AGREEMENT FOR SERVICES BETWEEN
THE CITY OF MENLO PARK AND EATON CORPORATION

THIS AGREEMENT made and entered into at Menlo Park, California, this 1st day of May, 2016, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY", and EATON CORPORATION, hereinafter referred to as "FIRST PARTY."

WITNESSETH:

WHEREAS, CITY desires to retain FIRST PARTY to provide certain professional services for CITY in connection with that certain project called:

WHEREAS, FIRST PARTY is licensed to perform said services and desires to and does hereby undertake to perform said services.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND CONDITIONS of each of the parties hereto, it is hereby agreed as follows:

1. SCOPE OF WORK

In consideration of the payment by CITY to FIRST PARTY, as hereinafter provided, FIRST PARTY agrees to perform all the services as set forth in Exhibit "A", Scope of Services.

2. SCHEDULE FOR WORK

FIRST PARTY's proposed schedule for the various services required pursuant to this agreement will be as set forth in Exhibit "A", Scope of Services. CITY will be kept informed as to the progress of work by written reports, to be submitted monthly or as otherwise required in Exhibit "A". Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the other, or the other's employees and agents.

FIRST PARTY shall commence work immediately upon execution of the Agreement. The execution date shall be considered the "effective date" of the Agreement, as used herein, except as otherwise specifically defined. FIRST PARTY shall complete all the work and deliver to CITY all project related files, records, and materials within one month after completion of all of FIRST PARTY's activities required under this Agreement.

3. PROSECUTION OF WORK

FIRST PARTY will employ a sufficient staff to prosecute the work diligently and continuously and will complete the work in accordance with the schedule of work approved by the CITY. (See Exhibit "A", Scope of Services).
4. COMPENSATION AND PAYMENT

A. CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed $22,061.05 as described in Exhibit "A", Scope of Services. This compensation shall be based on the rates described in Exhibit "A". All payments, including fixed hourly rates, shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable.

B. FIRST PARTY’s fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.

C. As each payment is due, a statement describing the services performed shall be submitted to CITY by the FIRST PARTY. This statement shall include, at a minimum, the project title, Agreement Number, the title(s) of personnel performing work, hours spent, payment rate, and a listing of all reimbursable costs. CITY shall have the discretion to approve the invoice and the work completed statement. Payment shall be for the invoice amount or such other amount as approved by CITY.

D. Payments are due Net 30 days upon receipt of written invoices. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. With the exception of orders quoted on a fixed-fee basis and excluding FIRST PARTY’s proprietary, cost and financial accounting data, FIRST PARTY shall keep in accordance with generally accepted accounting practices complete and accurate time records, invoices, expense receipts and supporting data, and other documents that are specifically identified and designated for preservation in writing by the parties (‘Records’). Records shall be maintained and preserved as required by FIRST PARTY’s record retention schedule. CITY, or its authorized representative, if approved in writing by FIRST PARTY, shall have the right, at a mutually agreed time and place, to examine the Records at FIRST PARTY’s facility during normal business hours at CITY’s sole cost and expense.

5. EQUAL EMPLOYMENT OPPORTUNITY

A. FIRST PARTY, with regard to the work performed by it under this Agreement shall not discriminate on the grounds of race, religion, color, national origin, sex, handicap marital status or age in the retention of sub-consultants, including procurement of materials and leases of equipment.

B. FIRST PARTY shall take affirmative action to insure that employees and applicants for employment, are treated without regard to their race, color, religion, sex, national origin, marital status or handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training including apprenticeship.

C. FIRST PARTY shall post in prominent places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

D. FIRST PARTY shall state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex, national origin, marital status or handicap.

E. FIRST PARTY shall comply with Title VI of the Civil Rights Act of 1964 and shall provide such reports as may be required to carry out the intent of this section.

F. FIRST PARTY shall incorporate the foregoing requirements of this section in FIRST PARTY’s agreement with all sub-consultants.

6. ASSIGNMENT OF AGREEMENT AND TRANSFER OF INTEREST
A. FIRST PARTY shall not assign this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the CITY thereto, provided, however, that claims for money due or to become due to the FIRST PARTY from the CITY under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of an intended assignment or transfer shall be furnished promptly to the CITY.

B. Notwithstanding the foregoing, FIRST PARTY may assign this Agreement (or any interest herein), to: (i) any parent, subsidiary, affiliated or successor corporation; or the purchaser of any of these entities; or (ii) any corporation to which the party has sold all or substantially all of its assets (including the purchaser of any of the party’s subsidiaries); (iii) any corporation or legal entity with which the party may merge or consolidate.

7. INDEPENDENT WORK CONTROL

It is expressly agreed that in the performance of the service necessary for compliance with this Agreement, FIRST PARTY shall be and is an independent contractor and is not an agent or employee of CITY. FIRST PARTY has and shall retain the right to exercise full control and supervision of the services and full control over the employment, direction, compensation and discharge of all persons assisting FIRST PARTY in the performance of FIRST PARTY’s services hereunder. FIRST PARTY shall be solely responsible for its own acts and those of its subordinates and employees.

8. CONSULTANT QUALIFICATIONS

It is expressly understood that FIRST PARTY is licensed and skilled in the professional calling necessary to perform the work agreed to be done by it under this Agreement and CITY relies upon the skill of FIRST PARTY to do and perform said work in a skillful manner usual to the profession. The acceptance of FIRST PARTY’s work by CITY does not operate as a release of FIRST PARTY from said understanding.

9. NOTICES

All notices hereby required under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid or by overnight courier service. Notices required to be given to CITY shall be addressed as follows:

Brian Henry
Public Works
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
650-330-6740
nmnelgar@menlopark.org

Notices required to be given to FIRST PARTY shall be addressed as follows:

Eaton Corporation
Attention: Inside Service Sales
8609 Six Forks Road
Raleigh, NC 27615

Provided that any party may change such address by notice, in writing, to the other party and thereafter notices shall be addressed and transmitted to the new address.

10. HOLD HARMLESS
The FIRST PARTY shall defend, indemnify and hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants (Indemnified Parties), from all claims, suits or actions brought against the Indemnified Parties to the extent they result directly from or out of bodily injuries to or death of any person or damage to property resulting from the negligent acts, errors, omissions or willful misconduct of the FIRST PARTY its officers, agents, employees and servants during the performance of any work required by this Agreement.
11. INSURANCE

A. FIRST PARTY shall not commence work under this Agreement until all insurance required under this Section has been obtained and such insurance has been evidenced to the City, with certificates of insurance evidencing the required coverage.

B. There shall be a contractual liability endorsement extending the FIRST PARTY's coverage to include the contractual liability assumed by the FIRST PARTY pursuant to this Agreement. FIRST PARTY shall notify CITY of any material change to or cancellation of the policy. All certificates shall be filed with the City.

1. Worker's Compensation and Employer's Liability Insurance:
   The FIRST PARTY shall have in effect during the entire life of this Agreement Worker's Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the FIRST PARTY makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement" (not required if the FIRST PARTY is a Sole Proprietor).

2. Liability Insurance:
   The FIRST PARTY shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the FIRST PARTY's operations under this Agreement, whether such operations be by FIRST PARTY or by any sub-consultant or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than One Million Dollars ($1,000,000) per occurrence and One Million Dollars ($1,000,000), in aggregate or One Million Dollars ($1,000,000) combined single limit bodily injury and property damage for each occurrence. FIRST PARTY shall maintain Automobile Liability Insurance pursuant to this Agreement in an amount of not less than One Million Dollars ($1,000,000) for each accident combined single limit or not less than One Million Dollars ($1,000,000) for any one (1) person, and One Million Dollars ($1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, ($300,000) property damage.

C. CITY and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured, to the extent of FIRST PARTY's negligence, by blanket endorsement on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for the Worker's Compensation), which shall also contain a provision that the insurance afforded thereby to the CITY, its subsidiary agencies, and their officers, agents, employees, and servants shall be primary insurance, and that if the CITY, its subsidiary agencies and their officers and employees have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.

D. In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, CITY, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.
12. PAYMENT OF PERMITS/LICENSES

Contractor shall obtain any license, permit, or approval if necessary from any agency whatsoever for the work/services to be performed, at his/her own expense, prior to commencement of said work/services or forfeit any right to compensation under this Agreement.

13. RESPONSIBILITY AND LIABILITY FOR SUB-CONSULTANTS AND/OR SUBCONTRACTORS

Approval of or by CITY shall not constitute nor be deemed a release of responsibility and liability of FIRST PARTY or its sub-consultants and/or subcontractors for the accuracy and competency of the designs, working drawings, specifications or other documents and work, nor shall its approval be deemed to be an assumption of such responsibility by CITY for any defect in the designs, working drawings, specifications or other documents prepared by FIRST PARTY or its sub-consultants and/or subcontractors.

14. OWNERSHIP OF WORK PRODUCT

Work products of FIRST PARTY for this project, which are delivered and paid for under this Agreement, shall become the property of CITY. The reuse of FIRST PARTY's work products by City for purposes other than intended by this Agreement shall be at no risk to FIRST PARTY. For materials other than software provided by FIRST PARTY to CITY in connection with the products, such as manuals, schematics, drawings, reports, and data ("Related Materials"), FIRST PARTY grants CITY a limited, non-exclusive, non-transferable, and royalty-free license to use and make copies of such Related Materials solely as necessary for the use, operation, maintenance and repair of such products, but CITY does not have the right to create derivative works, publish or otherwise publicly disseminate such Related Materials, in whole or in part. CITY may sublicense the Related Materials to its customers who subsequently buy the products from CITY, or to the ultimate end users of the products, under the same terms as described herein. For avoidance of doubt, FIRST PARTY does not grant CITY a license to any of FIRST PARTY's brands, logos, designs, trade dress, service marks, trademarks, domain names or trade names, in whole or in part.

15. REPRESENTATION OF WORK

Any and all representations of FIRST PARTY, in connection with the work performed or the information supplied, shall not apply to any other project or site, except the project described in Exhibit "A" or as otherwise specified in Exhibit "A".

16. TERMINATION OF AGREEMENT


A. CITY may give thirty (30) days written notice to FIRST PARTY, terminating this Agreement in whole or in part at any time, either for CITY’s convenience or because of the failure of FIRST PARTY to fulfill its contractual obligations or because of FIRST PARTY’s change of its assigned personnel on the project without prior CITY approval. Upon receipt of such notice, FIRST PARTY shall:
   1. Immediately discontinue all services affected (unless the notice directs otherwise); and
   2. Deliver to the CITY all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated or produced by FIRST PARTY in performing work under this Agreement, whether completed or in process.

B. If termination is for the convenience of CITY, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.

C. If the termination is due to the failure of FIRST PARTY to fulfill its Agreement, CITY may take over the work and prosecute the same to completion by agreement or otherwise. In such case, FIRST PARTY shall be liable to CITY for any reasonable additional direct cost of the replacement services over the original purchase price occasioned to the CITY thereby.

D. If, after notice of termination for failure to fulfill Agreement obligations, it is determined that FIRST PARTY had not so failed, the termination shall be deemed to have been effected for the convenience of the CITY. In such event, adjustment in the contract price shall be made as provided in Paragraph B of this Section.

E. The rights and remedies of the CITY provided in this Section are in addition to any other rights and remedies provided by under this Agreement.

F. Subject to the foregoing provisions, the CITY shall pay FIRST PARTY for services performed and expenses incurred through the termination date.
17. INSPECTION OF WORK

It is FIRST PARTY's obligation to make the work product available for CITY's inspections and periodic reviews upon request by CITY.

18. COMPLIANCE WITH LAWS

It shall be the responsibility of FIRST PARTY to comply with all State and Federal Laws applicable to the work and services provided pursuant to this Agreement, including but not limited to compliance with prevailing wage laws, if applicable.

19. BREACH OF AGREEMENT

A. This Agreement is governed by applicable federal and state statutes and regulations. Any material deviation by FIRST PARTY for any reason from the requirements thereof, or from any other provision of this Agreement, shall constitute a breach of this Agreement and may be cause for termination at the election of the CITY.

B. The CITY reserves the right to waive any and all breaches of this Agreement, and any such waiver shall not be deemed a waiver of any previous or subsequent breaches. In the event the CITY chooses to waive a particular breach of this Agreement, it may condition same on payment by FIRST PARTY of actual damages occasioned by such breach of Agreement.

20. SEVERABILITY

The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

21. CAPTIONS

The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction, or meaning of any provisions of this Agreement.

22. LITIGATION OR ARBITRATION

In the event that suit or arbitration is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees. The Dispute Resolution provisions are set forth on Exhibit "B", 'Dispute Resolution' attached hereto and by this reference incorporated herein.

23. RETENTION OF RECORDS

Contractor shall maintain all required records for three years after the City makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the City, a federal agency, and the state of California.

24. TERM OF AGREEMENT

This Agreement shall remain in effect for the period of February 1, 2016 through January 31, 2020 unless extended, amended, or terminated in writing by the parties.
25. **ENTIRE AGREEMENT**

This document constitutes the sole Agreement of the parties hereto relating to said project and states the rights, duties, and obligations of each party as of the document’s date. Any prior Agreement, promises, negotiations, or representations between parties not expressly stated in this document are not binding. All modifications, amendments, or waivers of the terms of this Agreement must be in writing and signed by the appropriate representatives of the parties to this Agreement.

26. **STATEMENT OF ECONOMIC INTEREST**

Consultants, as defined by Section 18701 of the Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations, are required to file a Statement of Economic Interests with 30 days of approval of a contract services agreement with the City of its subdivisions, on an annual basis thereafter during the term of the contract, and within 30 days of completion of the contract. Based upon review of the FIRST PARTY’s Scope of Work and determination by the City Manager, it is determined that FIRST PARTY IS **NOT** required to file a Statement of Economic Interest. A statement of Economic Interest shall be filed with the City Clerk’s office no later than 30 days after the execution of the Agreement.

27. **WARRANTY**

FIRST PARTY shall perform all Service in a professional and workmanlike manner. FIRST PARTY warrants repairing or replacing defective parts or materials and correcting defective workmanship reported to FIRST PARTY and/or diagnosed by FIRST PARTY’s personnel during the term of this Agreement. FIRST PARTY warrants its corrective maintenance and replacement parts to be free from defects in material and workmanship for the term of this Agreement or for a period of ninety (90) days from the completion date of the repair or replacement of parts or materials, whichever is longer. In the event the parts or materials fail to meet published specifications due to a defect in parts or materials or workmanship covered by this Warranty, FIRST PARTY, at its discretion, will repair or replace the warranted parts or materials at no cost to CITY. This Warranty shall not apply to any Power Module and/or Battery that has been: (i) subject to damage caused by accident, fire, flood, lightning, vandalism, acts of God, CITY's neglect, misuse, misapplication, incorrect connection or external damage; (ii) subject to repair or alteration by CITY (or a third party) not authorized by FIRST PARTY in writing; or (iii) moved without thirty (30) days’ notice to FIRST PARTY. FIRST PARTY reserves the right to supervise the move. THIS WARRANTY IS EXCLUSIVE EXCEPT FOR WARRANTY OF TITLE. FIRST PARTY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CORRECTION OF NON-CONFORMITIES IN THE MANNER AND FOR THE PERIOD OF TIME PROVIDED ABOVE SHALL CONSTITUTE FIRST PARTY'S SOLE LIABILITY AND CITY'S EXCLUSIVE REMEDY FOR FAILURE OF FIRST PARTY TO MEET ITS WARRANTY OBLIGATIONS, WHETHER CLAIMS OF CITY ARE BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE. Parts or materials supplied, but not manufactured by FIRST PARTY, are warranted solely by the manufacturer. FIRST PARTY’s obligation under this Warranty is conditioned upon receipt of all payments due from CITY.

28. **LIABILITY**
The remedies of the CITY set forth in this Agreement are exclusive and are its sole remedies for any failure of FIRST PARTY to comply with its obligations hereunder. Notwithstanding anything in this Agreement or otherwise to the contrary, in no event shall FIRST PARTY or CITY, or their respective officers, directors, employees or agents be liable to the other for damage to property or equipment, other than to equipment sold or serviced hereunder, or any incidental, indirect, special or consequential damages, such as, but not limited to, delay damages, lost profits or revenue, lost data, loss of use or lost opportunity damages, resulting from or in connection with any claim or cause of action, whether brought in contract or in tort, even if FIRST PARTY or CITY knew or should have known of the possibility of such damages. The total cumulative liability of FIRST PARTY arising from or related to this Agreement whether the claims are based in contract, in tort (including negligence or strict liability) or otherwise, shall not exceed five times (5x) the price paid hereunder for the products or services provided.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

FIRST PARTY:

Signature: [Signature]
Name: Jason Clevely
Tax ID#: 34-0196300
Date: 5/12/16
Title: Director of Finance

APPROVED AS TO FORM:

Signature: [Signature]
Name: William L. McClure, City Attorney
Date: 6/3/16

CITY OF MENLO PARK:

Signature: [Signature]
Name: Justin I.C. Murphy
Date: 5/19/16
Title: Department Head

ATTEST:

Signature: [Signature]
Name: Pamela Aguilar, City Clerk, City of Menlo Park
Date: 5/31/16
EXHIBIT “A” – SCOPE OF SERVICES

A1. SCOPE OF WORK

FIRST PARTY agrees to provide Uninterruptable Power Supply maintenance services (Services) for CITY’s Public Works. In the event of any discrepancy between any of the terms of the FIRST PARTY’s proposal and those of this Agreement, the version most favorable to the CITY shall prevail. FIRST PARTY shall provide the following services:

Provide general Services for projects as determined by the CITY. The detailed scope of work for each task the CITY assigns the FIRST PARTY shall be referred to as Exhibit A-1, which will become part of this Agreement. A notice to proceed will be issued separately for each separate scope of work agreed to between the CITY and FIRST PARTY.

FIRST PARTY agrees to perform these services as directed by the CITY in accordance with the standards of its profession and CITY’s satisfaction.

A2. COMPENSATION

CITY hereby agrees to pay FIRST PARTY at the rates to be negotiated between FIRST PARTY and CITY as detailed in Exhibit A-1. The actual charges shall be based upon (a) FIRST PARTY’s standard hourly rate for various classifications of personnel; (b) all fees, salaries and expenses to be paid to engineers, consultants, independent contractors, or agents employed by FIRST PARTY.--The total fee for each separate Scope of Work agreed to between the CITY and FIRST PARTY shall not exceed the amount shown in Exhibit A-1.

FIRST PARTY shall be paid within thirty (30) days after receipt of invoice by the CITY. Invoices shall be submitted containing all information contained in Section A5 below. In no event shall FIRST PARTY be entitled to compensation for extra work unless an approved change order, or other written authorization describing the extra work and payment terms, has been executed by CITY prior to the commencement of the work.

A3. SCHEDULE OF WORK

FIRST PARTY’S proposed schedule for the various services required will be set forth in Exhibit A-1.

A4. CHANGES IN WORK -- EXTRA WORK

In addition to services described in Section A-1, the parties may from time to time agree in writing that FIRST PARTY, for additional compensation, shall perform additional services including but not limited to:

• Change in the services because of changes in scope of the work.
• Additional tasks not specified herein as required by the CITY.

The CITY and FIRST PARTY shall agree in writing to any changes in compensation and/or changes in FIRST PARTY’s services prior to the commencement of any work. If FIRST PARTY deems work he/she has been directed to perform is beyond the scope of this Agreement and constitutes extra work, FIRST PARTY shall immediately inform the CITY in writing of the fact. A supplemental agreement providing for such compensation for extra work shall be negotiated between the CITY and the FIRST PARTY. Such supplemental agreement shall be executed by the FIRST PARTY and may be approved by the City Manager upon recommendation of the Public Works Director.
### A5. BILLINGS

FIRST PARTY’s bills shall include the following information: A brief description of services performed, project title and the Agreement number; the current contract amount; the current invoice amount; Except as specifically authorized by CITY, FIRST PARTY shall not bill CITY for duplicate services performed by more than one person. In no event shall FIRST PARTY submit any billing for an amount in excess of the maximum amount of compensation provided in Section A2.

The expenses of any office, including furniture and equipment rental, supplies, salaries of employees, telephone calls, postage, advertising, and all other expenses incurred by FIRST PARTY in the performances of this Agreement shall be incurred at the FIRST PARTY’s discretion. Such expenses shall be FIRST PARTY’s sole financial responsibility.
EXHIBIT “B” - DISPUTE RESOLUTION

B1.0 All claims, disputes and other matters in question between the FIRST PARTY and CITY arising out of, or relating to, the contract documents or the breach thereof, shall be resolved as follows:

B2.0 Mediation
B2.1 The parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute. After a written demand for non-binding mediation, which shall specify in detail the facts of the dispute, and within ten (10) days from the date of delivery of the demand, the matter shall be submitted to a mutually agreeable mediator. The Mediator shall hear the matter and provide an informal opinion and advice, none of which shall be binding upon the parties, but is expected by the parties to help resolve the dispute. Said informal opinion and advice shall be submitted to the parties within twenty (20) days following written demand for mediation. The Mediator's fee shall be shared equally by the parties. If the dispute has not been resolved, the matter shall be submitted to arbitration in accordance with Paragraph B3.1.

B3.0 Arbitration
B3.1 Any dispute between the parties that is to be resolved by arbitration as provided in Paragraph B2.1 shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, as then in effect, except as provided below. Any such arbitration shall be held before three arbitrators who shall be selected by mutual agreement of the parties; if agreement is not reached on the selection of the arbitrators within fifteen (15) days, then such arbitrator(s) shall be appointed by the presiding Judge of the court of jurisdiction of the Agreement.

B3.2 The provisions of the Construction Industry Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however to the following:

B3.3 Any demand for arbitration shall be writing and must be made within a reasonable time after the claim, dispute or other matter in question as arisen. In no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim, dispute or other matter would be barred by the applicable statute of limitations.

B3.4 The arbitrator or arbitrators appointed must be former or retired judges, or attorneys at law with last ten (10) years’ experience in construction litigation.

B3.5 All proceedings involving the parties shall be reported by a certified shorthand court reporter, and written transcripts of the proceedings shall be prepared and made available to the parties.

B3.6 The arbitrator or arbitrators must be made within and provide to the parties factual findings and the reasons on which the decisions of the arbitrator or arbitrators is based.

B3.7 Final decision by the arbitrator or arbitrators must be made within ninety (90) days from the date of the arbitration proceedings are initiated.

B3.8 The prevailing party shall be awarded reasonable attorneys’ fees, expert and non-expert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration, unless the arbitrator or arbitrators for good cause determine otherwise.

B3.9 Costs and fees of the arbitrator or arbitrators shall be borne by the non-prevailing party, unless the arbitrator or arbitrators for good cause determine otherwise.

B3.10 The award or decision of the arbitrator or arbitrators, which may include equitable relief, shall be final, and judgment may be entered on it in accordance with applicable law in any court having jurisdiction over the matter.
We are pleased to provide the following services proposal for your power quality equipment. Please refer to the Scopes of Work (SOW) for descriptions of service coverage and exclusions.

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<th>Serial Number</th>
<th>New/Renewal</th>
<th>Model Description</th>
<th>Battery Type, Quantity</th>
<th>Coverage Type</th>
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<td>EH142CAC08</td>
<td>N</td>
<td>9390-20-40</td>
<td>VRLA Sealed, 32</td>
<td>Flexible</td>
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**Quantity 1, Eaton 9390-20-40, VRLA Sealed, 32**

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<tr>
<th>Coverage Start Date</th>
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<tr>
<td>2/1/2016</td>
<td>1/31/2020</td>
<td>4 Years</td>
<td>$13,237.05</td>
</tr>
</tbody>
</table>

**Flex:** 4 Hr Rsp, 7x24 Cvg, Parts & Labor Disc Only (FL47NXDX-0050)
- After Hours (7x24) w/ Parts & Labor
- 4 HR Response Time
- 30% Spare Part Kit and Time and Material Discount
- 4x per term: UPS Preventive Maintenance, After Hours (7x24) (0005NXXX-0050) $5,880.00
- 4x per term: Sealed Battery Preventive Maintenance, Any Time (0005NSXXX32) $2,944.00
- EOSL Status Active

**Supporting Documents:** T-0, X-1, R-2, R-5, R-30, R-33, R-10

**Grand Total Price:** $22,061.05

**NOTE:** This is an estimation only for billing disbursement.

- Contract Payment Terms: Net 30 days, Billing Cycle: Annual
- Important Tax Notice: Tax is not included in the above purchase price. All orders will be subject to all applicable sales tax unless a current tax exemption certificate is on file covering the state shown in the ship-to address or service equipment location.
- To purchase, please sign and date below. Return all attachments WITH purchase order to: Mary Andrews at MaryA@OneLinePower.com and Joe Schilllange at JoeS@OneLinePower.com.
- Make Purchase Orders to: Eaton Corporation, PO Box 93531, Chicago, IL 60673-3531. Please reference the cart number on the purchase order. The cart number can be found in the upper left corner of this quote.
- If the unit(s) has not been under an Eaton Powerware service agreement within the last 90 days, we would use the UPS PM as the pre-contract survey. Any needed repairs found during this inspection will be billed to the customer at the current T&M rates.
- Eaton Corporation terms and conditions govern this proposal and any purchase order submitted to Eaton pursuant thereto. Additional or different terms proposed by Buyer, whether in its purchase order or otherwise, shall not be binding upon Eaton Corporation and are hereby rejected unless expressly agreed to in writing by Eaton Corporation. Pricing may be void if other than Eaton Corporation’s terms and conditions are requested. Please advise prior to placing your order of any T&C issues.
EATON CORPORATION
SERVICE AGREEMENT – TERMS AND CONDITIONS (T-0)

1. DEFINITIONS: As used in this Service Agreement, the terms listed below shall have the following meanings:
   “Agreement” shall mean this Agreement, the quote, and the applicable Scope(s) of Work.
   “Battery” shall mean the electric storage portion of a UPS.
   “Contractor” shall mean Eaton Corporation.
   “Covered Equipment” shall mean the equipment as listed on the quote.
   “CPM” shall mean the Contracted Period of Maintenance or Hours of Service.
   “Customer” shall mean the purchaser of this Agreement.
   “Drop Ship Items” shall mean batteries, battery monitoring systems, battery containment, battery materials, racks and cabinets.
   “Emergency Service” shall mean all services provided on an as needed basis that is not scheduled in advance.
   “PCS” shall mean Pre-Contract Survey.
   “On-Site” shall mean Service performed at Customer’s physical location as listed on the quote.
   “Power Module” shall mean the electronic portion of a UPS or other power quality device.
   “Scope of Work” shall mean the services, procedures, methods, exclusions and coverage as purchased by the Customer.
   “Service” shall mean installation, maintenance (including Preventive Maintenance as defined in Scope of Work Attachment R-2), repair, inspection, adjustment, and remote monitoring services (including the PredictPulse Service as defined in Scope of Work, Attachment R-32) performed on the Covered Equipment by Contractor or otherwise provided by Contractor in connection with the Covered Equipment.
   “UPS” shall mean Uninterruptible Power Supply which is comprised of the Power Module and Batteries.

2. ELIGIBILITY: All Covered Equipment that has experienced a lapse in Service coverage with the Contractor (or factory warranty coverage) or has had no service history with Contractor within the previous ninety (90) days, is subject to a PCS inspection by Contractor prior to eligibility for any Service under this Agreement. Customer is subject to charges for a PCS inspection at Contractor’s then current Time and Material Service Rate Schedule (refer to Exhibit 1-PCS and Attachment X-1). If a PCS inspection is required for eligibility, a list of the equipment requiring a PCS inspection will be provided to Customer and will be incorporated into this Agreement.

3. HOURS OF SERVICE: Contractor will provide scheduled and emergency services portal-to-portal 8:00AM to 5:00 PM Monday-Friday (alternatively described as “5X8 Service”) excluding all holidays observed by Contractor. The Customer may optionally purchase extended hours of scheduled and Emergency Service coverage (alternately described as “7x24 Service”) which will include Emergency Service being provided on all holidays observed by Contractor. Notwithstanding anything herein or otherwise to the contrary, scheduled services are not available on Contractor’s observed holidays. Contractor’s observed holidays shall be the same as public holidays for Federal employees as established by U.S. Federal law (5 U.S.C. 6103).

4. ON-SITE RESPONSE TIME: Following Customer’s request for Service, Contractor will arrive at the location of the Covered Equipment the next business day or if optionally purchased by Customer, Contractor will arrive at the location of the Covered Equipment within eight (8), four (4) or two (2) CPM hours, provided the Covered Equipment is located within one hundred (100) miles of a Contractor service location. Response time does not include battery replacement service.

5. LABOR AND MATERIAL RATES: For any additional Service outside the Scope(s) of Work purchased for Covered Equipment under this Agreement, Customer shall be billed at Contractor’s then current Time and Material Rate Schedule (refer to Attachment X-1). This excludes any flat-rate quoted by Contractor representative.

6. ENGINEERING CHANGES: All engineering changes deemed necessary by Contractor will be installed during scheduled Service visits during the CPM. Any engineering changes deemed optional by Contractor will be offered to Customer on an as-available, per charge basis.

7. CUSTOMER’S RESPONSIBILITY:
   A. Communication and Scheduling - Customer shall contact Contractor’s Customer Reliability Center (1-800-843-9433) regarding all Service and Preventive Maintenance requests and all other matters arising out of or relating to this Agreement. With respect to Preventive Maintenance purchased by Customer, it shall be Customer's
responsibility to contact Contractor to schedule the Preventive Maintenance. In the event that Customer fails to schedule and/or does not permit, for any reason, Preventive Maintenance to be completed within ninety (90) days of the scheduled service date, Contractor’s obligation for that Preventive Maintenance shall be considered fulfilled.

B. Movement - If Covered Equipment is moved to another location within the United States, Service coverage will continue only upon the following conditions: (i) Customer shall notify Contractor in writing at least thirty (30) days in advance of power-down of Covered Equipment; (ii) Contractor reserves the right to supervise the power-down, disconnection, rigging, packing, movement, unpacking, reinstallation and re-start of the Covered Equipment for which Customer will be charged according to Contractor’s then current Time and Material Service Rate Schedule; and (iii) resumption of Service coverage under this Agreement is subject to acceptance by Contractor of Covered Equipment at the new location.

C. Safety - Customer shall, at all times during the provision of Service hereunder, have a representative present at the Service site at no cost to, and solely for, the safety of Contractor.

D. Access - Customer shall grant ready access to the Covered Equipment, subject to reasonable security requirements, so that Contractor may perform Service under this Agreement.

8. BATTERY REPLACEMENT SERVICES AND TERMINATION:

Battery Replacement Services are an optional service and available upon request from Customer. Contractor will provide a quotation upon request and the terms and conditions of this section shall apply to any work order that is placed for Battery replacement services.

Prices stated in Contractor’s quote do not include installation, freight, and handling charges unless these items are specifically listed and priced in the quote. Prices stated in Contractor’s quote are F.O.B. factory (unless otherwise stated) and title and risk of loss to each article sold by Contractor to Customer shall pass to Customer upon delivery at the F.O.B. point.

Shipment estimates are after receipt of Customer’s work order at the factory. If drawings are required for approval before Contractor is authorized to proceed with manufacture, then shipment estimates are after receipt of written approval to proceed. If the Customer cannot accept delivery of equipment, Customer will arrange for storage. Contractor shall not be liable or responsible for any damages or loss for delay or default in delivery due to any cause beyond Contractor’s reasonable control, nor shall Customer cancel or have the right to cancel its work order because of delays or default in delivery due to such causes.

Customer may not cancel or terminate its work order without prior written notice to the Contractor and upon payment of cancellation charges which shall take into account, among other things, expenses already incurred and commitments made by the Contractor. Cancellation charges are as follows: for batteries and Drop Ship Items, cancellation 31 days or more prior to shipment, 50% of the total invoice; between 0-30 days prior to shipment, 100% of the total invoice. Changes made to an order may be subject to increase or decrease in purchase order amount, change order charges, and changes in schedule date. Customer is responsible for return freight charges related to cancellation.

9. END OF SERVICE LIFE (“EOSL”)/BEST EFFORTS: Contractor may designate a Power Module as “End of Service Life/Best Efforts” which shall mean that limited parts are available or Service will be provided on a best efforts basis. This designation will be indicated on the quote provided to Customer for Service renewal. In the event that Contractor cannot perform or complete a covered repair, Contractor may terminate coverage subject to the Termination Section of the main Agreement. Customer may request a pro-rated refund for the terminated portion of this Agreement, subject to Termination Section of the main Agreement. Customer acknowledges EOSL/Best Efforts designation on the quote will serve as Contractor’s notice of limited service support and its recommendation to replace or decommission the Power Module.

10. PARTS: Unless otherwise agreed to by the parties in writing, all parts removed for replacement shall be Contractor’s property. Parts used from Customer-owned spare parts kit shall be replaced by Contractor at no cost. Replacement parts shall be new or of the same quality as new.
# Certificate of Liability Insurance

**Date (MM/DD/YYYY):** 05/03/2016

**Producer:** Marsh USA Inc.
200 Public Square, Suite 1000
Cleveland, OH 44114

**Insured:** Eaton US Holdings, Inc., Eaton Corporation PLC, Eaton Corporation and all other divisions

**Subsidiaries and controlled associate companies that are part of:** Eaton or Cooper Industries Eaton Center, 1000 Eaton Boulevard

**Insurer(s) Affording Coverage:** Old Republic Insurance Company

**NAIC #:** 24147

**Certificate Number:** 05-000620394-01  **Revision Number:** 1

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### Coverages

**Type of Insurance**

<table>
<thead>
<tr>
<th>Policy</th>
<th>Policy Eff</th>
<th>Policy Exp</th>
<th>Limits</th>
</tr>
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</table>
| **Commerical General Liability**
  - Claims-Made Occur | 01/01/16 | 01/01/17 | $5,000,000 |
| **Automobile Liability**
  - Combined Single Limit (EA accident) | 01/01/16 | 01/01/17 | $7,500,000 |
  - Bodily Injury (Per person) |  |  | $5,000,000 |
  - Bodily Injury (Per accident) |  |  | $5,000,000 |
| **Workers Compensation and Employers Liability**
  - E.L. Each Accident |  |  | $5,000,000 |
  - E.L. Disease - EA Employee |  |  | $5,000,000 |
  - E.L. Disease - Policy Limit |  |  | $5,000,000 |
| **Excess Workers Comp**
  - Employers Liability | 01/01/16 | 01/01/17 | $4,000,000 |
  - Self Insured Retention |  |  | $1,000,000 |

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**Description of Operations / Locations / Vehicles (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

**Contract No.:** 129136-1  **Project / Location of Work:** City of Menlo Park-PD, 701 Laurel St, Menlo Park, CA 94025

Each occurrence limit other than products/completed operations $5,000,000

Each occurrence limit - products/completed operations $8,500,000

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**Certificate Holder:**

City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025

**Cancellation:**

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

Authorized Representative of Marsh USA Inc.

Kevin Robinson

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**AGENCY CUSTOMER ID:** 12345e  
**LOC #:** Cleveland

## ADDITIONAL REMARKS SCHEDULE

<table>
<thead>
<tr>
<th>AGENCY</th>
<th>NAMED INSURED</th>
</tr>
</thead>
<tbody>
<tr>
<td>MARSH USA INC.</td>
<td>EATON US HOLDINGS, INC. EATON CORPORATION PLC. EATON CORPORATION AND ALL OTHER</td>
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<td></td>
<td>DIVISIONS SUBSIDIARIES AND CONTROLLED ASSOCIATE COMPANIES THAT ARE PART OF</td>
</tr>
<tr>
<td></td>
<td>EATON OR COOPER INDUSTRIES EATON CENTER 1000 EATON BOULEVARD</td>
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<tr>
<th>CARRIER</th>
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<th>EFFECTIVE DATE:</th>
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</table>

**ADDITIONAL REMARKS**

**REMARKS**

**FORM NUMBER:** 25  
**FORM TITLE:** Certificate of Liability Insurance

- EATON CORPORATION
- ADDITIONAL INSURED

THE CERTIFICATE HOLDER IS INCLUDED AS ADDITIONAL INSURED WHERE REQUIRED BY WRITTEN CONTRACT WITH RESPECT TO GENERAL LIABILITY.
Form W-9
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

1. Name (as shown on your income tax return). Name is required on line 1; do not leave this blank.
   Eaton Corporation

2. Business name/desired entity name, if different from above:

3. Check appropriate box for federal tax classification; check only one of the following seven boxes:
   - Individual/sole proprietor
   - C Corporation
   - S Corporation
   - Partnership
   - Trust/estate
   - Unlimited liability company. Enter the tax classification (C=S corporation, S=S corporation, P=partnership)
   - Note: For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner.
   - Other (see instructions)

4. Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):
   - Exempt payee code (if any) 5
   - Exemption from FATCA reporting code (if any) N/A
   (Applies to accounts maintained outside the U.S.)

5. Address (number, street, and apt., or suite no.):
   1000 Cherrington Parkway
   MOON TOWNSHIP PA 15108

6. City, state, and ZIP code

7. List account number(s) here (optional)
   Requester's name and address (optional)

Part I: Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see How to get a TIN on page 3.

Note: If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

Social security number

Employer Identification number

34-0196300

Part II: Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and

2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here

Signature of U.S. person  
Date

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at www.irs.gov/w9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-9 (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1088 (home mortgage interest), 1089-E (student loan interest), 1089-T (tuition)
- Form 1098-H (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)
- Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding? on page 2.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),

2. Certify that you are not subject to backup withholding, or

3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and

4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See What is FATCA reporting? on page 2 for further information.