payment to B&W in accordance with the cancellation schedule set forth in the Contract, or if no such cancellation schedule exists, then:

**26.1.1** For regular maintenance and software support Services, upon payment to B&W for all Services performed prior to the effective date of termination, plus seventy percent (70%) of the remainder of the Contract price for such Services; and

**26.1.2** For all other Services and Equipment, upon payment to B&W of reasonable and proper termination charges including general and administrative costs and profit. Such charges include direct labor and material expenses; all overhead charges allocated in accordance with B&W's standard accounting practices; all vendor termination charges; engineering and drafting expense (based on the percentage of completion of the engineering and drafting work); development engineering specially incurred for the terminated contract including special tools, dies, fixtures and patterns; all other direct and indirect costs properly allocable and apportionable to the Contract; and the total profit anticipated under the Contract.

**26.2** The indirect costs referenced above include, without limitation, B&W's non-recoverable shop overhead allocations resulting from the loss of or under-utilization of B&W's shop facilities which will be determined at the conclusion of the period during which the Equipment would have been fabricated or assembled under the schedule contemplated by the Contract.

**26.3** Buyer is entitled to all material specially accumulated for the order and included in the above charges, shipped at its expense, or, at its option, the salvage value thereof will be deducted from the termination charges. Buyer may, at its option and expense, have B&W's firm of independent auditors conduct an independent examination and certify that the charges are in accordance with B&W's standard accounting practice. All termination charges are due and payable on submission of B&W's invoice therefor.

**27. Suspension.**

**27.1** B&W may suspend or terminate the Contract (or any portion thereof), with 30 days prior notice, for cause if Buyer becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws; there is an excusable delay lasting longer than 120 days; any representation or warranty made by Buyer herein or in any document or certificate furnished by Buyer in connection herewith proves to be incorrect in any material respect; Buyer materially fails to comply with any terms of the Contract, including but not limited to, failure or delay in making any payment when due or fulfilling any payment conditions; or Buyer fails or delays making any payment when due or fulfilling any payment conditions under any contract between the parties.

**27.2** Buyer shall pay any reasonable expenses incurred by B&W in connection with a suspension, including expenses for repossession, fee collection, demobilization/remobilization or costs of storage during suspension upon submission of B&W's invoice(s). The schedule for B&W's obligations will be extended for a period of time reasonably necessary to overcome the effects of any suspension.

**28. Governing Law, Venue and Dispute Resolution.**

**28.1** This Contract is interpreted in accordance with and governed by the laws of the State of California without regard for its conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Contract.

**28.2** If Buyer is organized under the laws of the United States or any state therein, then, subject to the requirements of Section 28.4, each party hereby irrevocably and unconditionally submits for itself and its property in any question or controversy arising out of or in any way relating to the Work or the Contract, including its construction or interpretation ("**Dispute**"), to the exclusive jurisdiction of the State of California, and any state or federal court located in the State of California and consents and agrees to suit being brought in such courts. Each party hereby waives and agrees not to assert in any such action or proceeding, in each case, to the fullest extent permitted by applicable law (i) any claim of lack of personal jurisdiction; (ii) immunity from any legal process with respect to it or its property; (iii) any such suit, action or proceeding



# babcock & wilcox power generation group

is brought in an inconvenient forum; or (iv) the venue of such suit is improper.

**28.3**If Buyer is not organized under the laws of the United States or any state therein, then, subject to the requirements of Section 28.4, any Dispute will be finally settled by arbitration in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce before a panel of three (3) arbitrators, and the judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Arbitration proceedings will be conducted in the English language in Cleveland, OH, United States of America.

**28.4**Prior to commencing any action described above, the parties shall attempt in good faith to resolve all Disputes as follows:

**28.4.1**The party claiming the Dispute shall give the other party prompt written notice of any Dispute not resolved in the normal course of business. Executives of both parties at levels one level above the project management personnel who have previously been involved in the dispute will meet at a mutually acceptable time and place within ten days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days from the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within fifteen (15) days after such referral, either party may initiate mediation as provided hereinafter. If a party intends to be accompanied at a meeting by an attorney, it shall give the other party reasonable notice of such intention and the other may also be accompanied by an attorney. All negotiations pursuant to this clause are confidential and will be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence.

**28.4.2**The parties will submit any Dispute not resolved in accordance with the procedures set forth above to mediation with mediators agreed upon by the parties. The mediation will take place at Buyer's facilities unless otherwise agreed.

**28.5**Each party will bear its own costs for any Dispute resolution.

**29. Third Party Beneficiaries.** No provision of the Contract is intended or will be construed to be for the benefit of any third party, except as expressly provided herein.

**30. Survival.** Any provision of the Contract which by its nature is intended to survive the termination or completion of the Contract will survive the termination or completion of the Contract.

**IN WITNESS WHEREOF**, the parties hereto have executed the Contract as of the date the last party has signed below.

**BABCOCK & WILCOX  
POWER GENERATION GROUP, INC.**

Signature: Leslie C. Kas

Name: Leslie C. Kas  
(print or type)

Title: VP Retrofit Projects & LEA

Date Signed: 2/21/17

Signature: Cameron Frymoyer

Name: Cameron Frymoyer

Title: VP Finance Power

Date Signed: 3/2/17

CITY OF RIVERSIDE, a California  
charter city and municipal corporation

By: \_\_\_\_\_  
City Manager

Attest: \_\_\_\_\_  
City Clerk

Certified as to Availability of Funds:

By: \_\_\_\_\_  
Chief Financial Officer

**APPROVED AS TO FORM:**

BY: Jessam Wilson

**ASSISTANT CITY ATTORNEY**