

Master Services Agreement

Under these Terms and Conditions, “**Company**” shall mean **Concentric, LLC**, and “**Customer**” shall the customer indicated on the applicable Purchase Order. Company and Customer shall be individually referred to herein as a “**Party**” and collectively as the “**Parties**”. For purposes of these Terms and Conditions, any quote, purchase order, scope of work, work order, contract order or contract to which these Terms and Conditions are attached or included shall be referred to herein as a “**Purchase Order**”; and these Terms and Conditions taken together with any such Purchase Order shall collectively be referred to herein as this “**Agreement**”; “**Goods**” shall mean the goods or products to be supplied by Company, as set forth in the applicable Purchase Order forming part of this Agreement; “**Services**” shall mean the services and related obligations to be performed by Company, as set forth in the applicable Purchase Order forming part of this Agreement. Any and all additional or different terms and conditions included in or attached to any commercial documents, other than those specifically approved in writing by both Parties, are hereby rejected and shall not become part of this Agreement.

A. Terms and Conditions Applicable to Purchase of Goods

1. **Warranty.** EXCEPT AS EXPRESSLY SET FORTH IN A PURCHASE ORDER, THE GOODS TO BE PURCHASED UNDER THIS AGREEMENT ARE FURNISHED AS IS, WHERE IS, WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. THE CUSTOMER SHALL RECEIVE ONLY REPRESENTATIONS AND WARRANTIES OF THE MANUFACTURER, IF AVAILABLE, WITH RESPECT TO ANY NEW GOODS INSTALLED BY COMPANY.

2. **Title and Risk of Loss; Acceptance.** Title to the Goods shall pass to Customer upon the later of (a) delivery of the Goods to the site of Customer’s facility (the “**Facility**”) for which the Goods and/or Services specified in the Purchase Order forming part of this Agreement are intended to be provided, or such other delivery point as may be specified in the applicable Purchase Order forming part of this Agreement (the “**Delivery Point**”), and (b) payment in full therefor by Customer. Company shall bear all risk of loss with respect to the Goods until they are delivered to Customer at the Delivery Point and Customer receives the Goods. Following receipt of the Goods, Customer shall have the right to inspect the Goods before accepting them. Customer agrees to inspect and either accept or reject the Goods within two (2) business days following delivery of such Goods to the Delivery Point. If Customer fails to accept or reject the Goods within two (2) business days following delivery of such Goods to the Delivery Point, the Goods shall be deemed accepted by Customer. If Customer rejects the Goods for being non-compliant with applicable specifications, Company shall bear all risk of loss with respect to the Goods when Company removes the Goods from Customer’s premises. Unless otherwise quoted or agreed by the Parties, the Goods are priced and shall be delivered by Company FCA (the Delivery Point), and the Goods shall be considered delivered for purposes of this **Section 3** when Company fulfills all of the obligations associated with delivery FCA in accordance with the International Chamber of Commerce’s Incoterms 2020 (or in the case where another delivery method is specified in the applicable Purchase Order forming part of this Agreement and agreed to by the Parties, when delivered in accordance with the requirements thereof).

B. Terms and Conditions Applicable to the Purchase of Services

3. **Warranty.** Company represents and warrants to Customer that: (a) Company shall perform the Services in a professional and workmanlike manner; (b) Company shall employ only competent and experienced personnel to perform the Services; and (c) no federal, state or local statute, law, rule, regulation or order of any government instrumentality having competent jurisdiction over the performance of the Services, in each case as in effect as of the effective date of the applicable Purchase Order forming part of this Agreement or any subsequent Change Order which contemplates the change in such legal requirements (collectively, together with the Applicable Goods Laws, the “**Applicable Laws**”), will be violated in the performance of the Services (“**Services Warranty**”). If any Defect in any Service becomes apparent within six (6) months after Company completes such Service (the “**Services Warranty Period**”) and so long as Customer properly notifies Company in writing of such Defect during the applicable Services Warranty Period, Company shall re-perform such Service (“**Services Warranty Repair**”) to the extent of the Defect such that the Service, as so re-performed, complies with the foregoing warranty or, in the event re-performance is not practical, refund the price paid for such Service. For purposes of this **Section 3**, “**Defect**” means any failure of any Service to conform to the Services Warranty or the final written descriptions, specifications, and drawings expressly set forth in or referenced in the applicable Purchase Order forming part of this Agreement, as determined by Company in its reasonable discretion, except to the extent such failure is due to (i) Force Majeure, (ii) Customer’s failure to unload, store, erect, operate, and/or maintain the Goods in accordance with prudent industry practice and applicable operating and maintenance manuals, as may be updated from time to time, (iii) any misuse or abuse of the Goods by any party other than Company and its subcontractors; and/or (iv) normal wear and tear. Notwithstanding

anything to the contrary in this Agreement, Company shall have no obligation or liability under this **Section 3** in respect of any Service after the end of the Services Warranty Period applicable to such Service. EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET FORTH IN THIS **SECTION 3**, COMPANY DOES NOT MAKE ANY OTHER EXPRESS WARRANTIES OR REPRESENTATIONS, OR ANY IMPLIED WARRANTIES OR REPRESENTATIONS, OF ANY KIND WHATSOEVER RELATING TO THE SERVICES UNDER THIS AGREEMENT, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A SPECIFIED PURPOSE, WHETHER SUCH MIGHT ARISE UNDER LAW OR CUSTOM OF TRADE OR OTHERWISE. THE REMEDIES SPECIFIED IN THIS **SECTION 3** REPRESENT THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMER AND THE SOLE AND EXCLUSIVE LIABILITY OF COMPANY WITH RESPECT TO ANY DEFECT OR OTHER BREACH OF THIS **SECTION 3**, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, COMPANY SHALL HAVE NO OBLIGATION TO REPAIR OR REPLACE ANY DAMAGE TO ANY PROPERTY ARISING BY REASON OF A DEFECT, OTHER THAN TO RE-PERFORM THE DEFECTIVE SERVICE IN ACCORDANCE WITH AND SUBJECT TO THIS **SECTION 3**.

4. **Qualifications.** (a) Company shall comply, and shall ensure that any of its subcontractors which have been engaged by Company under subcontracts to perform all or a portion of the Services at the Facility (each, a “**Subcontractor**”) have a contractual duty under their respective subcontracts to comply, with all applicable labor, employment, and immigration laws that may impact Company’s obligations under this Agreement, including but not limited to federal, state and local laws, rules and regulations, and executive orders that are now or that become applicable to the Company during the period the Company is performing the Services hereunder (it being understood that the provisions of **Section 22** shall apply in the case of any Change in Law (as defined therein)).

5. **Safety and Security.** All Services performed by Company or its Subcontractors on Customer’s premises shall comply fully with the Occupational Safety and Health Act of 1970 and the regulations and standards issued thereunder and (ii) safety practices typically observed in prudent industry practice (hereinafter “**OSHA Requirements**”). Company shall not, and shall not permit its workers, employees, or subcontractors to bring any firearm or other weapon of any type upon any property owned or controlled by Customer. Further, Company shall not permit or tolerate the use of intoxicating liquor, narcotic drugs, or gambling at the Facility or during the performance of any Services.

C. Title to Deliverables and Intellectual Property

6. Customer acknowledges that Company’s drawings, plans, specifications, and other similar documents, whether in written, graphic, or electronic form, are instruments of professional service and not products (together with any intellectual property embodied therein, the “**Deliverables**”).

Company shall retain ownership of all intellectual property used or developed in performing the Services or incorporated into the Deliverables. Customer shall not edit, modify, or amend any part of Company’s Deliverables. Customer shall not sublicense or authorize any other person to use the Deliverables without Company’s prior written consent.

D. Terms and Conditions Applicable to All Purchases

7. **Insurance.** During the term of this Agreement, including during the performance of any warranty Services, Company shall maintain or cause to be maintained, for itself and its Subcontractors, occurrence form insurance policies as follows: (a) workers’ compensation in accordance with the statutory requirements of the state in which the Services are performed and employer’s liability insurance of not less than \$1,000,000 per each accident/employee/disease; (b) commercial general liability insurance having a limit of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate for contractual liability, personal injury, bodily injury to or death of persons, and/or loss of use or damage to property, including but not limited to products and completed operations liability, premises and operations liability and explosion, collapse, and underground hazard coverage; (c) commercial/business automobile liability insurance (including owned (if any), non-owned or hired automobiles) having a limit of at least \$1,000,000 per each accident for bodily injury, death, property damage and contractual liability, and no fellow employee exclusion; and (d) umbrella/excess liability insurance with limits of at least \$1,000,000 per occurrence and following the form of the underlying employer’s commercial general and automobile liability insurance, and providing at least the same scope of coverages thereunder. During the term of this Agreement, including during the performance of any warranty Services by Company, Customer shall maintain or cause to be maintained occurrence form insurance policies as follows: (a) commercial general liability insurance having a limit of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate for contractual liability, personal injury, bodily injury to or death of persons, and/or loss of use or damage to property, including but not limited to products and completed operations liability, premises and operations liability and explosion, collapse, sudden and accidental pollution, and underground hazard coverage; (b) workers’ compensation in accordance with the statutory requirements of the state in which the Services are performed and employer’s liability insurance of not less than \$1,000,000 per each accident/employee/disease; (c) commercial/business automobile liability insurance (including owned (if any), non-owned or hired automobiles) having a limit of at least \$1,000,000 per each accident for bodily injury, death, property damage and contractual liability, and no fellow employee exclusion; and (d) umbrella/excess liability insurance with limits of at least \$1,000,000 per occurrence and following the

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form of the underlying employer's commercial general and automobile liability insurance, and providing at least the same scope of coverages thereunder. The insurance policies specified above, provided and maintained by or on behalf of a Party, shall: (i) be underwritten by insurers which are rated A.M. Best "A- VII" or higher; (ii) specifically include the other Party and its directors, officers, employees, affiliates, and Subcontractors as additional insureds, with respect to liability for bodily injury or property damage, to the extent caused, in whole or in part, by the insured Party's acts or omissions or the acts or omissions of those acting on the insured Party's behalf, excluding, however, for Worker's Compensation/Employer's Liability; (iii) be endorsed to provide waiver of any rights of subrogation against the other Party and its affiliates, subcontractors and vendors, and their directors, officers, employees, and affiliates; and (iv) provide that such policies and additional insured provisions are primary with respect to the acts, omissions, services, products or operations of the insured Party or its subcontractors, whether in whole or in part, and without right of contribution from any other insurance, self-insurance or coverage available to the other Party and its affiliates. When requested to do so by the other Party, each Party shall provide to the other reasonable documentary evidence that the insurance required by this **Section 8** is being maintained.

8. No Additional Charges; Packaging; Audit. The total prices specified in the Purchase Order forming part of this Agreement are the total prices of the Goods and Services to Customer, and, except as set forth in **Section 21** and subject to the Change in Law relief available to Company as and to the extent provided in **Section 22**, Customer shall not be responsible for any other fees, customs duties or other taxes or similar charges.

9. Schedule and Payment Terms. All of Company's invoices shall refer to this Agreement and contain its Purchase Order number. If Services are being performed on a time-and-materials basis, the invoice shall include a statement or be accompanied by time sheets showing each employee's name, classification, hours worked, and the applicable rate of compensation to Company. If any equipment has been used for which a charge applies, the invoice must also specify the equipment used, hours of usage and rate of reimbursement for use. Any tax paid on material or equipment must be shown separately from the sale or rental price of those items. Taxes for which Customer is responsible under **Section 21** shall be shown on a separate line item in each applicable invoice. Customer shall make payment to Company within thirty (30) days from receipt of a correct and properly submitted invoice.

10. Indemnification. Subject to the limitations set forth in this Agreement, each Party shall indemnify, defend and hold harmless the other (including its parent, subsidiary and affiliate companies), its officers, employees and agents (collectively, the "**Indemnified Parties**") from and against all liability, loss, costs, claims, damages, expenses, judgments, and awards, whether or not covered by insurance, to the extent arising out of negligent acts and/or negligent omissions of the indemnitor or its subcontractors, materialmen, agents or employees, which resulted in: (i) injury to or death of any third party or (ii) damage to or destruction of any property, real or personal, belonging to a third party, except, in each case, to the extent arising from the gross negligence, fraud or willful misconduct of the Indemnified Parties. Indemnification shall include all costs, including attorneys' fees reasonably incurred in pursuing indemnity claims under this Agreement. Each Indemnified Party shall give the applicable indemnitor prompt notice of any claim it contends falls within this indemnification. Each Party providing indemnity hereunder waives all rights of recovery, including for contribution, against all Indemnified Parties for any matters to which this **Section 10** may apply.

11. Termination; Suspension.

If either Party defaults under any material term of this Agreement and does not cure that default within thirty (30) days after notice from the other Party (or ten (10) days in the case of non-payment defaults), or if any such breach (other than a non-payment default) is not reasonably capable of being cured within such thirty (30) day period, such longer period as is reasonably necessary so long as the defaulting Party has commenced the cure within such thirty (30) day period and thereafter diligently pursues the cure, or in case such other Party suffers a Bankruptcy Event, then the non-defaulting Party shall be entitled: (a) to suspend its performance under the applicable Purchase Order; (b) to terminate this Agreement and have no further obligation to the defaulting Party other than for liabilities already accrued; and (c) to pursue any other right or remedy that may be available to such non-defaulting Party in law. For purposes of this Section 12, a "Bankruptcy Event" means, in respect of either Party: (a) such Party institutes a voluntary case seeking liquidation or reorganization under applicable law, or shall consent to the institution of an involuntary case thereunder against it or otherwise file a petition, answer or consent in respect thereof; (b) such Party applies for, or by consent or acquiescence there shall be an appointment of, a receiver, liquidator, sequestrator, trustee or other officer with similar powers over such Party or its assets; (c) such Party shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due; or (d) an involuntary case shall be commenced seeking the liquidation or reorganization of such Party under applicable law, and (i) the petition commencing the involuntary case is not timely controverted; (ii) the petition commencing the involuntary case is not dismissed within sixty (60) days of its filing; (iii) an interim trustee is appointed to take possession of all or a portion of the property, and/or to operate all or any part of such Party's business and such appointment is not vacated within sixty (60) days; (iv) an order for relief shall have been issued or entered therein; (v) a

decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee or other officer having similar powers of such Party or of all or a part of its property, shall have been entered; or (vi) any other similar relief shall be granted against such Party under applicable law.

In addition to the foregoing, in the event that Customer fails to make payment when due, Company shall have the option, upon providing written notice to Customer, to suspend and otherwise delay performance of its obligations under this Agreement or any applicable Purchase Order without repercussion on a day-for-day basis until such failure by Customer is corrected.

12. Confidentiality. (a) Each Party agrees that any information relating to the other Party's business and customer or supplier information, or technical, financial, administrative and internal activities or any business plans and methods, operating and technical data, reports, drawings, operating documents, project documents, reports, and all non-public data specific to such other Party and its business or its customers that is or has been obtained or compiled by such other Party in connection with supplying services to such customers is considered confidential and proprietary information. All such information and any other non-public information which is supplied by or on behalf of one Party to the other hereunder shall be treated as "**Confidential Information**"; provided that Confidential Information shall not include any information that: (i) was already known to the Party to which it was disclosed at the time it was disclosed by the disclosing Party; (ii) was available to the public at the time it was disclosed by the disclosing Party; (iii) becomes available to the public after being disclosed by the disclosing Party through no wrongful act of, or breach of this Agreement by, the Party to whom such information was disclosed; (iv) is received by the Party to whom it was disclosed without restriction as to use or disclosure from a third party; or (v) is independently developed by the Party to whom it was disclosed without benefit of any disclosure of information by the disclosing Party. Each Party agrees to use the other Party's Confidential Information solely for the purpose of performing its obligations and exercising its rights under this Agreement (the "**Purpose**"), and shall disclose such Confidential Information only to its employees and professional advisors (excluding any Competitor) with a need to know such information for the performance of this Agreement and only after such employees understand and agree to be bound by the terms of this **Section 12**. The Parties agree that in the event of a breach of this **Section 12**, the non-breaching Party shall be entitled to equitable relief, including injunction and specific performance, in addition to all other remedies available at law or equity. Subject to clause (b) below, each Party agrees (i) to protect the other Party's Confidential Information with at least the same degree of care used to protect its own most confidential information; (ii) not to use (except for the Purpose), publish or disclose to third Parties such other Party's Confidential Information; (iii) limit the number of copies, summaries, and/or compilations of the other Party's Confidential Information to those necessary for furtherance of the Purpose; and (iv) upon the request of the other Party, to promptly deliver to such other Party all written copies of such other Party's Confidential Information. (b) Each Party shall have the right to supply the other Party's Confidential Information to any governmental authority asserting a right to such information, or as may be required by applicable law. For purposes of this **Section 12** and **Section 17**, "**Competitor**" means any person or entity which provides or which includes in its business plan the provision of goods or services similar to those of Company.

13. Waiver of Consequential Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY LOST PROFITS, LOSS OF REVENUE, LOSS OF USE, LOSS OF POWER, LOSS OF GOOD WILL, COST OF REPLACEMENT POWER, COLLATERAL OR DOWNSTREAM DAMAGE, INSTALLATION OR REMOVAL COSTS, DISASSEMBLY OR REASSEMBLY COSTS, COST OF CAPITAL, OR CLAIMS OF CUSTOMERS FOR LOSS OF POWER OR PRODUCTION ARISING IN CONNECTION WITH THIS AGREEMENT, OR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT SUCH LIABILITY IS CLAIMED IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), INDEMNITY, WARRANTY OR ANY OTHER LEGAL OR EQUITABLE THEORY; PROVIDED, HOWEVER, THAT NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, THE FOREGOING LIMITATION SHALL NOT APPLY TO LIABILITY ARISING OUT OF OR RELATED TO COMPANY'S FRAUD OR WILLFUL MISCONDUCT. THE LIMITATION OF LIABILITY PROVISIONS SET FORTH IN THIS SECTION 13 AND SECTION 14 SHALL APPLY EVEN IF CUSTOMER'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

14. Limitation of Liability. In no event shall Company's liability arising as a result of the performance or nonperformance of any obligations or the exercise of any rights under this Agreement, be greater in the aggregate than an amount equal to one hundred percent (100%) of the sum of the full amounts paid for the specific Goods or Services giving rise to such liability, whether arising in contract, warranty, tort (including negligence and strict liability), indemnity, statutory duty or otherwise; provided, however, that notwithstanding anything to the contrary herein, the foregoing limitation shall not apply to liability arising out of or related to fraud or willful misconduct.

15. Compliance with Laws and Procedures. Company and its Subcontractors, if any, shall observe and abide by all Applicable Laws, federal, state and local, and the rules and regulations of any lawful regulatory body acting thereunder in connection with the Services.

16. Assignment and Subcontracting; Third Party Beneficiaries. Neither Party shall assign its rights or delegate its obligations under this Agreement without

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the prior written consent of the other Party. Company may freely subcontract any portion of the Services and may enter into purchase order or supply agreements with sub-vendors to supply the Goods, in each case without Customer's consent. Any attempted assignment in violation of this **Section 16** shall be ineffective and void. This Agreement shall be binding upon and inure to the benefit of any and all successors and/or permitted assigns of Customer and Company. Notwithstanding any provision herein, except for the rights of Indemnified Parties under **Section 10**, this Agreement shall not confer or be construed in any manner to confer, directly or indirectly, any rights, privileges, benefits, and/or remedies, upon any Parties other than the Parties hereto and their respective successors and/or permitted assigns.

17. **Disputes.** Notice of any claim by either Party shall be made in writing to the other Party, together with reasonable written documentation and supporting data, where applicable. The Parties shall attempt to resolve any claims, disputes and other controversies arising out of or relating to this Agreement (collectively, "**Disputes**") promptly by negotiation between individuals who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. All negotiations pursuant to this **Section 17** are to be deemed confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. If the Dispute has not been resolved by negotiation within sixty (60) days of the disputing Party's notice, then either Party may initiate litigation. This Agreement shall be governed and construed in accordance with the laws of the State of New York, except that the New York conflict of law provisions shall not be invoked in order to apply the laws of any other state or jurisdiction. Any dispute or equitable relief sought pursuant to this Agreement shall be filed exclusively in a state or federal court residing in New York City, New York. COMPANY AND CUSTOMER HEREBY IRREVOCABLY RELINQUISH AND WAIVE THEIR RIGHTS TO A TRIAL BY JURY IN ANY ACTION RELATED TO THIS AGREEMENT (WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE). If any term or provision of this Agreement is determined to be illegal or unenforceable, this Agreement shall remain in full force and effect and the illegal or unenforceable term or provision shall be deemed stricken.

18. **Remedies.** Except where remedies are stated to be exclusive, the remedies in this Agreement are cumulative and in addition to all rights and remedies at law and in equity. No delay in exercising or failure to exercise a right of remedy shall impair that or any other right or remedy or be construed as a waiver of any default.

19. **Independent Company.** Company is an independent contractor and not an agent or employee of Customer and nothing contained in this Agreement shall be so construed as to justify a finding of the existence of any relationship between Customer and Company inconsistent with that status. Company shall have exclusive control of and responsibility for its labor relations.

20. **Hazardous Materials and Working Conditions.** Any performance by Company involving the generation, storage, handling, packaging, marking, labeling, transportation, or disposal of Hazardous Substances, and any work in an area defined as a confined space shall be in accordance with any and all applicable federal, state, local, and other laws and with any and all rules, orders, and regulations promulgated under such laws. "**Hazardous Substances**" means any substance or material regulated or governed by any Applicable Laws in relation to the Goods and Services, or any substance, emission or material now or hereafter deemed by any governmental authority of competent jurisdiction over the supply of Goods or performance of Services to be a "regulated substance", "hazardous material", "hazardous waste", "hazardous constituent", "hazardous substance", "toxic substance", "radioactive substance", "pesticide" or any similar classification. Customer shall be solely responsible, at its sole cost and expense, for physical disposal of Hazardous Substances on the Facility in accordance with any and all applicable federal, state, local, and other laws and with any and all rules, orders, and regulations promulgated under such laws; provided, that in connection with any Hazardous Substances brought onto the Facility by Company or otherwise generated by Company in the performance of Services at the Facility, Company shall clean up and deliver any such Hazardous Substances to the Customer-designated Hazardous Substances storage location on the Facility. To the extent permitted by law and only to the extent caused by Company or its Subcontractor, Company shall indemnify, defend and hold harmless Customer against (i) any release after the effective date of this Agreement by Subcontractor of Hazardous Substances brought onto the Facility by Company or any Subcontractor on its behalf and (ii) any negligent release after the effective date of this Agreement by Company or any Subcontractor of any pre-existing Hazardous Substances with respect to the Facility.

21. Taxes.

(a) Company shall be responsible for, and shall pay directly, any and all corporate and individual taxes that are measured by net income, profit or gross receipts (except where assessed in lieu of sales or transfer taxes) imposed by any governmental authority on Company, its employees or Subcontractors due to the performance of or payment for Goods or Services in accordance with this Agreement. The price for the Services or Goods shall include all applicable foreign, federal, state and local taxes payable with respect to this Agreement. Company shall pay directly, and Customer shall be responsible for, any and all

import tariffs or any other similar import fees levied on any goods delivered hereunder as of the date of any Purchase Order or quote and are subject to change to the current duty rate; any tariff fees based on government fluctuations are charged at the time of import and will be the responsibility of Customer.

(b) Customer shall be solely responsible for any ad valorem, property, license, privilege, excise, or similar taxes lawfully imposed on property owned by Customer. Company and its Subcontractors shall be solely responsible for any ad valorem, property, license, privilege, excise or similar taxes lawfully imposed on property owned by Company and its Subcontractors, respectively that is used for but not incorporated into the Services.

(c) Customer shall be responsible for paying any applicable federal, state, regional, or local sales or use taxes, excise taxes, goods and services taxes, value added taxes, gross receipts taxes, taxes based on gross income (where assessed in lieu of sales or transfer taxes) or ownership, property or property transfer taxes, in each case which are imposed upon Company or which are required to be collected by Company in respect of the Goods and/or Services (or any portion thereof) or the transfer thereof, and in each case, whether effective or enacted as of the effective date of the applicable Purchase Order forming part of this Agreement or thereafter. Company shall invoice each and every such tax as a separate line item on Company's invoices and shall collect and remit such taxes to the appropriate taxing authority. If Customer is exempt from the payment of any applicable sales, use or other taxes or has a direct payment permit with respect to such taxes, Customer shall provide the applicable certificate or permit, duly executed and issued by the appropriate governmental authority, demonstrating such exemption.

22. **Force Majeure.** Force Majeure shall mean any exceptional event or circumstance that (i) is beyond the control of the Party affected, (ii) could not reasonably be prevented, avoided or removed by such affected Party with the exercise of reasonable diligence, and (iii) causes such affected Party to be delayed in performance of, or unable to perform, or increases the cost of its performance of its obligations under this Agreement (other than any obligation for the payment of money), to the extent and for the duration that such event or circumstance satisfies all of the conditions of clauses (i), (ii) and (iii) above. The following list constitutes illustrative examples rather than an exhaustive list of Force Majeure events: war, riots, insurrection, rebellion, floods, hurricanes, tornadoes, earthquakes, extreme and unanticipated weather conditions, and other natural calamities; epidemic or pandemic; acts or inaction of any government authority which directly impact the Services; explosions or fires arising from lightning or other natural causes unrelated to acts or omissions of the Party; the enforcement of any applicable law (including any laws in relation to taxes or customs duties for which Company is responsible hereunder) enacted or changed after the effective date of the Purchase Order to which these Terms and Conditions are attached or included (a "**Change in Law**"); and delays in obtaining goods or services from any subcontractor caused solely by the occurrence of a Force Majeure event. Any delays in performance by Customer or Company shall not constitute a default hereunder if and to the extent such delays of performance are caused by a Force Majeure event, and the scheduled completion date for any Services or delivery date for Goods shall be adjusted to account for any Force Majeure delay. The affected Party shall exercise all reasonable efforts to overcome and mitigate the effects of any Force Majeure event; provided that, (a) Customer will reimburse Company for its reasonable additional costs incurred in complying with its obligations under this Agreement due to a Force Majeure event, and (b) if a Force Majeure event affecting the performance of any work hereunder continues for more than sixty (60) consecutive days, then either Party may terminate all or the applicable portion of the relevant Purchase Order. In the case of such a termination due to Force Majeure, Company shall bring any ongoing work to an orderly cessation, and Customer shall compensate Company for: (i) all work performed and reasonable costs incurred by Company on or before Company's receipt or provision of the termination notice, including all outstanding and unpaid invoices including reasonable profits with respect to such completed work; (ii) all work and costs reasonably incurred to bring such work to an orderly cessation (plus reasonable profits on such costs); and (iii) all other reasonable costs necessarily incurred by Company prior to or after Company's receipt or provision of the termination notice as a direct result of the termination..

23. **Entire Agreement; Differing Terms; Survival.** This Agreement contains the entire agreement of the Parties relating to the subject matter and supersedes all prior and contemporaneous agreements, understandings, usages of trade and courses of dealing, whether written or oral pertaining thereto. This Agreement may only be modified by a written agreement signed by both Parties expressly modifying this Agreement. The provisions of **Sections 6, 10, 11, 12, 13, 14, 17, 18, 19, and 23** of these Terms and Conditions and all other provisions of this Agreement providing for indemnification or limitation of or protection against liability shall survive the termination, cancellation, or expiration of this Agreement.