

NOTICE: THESE PURCHASE ORDER TERMS AND CONDITIONS TOGETHER WITH THE PURCHASE ORDER THERETO REPRESENT THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THESE PURCHASE ORDER TERMS AND CONDITIONS ARE AN INTEGRAL AND NECESSARY PART OF THE PURCHASE ORDER, AND THE ORDER, ACCEPTANCE, OR SALE OF ANY EQUIPMENT, EQUIPMENT FABRICATION, MATERIALS, SERVICES OR OTHER WORK COVERED THEREIN IS CONDITIONED UPON THE TERMS CONTAINED HEREIN.

1. DEFINITIONS:

“**Agreement**” shall mean (i) the Purchase Order, (ii) these Purchase Order Terms and Conditions, and (iii) all appendices and attachments hereto. “**Customer**” shall mean Graphyte, Inc., a Delaware corporation, or any Affiliate designated as the “**Customer**” in a Purchase Order. “**Equipment**” shall mean equipment and/or materials furnished and to be furnished by Vendor as part of the Work under a Purchase Order. “**Party**” shall mean Customer and Vendor. “**Purchase Order**” shall mean the specific terms and conditions for Work, Equipment and/or Services, as applicable, to which these Purchase Order Terms and Conditions are attached or incorporated by reference therein. “**Vendor**” shall mean the company designated as the “**Vendor**” in the Purchase Order. “**Vendor Personnel**” shall mean all Permitted Subcontractors (of any tier), any Affiliates of Vendor, or any employees, agents, contractors and subcontractors, suppliers or vendors of Vendor, any Permitted Subcontractors (of any tier) and any Affiliates of Vendor or any other persons, in each case, performing any part of the Work or any other obligations of Vendor under this Agreement and each Purchase Order. “**Services**” shall mean any services performed by Vendor as part of the Work under the Purchase Order. “**Work**” shall mean the supply of Equipment and Services and other deliverables provided and to be provided by Vendor under a Purchase Order.

2. STANDARD OF CARE:

(a) Vendor shall furnish and perform the Equipment, Services, and other Work for Customer as specified in the applicable Purchase Order. Each Purchase Order shall define the scope of Work, delivery or performance requirements, completion criteria, and pricing applicable thereto. Customer is not obligated to issue any Purchase Order, and Vendor is not entitled to perform any Work except as expressly authorized by a Purchase Order. In the event of a conflict between a Purchase Order and these Purchase Order Terms and Conditions, the Purchase Order shall govern solely with respect to the applicable Work.

(b) Vendor assumes sole and exclusive professional and technical responsibility for the performance of the Work. All Work shall be performed (a) diligently, duly and properly using Vendor’s best skill and judgement and completing all work, services, acts or actions required or necessary in connection with the Work, (b) in accordance with sound, good and prudent practices, acts, methods, specifications, codes or standards of performance, safety and workmanship prudently and generally engaged in or observed by a prudent and experienced national construction firm performing services for facilities in the United States of technology, complexity and size similar to that of the project identified in the Purchase Order that, in the exercise of good judgment, would have been expected to accomplish the desired result in compliance with applicable laws, applicable permits, and in a manner consistent with reliability, safety, environmental protection, local conditions, economy and efficiency, (c) in conformance with all applicable

laws, statutes, regulations, and codes, and applicable permits, and (d) in strict compliance with the schedule agreed in the Purchase Order, the terms of this Agreement and the Purchase Order applicable to such Work (the “**Standard of Care**”). The Work performed by Vendor or any Vendor Personnel shall only be performed by Persons who (i) have the requisite permits, registrations, and licenses (if applicable) necessary to perform the Work, and (ii) who are competent, professional and have the required skill, qualifications, and experience to perform the Work as warranted. Where an irreconcilable conflict exists among the standards for performance of the Work under applicable laws, this Agreement, or the Standard of Care, the strictest requirement shall apply.

3. VENDOR RESPONSIBILITIES:

(a) Vendor shall be solely responsible for providing qualified personnel and for supervising and paying its employees and Permitted Subcontractors performing the Work. Vendor shall designate a primary point of contact authorized to act on Vendor’s behalf with respect to the applicable Purchase Order.

(b) Vendor shall comply with applicable laws, regulations, and permits in connection with its performance of the Work and shall obtain any permits or licenses required solely for Vendor’s performance of the Work. Vendor shall perform the Work using personnel possessing the appropriate qualifications, experience, and licenses, and shall take reasonable precautions to maintain a safe working environment for its personnel. Vendor shall comply with, and ensure that all Vendor’s Personnel comply with, all rules, regulations, and policies of Customer that are communicated to Vendor in writing, including, but not limited to, security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by Customer to certain areas of its premises for security reasons, and general health and safety practices and procedures. Vendor shall promptly notify Customer of any material issue of which Vendor becomes aware that is reasonably likely to affect Vendor’s ability to perform the Work as contemplated by the applicable Purchase Order.

(c) In connection with the supply of Equipment, Vendor shall arrange and be responsible for the transportation of all equipment, materials or tools, including securing insurance, the preparation of all necessary paperwork, the coordination of transportation, the payment of all required taxes, the payment of any storage fees, insurance costs, broker’s fees, and any other fees or costs associated with any equipment or materials. Vendor shall be responsible for ordinary tools, materials, and transportation necessary for the performance of the Work. Vendor shall remove its equipment and non-hazardous waste from the applicable worksite upon completion of the Work to the extent reasonably practicable.

(d) Vendor shall furnish all Work in a prompt, timely manner and proceed with the Work as expeditiously as possible but in no event later than as required by the Work Schedule (including all guaranteed or scheduled completion dates) provided in a Purchase Order, as applicable. Vendor shall provide reasonable status updates regarding the performance of the Work upon Customer’s written request. Vendor shall maintain commercially reasonable records relating to the Work for a period consistent with Vendor’s standard business practices, subject in all cases to the retention requirement set forth in Section 3(l).

(e) Vendor shall provide Customer with progress reports and such other information regarding the status of the Work as the Customer may reasonably request from time to time (a “**Progress Report**”). Such Progress Reports shall be provided in a form acceptable to Customer. The progress report shall include, without limitation: (i) the status of the Work Schedule, including any changes thereto agreed upon through a Change Order; (ii) the status of key activities and deliverables; (iii) safety and quality assurance matters; (iv) significant issues affecting the Work and proposed mitigation strategies; and (v) such other matters as the Customer may reasonably request.

(f) Vendor warrants that it has the experience, resources, qualifications, and capabilities at its disposal to perform the Work in accordance with the applicable Work Schedule. Vendor assumes all risks related to, and waives any right to claim an adjustment in the price set forth in the applicable Purchase Order or the applicable Work Schedule for (i) all site conditions (whether known or unknown) where the Work is to be performed including, but not limited to, topography, subsurface obstructions, or soil conditions, and all easements, rights of way and other interests in real property affecting such site or the Work; (ii) availability of labor, subcontractors or local materials; (iii) availability and transportation of equipment; and (iv) breakdown or other failure of equipment under the control of or provided by the Vendor or any Permitted Subcontractors.

(g) Vendor shall not, nor shall it permit or allow any Permitted Subcontractor to, bring any substance that under applicable laws is considered to be hazardous or toxic or is or may be required to be remediated (“**Hazardous Materials**”) on the applicable site and shall bear all responsibility and liability for such materials; provided, however, that Vendor may bring onto the site, such Hazardous Materials in such quantities as are absolutely necessary to perform the Work so long as the same is done in compliance with applicable laws and Vendor shall remain responsible and strictly liable for all such Hazardous Materials. Subject to the other provisions of this Agreement and the Purchase Order, Vendor, on behalf of itself, its Affiliates, successors, assigns, officers, directors, employees and agents, agrees to indemnify, defend and hold harmless Customer and its Affiliates, subsidiaries, successors, assigns, officers, directors, employees, and agents, from and against any and all liabilities, losses, expenses and claims for personal injury or property damage that arise from or out of the use, handling, or disposal of Hazardous Materials on each site by Vendor or any Vendor Personnel.

(h) Vendor shall not employ, or permit any Permitted Subcontractor to employ, in connection with its performance under this Agreement and each Purchase Order any unfit Person or anyone not skilled in the work assigned to such Person. Vendor agrees to promptly remove (or to require any Permitted Subcontractor to remove) from its services in connection with the Work any employee who does not meet the foregoing requirements. In addition, Vendor agrees that within twenty-four (24) hours after receipt of written notice from Customer, it will remove from the Work any employee or agent of Vendor, or of any Permitted Subcontractors, who in Customer’s reasonable opinion, is unsafe, incompetent, careless, unqualified to perform the Work assigned to such Person, creates an unsafe or hostile work environment, disregards the terms and conditions of this Agreement or a Purchase Order, or is interrupting, interfering, or impeding the timely and proper completion of the Work. Notwithstanding the foregoing, Customer shall have no liability and Vendor agrees to indemnify Customer from any claims,

causes of action, damages, or losses which may arise in the event Vendor or any Permitted Subcontractor chooses to terminate the employment of any such employee who fails to meet the foregoing requirements following a request by Customer to have such employee removed from the Work.

(i) Vendor recognizes and agrees that safety is of paramount importance in the performance of the Work and that Vendor is responsible for performing the Work in a safe manner. Vendor will be responsible for supervision and site safety measures for its own employees, contractors, and agents. Vendor agrees to implement a safety program that is to be submitted to Customer for its approval prior to the commencement of the Work, and Vendor further agrees to perform the Work in accordance with the safety and health rules and standards of applicable law, the Vendor’s safety program, as approved by Customer, and Customer’s standards provided to Vendor in writing, and Vendor shall assume all costs associated with compliance therewith. Vendor further agrees to provide necessary training to its employees and Permitted Subcontractors to ensure their compliance with the foregoing safety and health rules and standards. Should Customer at any time observe Vendor, or any of its Permitted Subcontractors, performing the Work in an unsafe manner, or in a manner that may, if continued, become unsafe, then Customer shall have the right (but not the obligation) to require Vendor to stop the Work until such time as the manner of performing the Work has been rendered safe to the satisfaction of Customer; provided, however, that at no time shall Vendor be entitled to an adjustment of the price set forth in the applicable Purchase Order or Work Schedule based on such work stoppage. Nothing in this Section shall affect Vendor’s status as an independent contractor.

(j) In the event of any emergency endangering life or property, Vendor shall take such action as may be reasonable and necessary to prevent, avoid or mitigate injury, damage, or loss and shall, as soon as possible, report any such incidents, including Vendor’s response thereto, to Customer. If Vendor has not taken reasonable precautions for the safety of the public or the protection of the Work, and such failure creates an emergency requiring immediate action, then Customer, with or without notice to Vendor may, but shall be under no obligation to, provide reasonable protection as required to address such emergency. The taking of any such action by Customer, or Customer’s failure to take any action, shall not limit Vendor’s liability. Vendor shall reimburse Customer for the performance of any such Work or furnishing of any such equipment in connection with any emergency in an amount equal to the reasonable costs incurred by Customer in such performance of Work or furnishing of equipment.

(k) In the event Vendor, Vendor Personnel, and their Permitted Subcontractors have a claim, damage, loss or expense attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, while on any leased premises, Vendor, Vendor Personnel, and their Permitted Subcontractors expressly agree to waive any potential claims, damage, loss or expenses against Customer and its landlord(s).

(l) Vendor shall keep such full and detailed books, construction logs, records, daily reports, accounts, payroll records, and other pertinent documents as may be necessary for proper financial management under this Agreement and as required under applicable law. Vendor shall maintain all such books and records in accordance with applicable generally accepted accounting principles, and shall retain all such books and records for a minimum period of seven (7) years after completion of the Work, or such greater period of time as may be required under applicable

law. Upon reasonable notice, Customer shall have the right to audit or to have audited the books and records of Vendor which in any way relate to this Agreement. When requested by Customer, Vendor shall provide the auditors with reasonable access to all personnel, property, and records, and Vendor's personnel shall cooperate with the auditors to effectuate the audit or audits hereunder. The auditors shall have the right to copy any and all documentation relating to performance under this Agreement. Vendor shall pay for all costs incurred by it in assisting Customer with audits performed pursuant to this Section. Vendor shall include audit provisions identical to this Section in all subcontracts.

(m) Vendor shall keep the applicable project, the site, and all equipment and materials free and clear of all Liens arising from the performance of the Work. Vendor shall be responsible for all taxes or other similar charges assessed on its income or gross receipts along with all importation and transportation taxes and duties, storage fees, and brokers' fees, including but not limited to the following: payroll taxes; import taxes; and withholding taxes. Vendor shall provide Customer with clear evidence that it has paid any and all taxes due by it promptly upon request by Customer.

4. CUSTOMER RESPONSIBILITIES:

Customer shall designate an authorized representative to act on Customer's behalf in connection with the applicable Purchase Order. Customer shall provide, or cause to be provided, those items expressly identified as Customer-supplied in the applicable Purchase Order and shall provide Vendor with reasonable access to applicable sites to the extent necessary for Vendor to perform the Work, subject to Customer's reasonable access, safety, and security requirements.

5. COMMENCEMENT; SCHEDULE:

Vendor shall commence performance of the Work on the start date specified in the applicable Purchase Order, or if no start date is specified, on a date mutually agreed in writing by the Parties. The applicable Purchase Order shall set forth the schedule for the Work ("**Work Schedule**"), and Vendor shall perform the Work in accordance with such Work Schedule. Any modification to the Work Schedule shall be subject to a Change Order. If Vendor becomes aware of a material delay or anticipated delay affecting the performance of the Work, Vendor shall promptly notify Customer and cooperate in good faith to mitigate the effects of such delay. If at any time the progress of the Work is more than ten (10) days out of compliance with the Work Schedule, then Vendor shall promptly notify Customer of the delay or potential delay and the event or events causing such delay, and shall present an acceleration plan to Customer, for its approval, specifically identifying the steps to be taken and the resources to be committed to accelerating the progress of the Work to bring it back into compliance with the Work Schedule. If Customer does not approve the acceleration plan, Vendor shall, within three (3) business days of Customer's rejection, submit a revised acceleration plan addressing Customer's objections, and shall continue to do so until Customer approves a plan. All additional costs related to schedule accelerations shall be to Vendor's account.

6. PRICE:

(a) Unless otherwise stated in the applicable Purchase Order, full consideration for the Work shall be the compensation calculated on a time-and-materials basis at the rates set forth in each Purchase Order provided that Vendor has completed the corresponding Work to the reasonable satisfaction of Customer and is otherwise in compliance with the terms of this Agreement. Customer's

payment for Work shall not operate as a waiver of any rights under this Agreement or a Purchase Order. Customer's payments to Vendor under this Agreement shall be made net of any deduction or withholding of any tax required by any applicable law, and to the extent Customer is required to pay any such amount which was not deducted from the payments made under this Agreement, Vendor shall promptly reimburse Customer for such amounts. Vendor shall be responsible for (and remit as prescribed by the laws of any duly constituted taxing authority) all taxes imposed upon Vendor for the compensation received for the Work performed under the Agreement and each Purchase Order. Payment for any Work shall not be deemed an acceptance of the Work.

(b) Unless otherwise provided in a Purchase Order, Vendor shall submit to Customer monthly invoices (or at such other intervals as may be specified in the Purchase Order) for the Work performed and Equipment provided, as applicable, in the preceding month. Invoices shall be accompanied by supporting documentation reasonably required by Customer, including time sheets, receipts, and expense reports, if applicable. An invoice shall constitute a representation by Vendor, and Vendor shall provide to Customer and such other Persons as Customer may designate a certificate to the effect, that (i) the Work is progressing in accordance with the Work Schedule, (ii) the quality of all Work described in the invoice is in accordance with the terms of this Agreement, (iii) Vendor is entitled to payment of the amount invoiced, (iv) the Work (or any portion thereof) described in the statement accompanying the invoice and all previous invoices are free and clear of all Liens, (v) all Permitted Subcontractors have been paid the monies due and payable to them for work performed in connection with the applicable project (except for such amounts as may be disputed in good faith by Vendor). Each invoice shall be accompanied by (A) a Lien waiver in the form acceptable to Customer (with such changes as may be required by applicable law of the state having jurisdiction over the Work or Equipment) for all Work performed through the date for which payment is requested, and (B) conditional or unconditional lien waivers from all Permitted Subcontractors performing work under a Major Subcontract for work performed through the date covered by such invoice, in each case in a form acceptable to Customer. Customer shall pay Vendor all undisputed amounts within thirty (30) days of receipt of Vendor's completed final invoice (including all required time sheets, documents, lien waivers, expense reports and other information, as applicable). Invoices shall be submitted via e-mail to Customer's accounts receiving mailbox identified in the Purchase Order together with supporting time sheets, documents, lien waivers, expense reports and other information, as applicable. Payments shall be made to an account designated by Vendor in writing.

(c) Customer may withhold a portion of any payment owed to Vendor to protect Customer from losses due to Vendor's failure to comply with such requirements and any terms and conditions of this Agreement and the applicable Purchase Order including, without limitation, the following: (i) if an invoice is submitted without the supporting documentation, (ii) if any portion of the Work have not been completed in accordance with the requirements of this Agreement and the applicable Purchase Order, or (iii) Vendor's unsatisfactory performance which shall be determined in Customer's sole discretion. If Vendor fails to submit any invoice within one (1) year following completion of the Work covered thereby, then Customer shall have no obligation to make payment for the Work associated with such invoice. Without

prejudice to any other right or remedy it may have, Customer reserves the right to set off at any time any amount owing to it by Vendor against any amount payable by Customer to Vendor under this Agreement. No payment made hereunder shall be considered as approval or acceptance of any Work by Customer or a waiver of any claim or right Customer may have hereunder. All payments shall be subject to correction or adjustment in subsequent payments.

(d) Any amounts determined to be due but not paid within the applicable payment period hereunder shall bear interest at an annual rate equal to the annual prime rate of interest published in the Wall Street Journal for the applicable period during which interest is incurred pursuant to this Agreement plus one percent (1%). Customer shall not be obligated to make any payments hereunder at any time in which (i) a Vendor Default shall have occurred and is continuing, or (ii) an event has occurred which, with the passage of time, will constitute a Default.

7. CHANGES:

It is the desire of the Parties to keep changes in the scope of Work to a minimum. Any changes to the Work agreed upon in a Purchase Order must be agreed upon by Customer and Vendor in a mutually agreed written change order ("**Change Order**") in a form acceptable to Customer. In the event Customer requests a change to such Work, Vendor shall provide Customer a proposed Change Order within five (5) business days of Customer's change request (failing which Vendor shall be deemed to have waived any claim for additional compensation or time arising from such change) that sets forth (i) the change details, (ii) resulting change in the time for the Work, (iii) resulting change in the cost of the Work, and (iv) any additional details required to accommodate the change in the Work. Unless otherwise provided in a Purchase Order, all cost estimates shall be prepared on an "open book" time and material basis at the agreed rates set forth in the Purchase Order. The Work Schedule will only be adjusted, if an adjustment is permitted under this Agreement, to the extent that Vendor can demonstrate that the Change Order requested by Customer has materially and adversely impacted the critical path of the Work. If it is possible to maintain the Work Schedule without adjustment by accelerating the performance of the Work, then Vendor shall propose such acceleration as an option for Customer and give Customer the cost impact of performing the Work on an accelerated basis as opposed to the cost impact without acceleration. Vendor shall use its best efforts to minimize the impact of any Change Order on the Work Schedule. A Change Order is not effective and binding unless and until it is agreed to in writing and signed by Customer. No payment or allowance whatsoever shall be made to Vendor for any additional Work, costs or time without a written Change Order signed by both Customer and Vendor.

8. GARANTEE OF TIMELY COMPLETION:

(a) Time is of the essence with respect to Vendor's performance of the Work. If liquidated damages for delay are specified in the applicable Purchase Order, Vendor shall be liable for such liquidated damages for each day, or portion thereof, of delay beyond the scheduled completion dates, as set forth in the Purchase Order. Liquidated damages shall be due and payable on each Friday following the date specified in the applicable Purchase Order, in an amount equal to the liquidated damages accrued during the one-week period ending on the immediately preceding day. Customer may deduct liquidated damages from amounts otherwise due to Vendor, without prejudice to Customer's other

rights or remedies, and payment of liquidated damages shall not relieve Vendor of its obligation to complete the Work.

(b) The Parties agree that liquidated damages represent a reasonable estimate of Customer's anticipated damages arising from delay, that actual damages would be difficult to determine, and that such liquidated damages are not a penalty. Vendor agrees not to challenge the enforceability of the liquidated damages provisions, and if such provisions are held unenforceable, Vendor shall remain liable for Customer's actual damages arising from delay.

9. FORCE MAJEURE:

(a) Any delays in or failure of performance by Vendor or Customer, other than payment of money, shall not constitute a default if, and to the extent, such delays or failures of performance are caused by a Force Majeure Event and the affected Party complies with the requirements of this Article 9. A "**Force Majeure Event**" means an occurrence or circumstance (i) arising after or that were not reasonably foreseeable prior to, the effective date of the affected Purchase Order, (ii) not caused by and beyond the reasonable control of the affected Party, (iii) that is unavoidable or could not be prevented or overcome by the reasonable efforts and due diligence of the affected Party, and (iv) that has an impact which will actually, demonstrably, adversely and materially affect such affected Party's ability to perform its obligations. Subject to the satisfaction of the foregoing criteria, Force Majeure Events include, but are not limited to, the following: acts of God or the public enemy; orders of any governmental authority (other than in respect of Vendor's compliance (or non-compliance) with applicable laws and any applicable permits or other authorizations required in connection with Vendor's performance under this Agreement); act or threat of war, terrorism, rebellion, or sabotage or damage resulting from such events; fires, explosions; acts of nature or extreme weather such as volcanic eruption, landslide, wildfire, earthquake, flood, tornado, or hurricane; provided, however, that the following shall not constitute a Force Majeure Event: (i) strikes, lockouts or other labor disputes specific to Vendor or any Vendor Personnel; (ii) material shortages; (iii) labor or manpower shortages; (iv) any delay, default or failure of any Vendor Personnel, Vendor Affiliate or other Person performing the Work (except if caused by a separate Force Majeure Event); and (v) economic hardship (including lack of money).

(b) A Party claiming relief arising from a Force Majeure Event must: (i) provide the other Party with notice describing the particulars of the Force Majeure Event as soon as reasonably practicable and in any event within five (5) days after such Party becomes aware of the occurrence of the Force Majeure Event, and (ii) use commercially reasonable efforts to remedy its inability to perform and mitigate all impacts of a Force Majeure Event. Failure to provide timely notice as required by clause (i) shall constitute a waiver of the affected Party's right to claim relief for the Force Majeure Event to the extent such failure caused harm to the other Party. The Party claiming a Force Majeure Event shall have the burden of proving that such event qualifies as Force Majeure Event

(c) Customer may terminate a Purchase Order if performance is delayed by a Force Majeure Event for more than ninety (90) days, in which case Vendor shall be paid for all compensation earned for Work performed to the date of termination, and such payment shall be Customer's sole and exclusive liability in the event of such termination.

10. INDEMNITY:

(a) To the fullest extent permitted by applicable law, Vendor shall indemnify, defend and hold Customer, its officers, directors, members, agents, consultants, employees, contractors or subcontractors, and, if applicable, its landlord (each an “**Indemnitee**” and collectively, the “**Indemnitees**”) harmless from any and all liability, damages, penalties, costs, fines, expenses and claims, including reasonable attorney’s fees, arising out of or resulting from (i) Vendor or any Vendor Personnel’s failure to comply with applicable laws, applicable permits, or the Standard of Care, (ii) the acts or omissions of Vendor, any Vendor Personnel and its and their employees, trustees, shareholders or members, agents, subcontractors, officers, directors and anyone else for whom Vendor is responsible, and (iii) any claim, action or proceeding by any Person for unauthorized disclosure, infringement or use of any patent or other license or intellectual property rights arising from Vendor’s performance (or that of any Vendor Personnel) hereunder, and Work Product or the Work performed or items provided by Vendor or any Vendor Personnel hereunder, in any case, whether such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including loss of use or economic loss resulting therefrom, but only to the extent caused by the acts or omissions of Vendor, Vendor Personnel or anyone directly or indirectly employed by it or anyone for whose acts it may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by an Indemnitee.

(b) In addition to its indemnification, defense, and hold harmless obligations contained elsewhere in this Agreement, Vendor shall fully indemnify, hold harmless and defend Indemnitees from and against any and all claims arising out of any of the following:

i. Actual or alleged failure of Vendor or its Permitted Subcontractors to comply with applicable law, applicable codes and standards, or safety requirements under this Agreement;

ii. Actual or alleged contamination, spill, release, discharge, or pollution arising out of (A) acts or omissions of Vendor’s or any Permitted Subcontractor’s use, handling, or disposal of hazardous materials generated or brought on the site or any other property during the performance of services by Vendor or any of its subcontractors, or (B) failure of contractor or any of its subcontractors to stop work after encountering contamination;

iii. Claims by and governmental authority as a result of a failure by Vendor or any Permitted Subcontractor to pay taxes; and

iv. Failure of Vendor to make payments to any Permitted Subcontractor in accordance with the respective subcontract and applicable law.

(c) Prior to commencing any Work under a Purchase Order, the Vendor will, at its sole cost and expense, obtain and maintain in full force and effect, for the benefit of Indemnitees, one or more forms of security (the “**Security**”) to secure the Vendor’s indemnity, defense, and reimbursement obligations under this Agreement. The Security will consist of one or more of the following, in each case reasonably acceptable in form and substance to the Indemnitees: (i) performance bond and/or payment bond issued by a reputable surety licensed to do business in the jurisdiction of the project; (ii) An irrevocable standby letter of credit issued by a United States bank reasonably acceptable to the Indemnitees; or (iii) such other security or credit support as the Indemnitees may reasonably approve in writing.

(d) The duty to indemnify and defend pursuant to Article 10 arises immediately upon presentation of a claim by any party and written notice of such claim being provided to Vendor. Vendor’s

obligation to indemnify and defend pursuant to Article 10 will survive the expiration or earlier termination of this Agreement and each Purchase Order until it is determined by final judgment that an action against the Indemnitee for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.

(e) The Parties shall give prompt written notice to the other of any and all injuries to Persons or damage to property (including any claim with respect thereto) of which such Party has notice or knowledge and which in any way arises from the performance of the Work or this Agreement.

(f) The indemnification provisions contained in this Agreement shall survive Vendor’s completion of the Work hereunder. Claims for indemnified losses may be made so long as any claim may be made in respect of such matters under any applicable statute of limitations; provided, however, that the foregoing shall not affect any claim made in good faith prior to the date of such expiration.

11. TITLE/RISK OF LOSS:

(a) Vendor warrants that all Services, Equipment, and other Work furnished under a Purchase Order shall be free and clear of all liens, claims, security interests, and encumbrances. Title to the Work (including Equipment) shall pass to Customer upon the earlier of Customer’s payment therefor or incorporation into the applicable project. Title to all drawings, reports, data, specifications, and similar deliverables produced for Customer shall vest in Customer upon creation, provided that Vendor retains ownership of its pre-existing proprietary materials and Vendor hereby grants Customer a perpetual, non-exclusive, transferable, royalty-free license to use such materials in connection with the applicable project and any expansion, modification, renovation, or replacement thereof.

(b) Unless otherwise stated in a Purchase Order, Vendor shall bear the risk of loss or damage to the Services, Equipment and other Work until completion of such Work. Customer may occupy or use any completed or partially completed Work to the extent permitted by law, and such occupancy or use shall not constitute acceptance of non-conforming Work or relieve Vendor of its obligations under the Purchase Order.

12. CONFIDENTIALITY:

(a) Vendor acknowledges that by reason of its relationship to Customer it will have access to Confidential Information that is of substantial value to Customer, which value would be impaired if such information were disclosed to third parties. Vendor covenants and agrees that it will not, without the prior permission of Customer, use, disclose, or permit to be disclosed, or, in case of documents, reproduce or permit to be reproduced to any Person Confidential Information acquired from or given by Customer to Vendor. Vendor shall take every reasonable precaution to protect the confidentiality of Confidential Information and shall only use Confidential Information as necessary to perform the Work. All Confidential Information disclosed by Customer shall remain the property of Customer, and Vendor shall return or destroy Confidential Information upon Customer’s written request. Vendor shall be liable and responsible for any disclosure of Confidential Information by Vendor Personnel. Vendor shall ensure that (i) any Permitted Subcontractors will be fully informed of and agree to adhere to the confidentiality obligations stipulated in this Article 12, and (ii) any subcontracts entered into contains confidentiality provisions which obligates such Permitted Subcontractor to protect Customer’s Confidential Information with the same degree of care as Vendor. Vendor will safeguard Customer’s Confidential Information with the same degree of care

that it uses to protect its own confidential and proprietary information, but in any event not less than reasonable care. For purposes of this Agreement, “**Confidential Information**” means designs, drawings, plans, calculations, formulae, techniques, trade secrets financial data, know-how, trade secret, specifications, computer programs, technical information, engineering, other proprietary business, financial and ownership information or data, or like information whether written, oral, or otherwise. All information provided by Customer to Vendor shall be considered Confidential Information that Customer protects as trade secrets.

(b) This Article 12 shall not apply to information that (i) was in the public domain at the time it was disclosed to Vendor; (ii) entered the public domain subsequent to the time it was disclosed to Vendor, through no fault of Vendor or an Affiliate of Vendor; or (iii) was in Vendor’s possession free of any obligation of confidence at the time it was disclosed to Vendor. Vendor may disclose certain Confidential Information of Customer, without violating the obligations of this Agreement, to the extent such disclosure is required by a valid order of a court or other governmental body having jurisdiction, provided that Vendor provides Customer with reasonable prior written notice of such disclosure and makes a reasonable effort to obtain, or to assist Customer in obtaining, a protective order preventing or limiting the disclosure and/or requiring that the Confidential Information so disclosed be used only for the purposes for which the law or regulation required, or for which the order was issued.

(c) The Parties acknowledge that any violation by Vendor of Article 12 would cause Customer irreparable harm that could not be adequately remedied by monetary damages. Accordingly, if Vendor has disclosed (or has threatened to disclose) Confidential Information in violation of this Agreement, Customer shall have the right, in addition to, and not in lieu of, monetary damages or any other legal or equitable remedy available to it, to seek injunctive or other equitable relief from a court of competent jurisdiction, without the necessity of proving damages or posting any bond, as may be necessary to prevent any such violation. In the event that Vendor discloses or utilizes Confidential Information in violation of this Agreement, Vendor shall indemnify Customer, its officers, directors, members, shareholders and Affiliates, for the damages, costs, and expenses (including reasonable fees of counsel) arising out of claims, suits, demands, actions, liabilities, or losses related to such disclosure or utilization. The restrictions on confidentiality and use and the indemnity set forth in this Article 12 shall be binding and survive for two (2) years after the termination or expiration of this Agreement; except with respect to Confidential Information that qualifies as a trade secret under the laws of any state or that Customer protects as a trade secret, for which the obligations set forth in Article 12 shall remain in effect as long as such Confidential Information remains a trade secret.

13. INTELLECTUAL PROPERTY:

(a) All right, title and interest in and to any concept, product, process (patentable or otherwise), copyrightable material (including, without limitation, documents, specifications, calculations, maps, sketches, notes, reports, data, models, samples, drawings, designs, videos, electronic software and native files) or other information conceived, reduced to practice or created by Vendor, Vendor Personnel or any of its or their employees or subcontractors in the performance of the Work under this Agreement and each Purchase Order (collectively, “**Work Product**”) and all improvements thereto shall belong exclusively and solely to Customer and shall be deemed “works made for hire”

to the extent permitted by applicable law. To the extent any Work Product does not qualify as a work made for hire, Vendor hereby irrevocably assigns to Customer all right, title and interest therein. Vendor shall upon request by Customer (but in no event later than thirty (30) calendar days from the date of completion of any Work) deliver all Work Product to Customer (including native files).

(b) To the extent any Vendor IP is embedded in the Work Product that is not assigned or conveyed to Customer, Vendor hereby grants to Customer and its Affiliates a non-exclusive, royalty-free, transferable, irrevocable, fully paid up, perpetual worldwide license and right to use, maintain, copy, modify, enhance, and prepare or create derivative works of any and all components of such Work Product. Customer (and its sublicensees) shall have the right to grant sublicenses under such license without notice to Vendor. For purposes of this Agreement, “**Vendor IP**” means all patents, rights in inventions, rights in designs, trademarks, trade and business names and all associated goodwill, rights to sue for passing off or for unfair competition, copyright, moral rights and related rights, rights in databases, topography rights, domain names, rights in information (including know-how and trade secrets), tools and methodologies and all other similar or equivalent rights subsisting now or in the future in any part of the world, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights for their full term, in each case owned or developed by Vendor or any Vendor Personnel.

(c) None of the Work, Work Product, Vendor IP, and Customer’s use thereof infringe or will infringe any intellectual property right of any third party and, as of the date hereof, there are no pending or, to Vendor’s knowledge, threatened claims, litigation, or other proceedings pending against Vendor by any third party based on an alleged violation of such intellectual property rights.

14. SUBCONTRACTING:

(a) Vendor may subcontract any portion of the Work only with Customer’s prior written approval (which may be withheld in Customer’s sole discretion) (a “**Permitted Subcontractor**”); provided, however, that no such approval shall relieve Vendor of any obligation or liability under this Agreement. All Permitted Subcontractors shall be reputable, qualified firms with an established record of successful performance in their respective trades performing identical or substantially similar work. Vendor shall notify Customer of any proposed subcontractor and furnish to Customer all information reasonably requested by Customer with respect to the qualifications of the proposed subcontractor. Customer’s approval of any subcontract shall in no way limit Vendor’s obligations under this Agreement or any Purchase Order or Customer’s rights herein or therein. Vendor shall remain fully responsible for the acts, omissions, performance, and compliance of all Permitted Subcontractors of any tier as if the Work were performed by Vendor directly, and Vendor shall ensure that all Permitted Subcontractors comply with all applicable requirements of this Agreement, including standards of performance, indemnification obligations, insurance requirements, compliance with applicable laws, and waive any lien rights against Customer, Customer’s customer, and their respective real and personal property. Vendor shall pay all Vendor Personnel in a timely fashion, and shall replace any Vendor Personnel who fails to perform its obligations in accordance with the Standard of Care. All agreements with Permitted Subcontractors shall name Customer as a third-party beneficiary and shall provide for a right of assignment to Customer or any designee of Customer if this Agreement or the Purchase Order applicable to the Work

performed by such Permitted Subcontractor is terminated. Nothing contained herein shall be deemed to create any contractual relationship between Customer (or Customer's customer) and any Permitted Subcontractor, or to obligate Customer to pay or ensure payment of any Permitted Subcontractor, all of which obligations shall remain solely the responsibility of Vendor.

(b) Vendor shall disclose to Customer any subcontract identified in a Purchase Order as material or as exceeding a specified value threshold as specified in the Purchase Order (each, a "**Major Subcontract**"). Vendor shall remain solely responsible for the acts, omissions, and performance of all subcontractors, including under any Major Subcontract. Upon the request of Customer, Vendor shall deliver copies of all purchase orders for equipment, including addenda, complete vendor operating and maintenance information/manuals, material and fabrication certifications as applicable, installation instructions, and specific guarantee and warranty information.

15. LIENS:

To the extent that Customer has timely paid Vendor for all undisputed amounts in connection with Work performed, Vendor shall not, directly or indirectly, create, incur, assume, or suffer to be created any mechanic's, materialman's, or other lien, claim, or encumbrance arising out of the Work against Customer, Customer's customer, landlord (if applicable) or any of their respective real or personal property ("**Liens**") and shall promptly pay all amounts due for labor, materials, equipment, and services furnished in connection with the Work. In the event any Lien is filed or asserted, Vendor shall promptly notify Customer and shall, at its sole cost and expense, immediately discharge or bond around such Lien to Customer's reasonable satisfaction, and if Vendor fails to do so within a reasonable time after notice, Customer may, but shall not be obligated to, discharge such Lien, and Vendor shall promptly reimburse Customer for all amounts paid and expenses incurred in connection therewith, and Customer may offset such amounts against any sums due or to become due to Vendor. Vendor shall indemnify, defend, and hold harmless Customer, Customer's customer, and their respective Affiliates, members, managers, directors, officers, employees, and agents from and against any and all claims, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or related to any Lien or any failure by Vendor or its subcontractors to pay amounts due.

16. TERMINATION, SUSPENSION AND DEFAULT:

(a) In the event that: (i) Vendor becomes insolvent, bankrupt or admits in writing an inability to pay debts generally as they become due, (ii) Vendor makes a general assignment for the benefit of its creditors, (iii) Vendor or anyone directly or indirectly employed by or anyone for whose acts it may be liable (including, without limitation, any Vendor Personnel) violates applicable laws, (iv) Vendor fails in any material respect to prosecute the Work according to the Work Schedule, (v) Vendor refuses or fails to provide sufficient properly skilled workers, adequate supervision or materials of the proper quality, (vi) Vendor causes, by any action or omission, the stoppage or delay of or interference with the work of Customer or (vii) Vendor commits a material breach of this Agreement or a Purchase Order (each of the foregoing being a "**Default**") and fails to commence to remedy such breach within ten (10) days after receipt of written demand by Customer and fails to proceed diligently in remedying the same (provided, that any cure period shall not exceed thirty (30) days from the date of Customer's notice to Vendor), in each case, Customer may terminate (A) this Agreement and all Purchase

Orders, or (B) any one or more Purchase Orders, (C) remove from the site any equipment or materials of Vendor, (D) stop Vendor from performing further Work until such breach is remedied to the reasonable satisfaction of Customer, and (E) take possession of all or part of the Work and complete the same by any method Customer deems appropriate. In addition, Vendor shall be liable for all reasonable out-of-pocket and documented costs and/or expenses (including reasonable attorneys' fees) incurred by Customer as a result of Vendor's Default. Upon any such termination and subject to Section 16(b), Vendor shall be compensated for all costs incurred and compensation earned for Work then performed (and not subject to dispute and less allowances for Work which must be corrected) in accordance with the provisions of the applicable Purchase Order. Any such termination shall be without prejudice to any other rights or remedies of Customer, and in no event shall such termination operate to relieve Vendor of any obligation or liability arising under this Agreement and each Purchase Order prior to the date of such termination.

(b) In the event that Customer terminates this Agreement in whole or in part for Default or for convenience under Section 16(a), then Customer may, at its sole option, (i) enter onto the applicable site and take possession, for the purpose of completing the Work, all of the equipment, materials, tools, supplies, documents, and information of Vendor, (ii) take assignment of any or all of the subcontracts, and/or (iii) either itself or through others complete the Work by the most cost efficient means reasonably practicable. Vendor shall not be entitled to receive any further payment until the Work have been fully completed and accepted by Customer and any disputes in connection with such completion are resolved. At such time, if the unpaid balance of the price set forth in the applicable Purchase Order shall exceed the expense incurred by Customer (including the cost of financing or interest on such expense from the date such expense was incurred by Customer at the rate specified in Section 6(d)), then such excess shall be paid by Customer to Vendor. If such amount shall exceed the unpaid balance, then Vendor shall pay Customer the difference on demand. Vendor's liability under this Section 16(b) is in addition to any other liability provided for under the Agreement. Customer agrees to act reasonably and use commercially reasonable efforts to mitigate any costs it might incur in connection with any termination for default.

(c) In the event that: (i) Customer becomes insolvent, bankrupt or admits in writing an inability to pay debts generally as they become due or (ii) Customer commits a material breach of this Agreement and fails to commence to remedy such breach within ten (10) days after receipt of written demand by Vendor and fails to proceed diligently in remedying the same, in each case, then Vendor may terminate performance of the Work and the applicable Purchase Order. Should Vendor so terminate the applicable Purchase Order, Vendor shall be paid, as its sole and exclusive remedy, for all compensation earned for Work performed (and not subject to dispute and less allowances for Work which must be corrected) to the date of termination and reasonable, unavoidable and documented cancellation charges by subcontractors or vendors. Vendor shall use commercially reasonable efforts to minimize and mitigate any such cancellation charges. Vendor shall not be entitled to any other or further recovery against Customer, including anticipated fees or profit on Work not performed.

(d) Customer reserves the right to suspend or terminate, for convenience, the Work under any Purchase Order, in whole or in

part, at any time by providing notice in writing to Vendor whenever it determines such termination to be in its best interest. Upon receipt of such notice of suspension, Vendor shall (i) take all necessary action to terminate the work or services as provided in the notice, minimizing costs and liabilities, (ii) protect, preserve and deliver any property related to this Agreement which is in Vendor's possession pursuant to Customer's direction, and (iii) continue the performance of such part of the work or services, if any, as may not have been terminated by the notice. Should the Work be so terminated by Customer, Vendor shall be paid, as its sole and exclusive remedy, all compensation earned for Work performed (and not subject to dispute and less allowances for Work which must be corrected) to the date of termination and reasonable, unavoidable and documented cancellation charges by vendors and subcontractors. Should the Work be suspended by Customer, Vendor shall also be compensated for reasonable, unavoidable and documented stand-by costs. Vendor shall use commercially reasonable efforts to minimize and mitigate any such cancellation or stand-by charges. Vendor shall not be entitled to any other or further recovery against Customer, including anticipated fees or profit on Work not performed. Upon termination of any suspension, Vendor shall promptly recommence the Work under the terms and conditions of the applicable Purchase Order.

(e) Regardless of the reason for termination, on the effective date of termination of this Agreement or a Purchase Order, Vendor shall discontinue the terminated Work, preserve all work in progress, and turn over the work to Customer in accordance with Customer's instructions. In no event will Vendor be entitled to payment for any Work that was either not performed or not performed properly, in Customer's sole discretion, at the time of termination. Upon any termination, to the fullest extent allowed by applicable law, title to and possession of all permits, licenses, drawings, data, specifications, or other items acquired for Customer will immediately pass to and vest in Customer. During termination of Work, Vendor shall fully cooperate with Customer in all respects, including personnel matters and cost reduction.

17. WARRANTY:

(a) Vendor warrants that all materials, supplies and equipment supplied hereunder, and any Work performed or provided by, through, or on behalf of Vendor or any Vendor Personnel as part of or in connection with this Agreement or any Purchase Order shall be performed: (i) in accordance with the Standard of Care and the requirements of this Agreement and the Purchase Order, (ii) in a professional manner, (iii) using United States based codes and standards of construction and workmanship applicable to the location of the project, and (iv)(A) in respect of any Work, be free from (1) defects in any workmanship, (2) deficiencies caused by errors or omissions, and (3) free of defects in title and title to all such Work shall be free of all liens and other encumbrances and (B) in respect of any Equipment, materials, and supplies furnished, be new, unused, undamaged and of merchantable quality, fit for Customer's intended purposes as communicated to Vendor. Any portion of the Work that does not meet the standards set forth in this Section 17(a) is ("Defective") and contains a ("Defect").

(b) All Work furnished under a Purchase Order is subject to Customer's inspection and approval; provided, that such right of inspection of the Work shall not relieve Vendor of its responsibility for the proper performance of the Work, nor shall such inspection waive Customer's right to reject the Work at a later date. Customer reserves the right to reject, refuse, or revoke acceptance of Work that is not in accordance with any agreed upon

specifications, drawings, data, or Vendor's representation and warranties.

(c) If, during performance of Work and for the two (2) year period following Customer's written confirmation that all Work under the applicable Purchase Order has been completed in accordance with the requirements of this Agreement and the Purchase Order, any of the Work was performed in a manner inconsistent with the foregoing standards, or if a defect, deficiency or error is discovered in any materials, supplies, equipment, information or Work Product supplied as part of such Work, Vendor shall re-perform or replace (as applicable), at no additional cost to Customer, such Work within the original scope of Work as may be necessary to remedy such error without interfering with the applicable project. Re-performed Work shall be warranted for the longer of (i) the remaining term of the two (2) year period, or (ii) one (1) additional year, not to exceed three (3) years from completion of the original Work. In addition to the right to require Vendor to re-perform the Work, Customer shall be entitled to exercise any rights and remedies that may be available to Customer at law or in equity.

(d) Vendor shall furnish satisfactory evidence as to the kind, quality, and quantity of all equipment. Without prior written approval by Customer which specifically waives the requirements of this Agreement, Vendor shall not use any equipment other than as specified in this Agreement. If Vendor wishes to modify the requirements contained herein, then it shall make written application to Customer for Customer's approval, in Customer's sole discretion, prior to performing any such Work. All equipment shall be fabricated, applied, installed, connected, operated (during start-up and testing), cleaned and conditioned in accordance with the instructions of the applicable vendor, manufacturer, fabricator or processor.

(e) Vendor is fully responsible for ensuring that the Work is performed in an environmentally sound manner, and in compliance with all provisions of this Agreement regarding the environment. Vendor shall report to Customer, as soon as reasonably possible after having knowledge thereof and in no event later than one (1) day after such occurrence, any violation of the foregoing. Vendor shall, at its sole cost and expense, remediate the release of any substance or other event in violation of this Section and shall repair any damage caused thereby. Vendor's obligations under this Section shall survive termination of this Agreement.

(f) Vendor shall furnish Customer with access to all locations where Work is in progress, including locations not on the applicable site. If, in the judgment of Customer, any Work is Defective, then Vendor shall, at its own expense, promptly repair or replace the Defective Work. Subject to Vendor's right to pursue a dispute under this Agreement, the decision of Customer shall be conclusive as to whether the Work is conforming or Defective, and Vendor shall comply with the instructions of Customer in all such matters while pursuing any such dispute. If it is later determined that the Work was not Defective, then Customer shall reimburse Vendor for all costs incurred in connection with such repair or replacement and a Change Order shall be issued for such amount and shall address any impact the repair or replacement may have had on the Work Schedule. If Vendor fails, after a reasonable period of time not to exceed one (1) week, to repair or replace any Defective Work, or to commence to repair or replace any Defective Work and thereafter continue to proceed diligently to complete the same, then Customer may repair or replace such Defective Work and the expense thereof shall be paid by Vendor.

(g) If required by Customer in a Purchase Order, Vendor shall provide Customer with a list of witness points for all equipment no later than thirty (30) days after the execution of this Agreement, and Customer shall notify Vendor which of the witness points it wishes its personnel to witness. Vendor shall provide Customer with at least fifteen (15) days prior written notice of the actual scheduled date of each of the tests Customer has indicated it wishes to witness. Vendor shall bear the cost of having up to three (3) representatives of Customer witness up to five (5) tests, as determined at the sole discretion of Customer. Vendor will cooperate with Customer if Customer elects to witness any additional tests, and Vendor acknowledges that Customer shall have the right to witness all tests being performed in connection with the Work.

(h) Customer's right to conduct inspections under this Agreement shall not obligate Customer to do so. Neither the exercise of Customer of any such right, nor any failure on the part of Customer to discover or reject Defective Work shall be construed to imply an acceptance of such Defective Work or a waiver of such Defect.

(i) The cost of disassembling or dismantling finished Work for the purpose of inspection, and reassembling such portions (and any delay associated therewith) shall be borne by Customer if such Work is found to conform with the requirements of the Agreement and by Vendor if such Work is found to be Defective.

(j) Without limiting Vendor's obligations hereunder to warrant the Work, Vendor shall assign to Customer all rights under any warranties it may receive or be entitled to from Permitted Subcontractors to the extent such warranties extend beyond the period of Vendor's warranty obligations hereunder. Vendor shall execute such additional documents as Customer may require evidencing that assignment to Customer.

(k) If, after notification of a breach of a warranty under this Agreement or Purchase Order, Vendor fails to commence curative action within a reasonable period of time not to exceed one (1) week, or delays in continuing or completing curative action, then Customer, by written notice to Vendor, may correct such Defect(s) in accordance with this Agreement, and Vendor shall be liable for all costs, charges and expenses incurred by Customer in connection with such repair or replacement and shall pay to Customer an amount equal to such costs, charges and expenses upon receipt of an invoice from Customer.

18. INSURANCE:

(a) Vendor shall, at its own expense, procure and maintain during performance of the Work and for a period of two (2) years following completion of the Work, insurance coverage with financially sound insurers rated at least A-/VII by A.M. Best, including workers' compensation as required by law, employers' liability, commercial general liability, automobile liability (covering owned, non-owned, and hired vehicles), and professional liability (if design services are included in the Work), each with limits not less than those specified in the applicable Purchase Order or otherwise reasonably acceptable to Customer. Customer and its designees shall be named as additional insureds on Vendor's general liability and automobile liability policies, and such policies shall be primary and non-contributory with respect to any insurance maintained by Customer. Vendor shall provide certificates of insurance upon request and shall provide at least thirty (30) days' prior written notice of cancellation, non-renewal, or material reduction in coverage.

(b) In the event of any loss, damage, injury, or occurrence arising out of or relating to the Work that is covered or potentially covered

by insurance maintained by Vendor or any Permitted Subcontractor, Customer shall have the right, but not the obligation, to submit, pursue, and control claims directly under such insurance policies as an additional insured, including communicating and dealing directly with insurers with respect to investigation, defense, adjustment, settlement, and payment of such claims. Insurance proceeds shall be paid directly to Customer to the extent of Customer's insurable interest. Vendor and its subcontractors shall cooperate with Customer and insurers in the investigation and handling of any claims, and Customer shall be entitled to receive insurance proceeds to the extent of its insurable interest.

(c) Upon the request of Customer, Vendor shall deliver copies of all purchase orders for equipment, including addenda, complete vendor operating and maintenance information/manuals, material and fabrication certifications as applicable, installation instructions, and specific guarantee and warranty information.

(d) Vendor shall provide all other information and documentation as may be reasonably requested by Customer. The existence of insurance, and the Customer's rights to make claims under such insurance, does not limit or waive any liability or obligation of the Vendor, Vendor Personnel, or Permitted Subcontractors under this Agreement or at law, except to the extent that the Customer actually receives insurance proceeds in respect of the same loss

19. MISCELLANEOUS:

(a) Vendor shall be an independent contractor with respect to the Work to be performed. Vendor and all Vendor Personnel and the employees of either shall not, under any circumstance, be considered an agent or employee of Customer. This Agreement shall not be construed to create any fiduciary relationship, joint venture, or partnership between the Parties. Nevertheless, Vendor shall strictly comply with all provisions, terms and conditions of this Agreement, and the fact that Vendor is an independent contractor does not relieve it from its responsibility to fully, completely, timely and safely perform the Work in strict compliance with this Agreement.

(b) Vendor hereby represents and warrants to Customer that: (i) Vendor is duly organized, validly existing and in good standing under the laws of its state of organization and has all requisite power and authority to own and operate its properties and assets and to carry on its business as now conducted. Vendor is duly qualified and is authorized to transact business and is in good standing as a foreign entity in each jurisdiction in which the failure so to qualify would have a material adverse effect on its ability to perform its obligations under this Agreement; (ii) all action on its part and on the part of its officers, managers and/or members necessary for the authorization, execution and delivery of this Agreement and the performance by it of all of its obligations hereunder have been taken; (iii) it has obtained all governmental approvals or third-party approvals required for the performance by it of its obligations under this Agreement; (iv) there is no action pending or, to its knowledge, currently threatened against it that seeks to prohibit the transactions contemplated by this Agreement or adversely affect its ability to perform under this Agreement; (v) this Agreement constitutes the legal, valid and binding obligation of Vendor, enforceable in accordance with its terms (subject to principles of equity, the effect of bankruptcy, insolvency, reorganization, receivership, moratorium, and other similar laws), and the execution, delivery and performance of this Agreement by Vendor does not and will not, in any material respect, conflict with, violate or cause a breach of any applicable law, material agreement, contract or instrument to which Vendor is a party or

any judgment, order or decree to which Vendor is subject; and (vi) that Vendor is financially solvent, able to pay all debts as they mature and possesses sufficient working capital to complete the Work and perform its obligations hereunder.

(c) Except as otherwise provided in a Purchase Order, in no event shall Customer be liable to Vendor for any and all claims, suits, demands, actions, liabilities, or losses in excess of an amount equal to the charges for Work paid to Vendor under the Purchase Order giving rise to such liability during the twelve (12)-month period immediately preceding the most recent event giving rise to the claim, regardless of whether such liability arises out of breach of contract, tort, product liability, contribution, strict liability or any other legal or equitable theory; provided, however, that the preceding limitation of liability shall not apply to, and no liability amounts shall apply against such limitation of liability, (a) for liabilities resulting from the gross negligence, fraud, or willful misconduct of Customer; and (b) Customer's non-performance of its payment obligations under this Agreement. In no event, shall Customer be liable for any consequential, incidental, indirect, special or punitive damage, loss or expenses (including but not limited to business interruption, loss of data, reputational harm, lost business, lost profits, or lost savings) even if it has been advised of their possible existence. The allocations of liability in this Section 19(c) represent the agreed and bargained-for understanding of the Parties and Vendor's compensation for the Work reflects such allocations.

(d) This Agreement and each Purchase Order constitute the entire agreement between the Parties and supersedes any previous oral or written representations, understandings, proposals, or communications between the Parties. This Agreement and each Purchase Order may not be changed, modified, or amended except in writing signed by the Parties. In the event of any conflict between this Agreement and any of the Agreement's exhibits, the terms and provisions of this Agreement shall control. In the event of any conflict among the exhibits, the exhibit of the latest date shall control. All provisions of this Agreement and each Purchase Order which are by their nature intended to survive the expiration or termination shall survive such expiration or termination. This Agreement and each Purchase Order may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. For purposes of this Agreement and each Purchase Order, use of a facsimile, pdf by e-mail, or other electronic medium shall have the same force and effect as an original signature.

(e) If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, such term or provision shall not affect the other terms or provisions of this Agreement or this Agreement as a whole, but such term or provision shall be deemed modified to the extent necessary, in the court's opinion, to render such term or provision enforceable, preserving to the fullest permissible extent the intent and agreements of the Parties set forth in this Agreement.

(f) This Agreement shall not be assignable by either Party without the prior written consent of the other Party, except that Customer may assign this Agreement, without such consent, to any successor, or to a Person acquiring all or substantially all of the business assets of Customer, or to a related entity, an Affiliate or wholly owned subsidiary of Customer, but such assignment shall not relieve Customer of any of its obligations under this Agreement. No assignment of this Agreement shall be valid until this Agreement shall have been assumed by the assignee. When

duly assigned in accordance with the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the assignee. Notwithstanding the foregoing, Customer may (i) collaterally assign this Agreement as security in connection with any financing related to the Project without the prior written consent of Vendor, and Vendor agrees to cooperate and execute documents and opinions as reasonably required by Customer in connection with any such financing; and (ii) cause an Affiliate to enter into a Purchase Order, in such event, and solely with respect to such Purchase Order, all references to Customer in this Agreement shall mean the Affiliate signing such Purchase Order.

(g) During the term of this Agreement and for a period of twelve (12) months thereafter, Vendor shall not, directly or indirectly, in any manner solicit or induce for employment any person who performed any work under this Agreement who is then in the employ of Customer. A general advertisement or notice of a job listing or opening or other similar general publication of a job search or availability to fill employment positions, including on the internet, shall not be construed as a solicitation or inducement for the purposes of this Section, and the hiring of any employee or independent contractor who freely responds thereto shall not be a breach of this Section. If Vendor breaches this Section, the Vendor shall, on demand, pay to Customer a sum equal to one year's basic salary or the annual fee that was payable by the Customer to that employee, worker, or independent contractor plus the recruitment costs incurred by Customer in replacing such person.

(h) Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than Customer and Vendor (or Customer's Affiliate in the event such Affiliate enters into a Purchase Order), and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Customer and Vendor (or Customer's Affiliate in the event such Affiliate enters into a Purchase Order) and not for the benefit of any other party.

(i) No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the Party against which it is sought to be enforced. The delay or failure by either Party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that Party's right to thereafter enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise of these rights or any other right. Customer's review, approval, acceptance or payment for Work under this Agreement or any Purchase Order shall not operate as a waiver of any rights under this Agreement or a Purchase Order and Vendor shall be and remain liable to Customer for any damages incurred by Vendor as a result of Vendor's failure to perform in conformance with the terms and conditions of this Agreement and applicable Purchase Order.

(j) For purposes of this Agreement, (i) the words "include," "includes," and "including" shall be deemed to be followed by the words "without limitation"; (ii) the word "or" is not exclusive; and (iii) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Sections, Schedules, Exhibits, and Purchase Orders refer to the Sections of, and Schedules, Exhibits, and Purchase Orders attached to this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any

successor legislation thereto and any regulations promulgated thereunder. This Agreement and each Purchase Order shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Schedules, Exhibits, and Purchase Orders referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein. For the purposes of this Agreement, (1) “**Affiliate**” shall mean with respect to any Person, any other Person controlling, controlled by, or under common control with such Person; (2) “**Person**” shall mean any individual, corporation, limited liability company, partnership, trust, governmental authority or agency, or other entity.

(k) Each Party shall pay its own costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of this Agreement. Each Party shall take such further actions as are reasonably requested by the other Party, including the execution and delivery of documents, as are necessary or expedient to carry out the intent of this Agreement.

(l) Any notice or other communication provided under this Agreement will be in writing and will be delivered personally, sent by first class or registered mail (return receipt requested). Any such notice will be deemed given when actually received and will be addressed to such Party at the address set forth in the Purchase Order. A notice sent by email transmission to the other Party’s authorized representative shall be deemed received pursuant to the notice provisions of this Agreement if such notice is actually received by such authorized representative, and such receipt is confirmed by the recipient thereof. Either Party may change its address for notices upon giving at least ten (10) calendar days’ written notice of the change to the other Party given in the manner provided above.

(m) This Agreement shall be governed by, enforced and construed in accordance with the laws of the State of Delaware, without giving effect to conflict of law rules. Any litigation shall be filed and pursued in the United States federal courts located in the State of Delaware or the state courts of Delaware, and the Parties waive any claim based on inconvenient forum or venue, or lack of jurisdiction. Any dispute, controversy or claim arising out of or under this Agreement or its performance shall first be negotiated by the Parties. Any disagreement or dispute between the Parties may, if not promptly resolved by mutual agreement, be reduced to writing and submitted to executive officers of each Party designated by such Party to handle such disputes. Within thirty (30) calendar days of the submittal, such executive officers may, upon mutual agreement, meet to attempt to resolve the dispute and to hear any arguments that a Party wishes to make in connection therewith. Should the executive officers be unable to promptly resolve a dispute, either party may initiate professional third-party mediation first, failing that, then litigation.

(n) If required by Customer in a Purchase Order, Vendor’s parent organization acceptable to Customer will guarantee the full and faithful performance of all obligations of Vendor under this Agreement in the form acceptable to Customer. Such guarantee shall be unconditional and irrevocable. If Vendor does not have a satisfactory parent organization, Vendor may be required to furnish full payment and performance bonds.