

SP GENERAL TERMS AND CONDITIONS OF PURCHASE

Except as set forth below, the Terms are applicable to each Purchase Order issued by SP Entity to Contractor (each, a “**Party**” and together, the “**Parties**”), regardless of whether the Terms are attached to the face of the Purchase Order (the “**Purchase Order**”), posted on SP Entity’s website, or delivered separately, and shall be deemed to have been irrevocably accepted by Contractor upon the earliest of Contractor’s (a) acceptance of the Purchase Order as set forth below, (b) performance of a Deliverable, or (c) acceptance of any payment made by SP Entity for a Deliverable. Notwithstanding the foregoing, if SP Entity and Contractor have executed and delivered a specific agreement governing the purchase and sale of the Deliverables (a “**Specific Agreement**”), the Specific Agreement shall govern in lieu of the Terms.

“**Certificate of Acceptance**” means one or more certificates of acceptance of the goods provided and services completed by Contractor pursuant to the corresponding Purchase Order issued by the SP Entity in substantially the form attached hereto as **Appendix F**; “**Specific Details**” means the details contained on the Purchase Order; “**Contractor**” means the contractor described on the Purchase Order; “**Effective Date**” means the issue date set forth in the Specific Details; “**Deliverables**” means the services and goods to be provided by Contractor as described in the Specific Details or otherwise delivered to SP Entity; “**SP**” means Sustainability Partners, LLC; “**SP Entity**” means the “SP Entity” described on the Purchase Order; and other capitalized terms shall have the meanings defined herein or in **Section 14**.

1. **Scope.** The SP Entity engages Contractor as an independent contractor to provide the Deliverables in accordance with the Terms.
2. **Term.** The term of the Agreement begins as of the date of execution of the applicable Purchase Order and ends upon the completion of Contractor’s obligations herein (the “**Term**”). Either Party may terminate a particular Purchase Order as provided in the Terms or in the applicable Purchase Order.
3. **Payments.**
 - 3.1. *In General.* Subject to the Terms, the SP Entity shall pay the Service Costs set forth in the Purchase Order, except to the extent the aggregate Service Costs exceed the not to exceed amount specified in the Purchase Order (the “**Not to Exceed Amount**”) or the not to exceed amount per Good (on a fully-loaded cost basis) specified in the Purchase Order (the “**Not to Exceed Unit Amount**”), when due under the Agreement (each such payment, a “**Service Payment**”), on the condition that (a) Contractor has performed in accordance with the Terms, (b) there are no active disputes between the Parties in which, or SP Entity believes in good faith that, Contractor owes an amount greater than the Service Payment, (c) the SP Entity has received the applicable invoice from Contractor, together with all supporting documentation required under the Agreement, and (d) the SP Entity has received Customer’s payment notice containing certification of satisfaction of the foregoing conditions (the “**Customer’s Satisfaction Notice**”).
 - 3.2. *Excluded Costs.* If Contractor intends to charge the SP Entity any fees for travel time of Contractor’s Personnel or any internal costs, such as overhead, administrative fees, or other similar costs, expenses, or fees (or markups thereon) related to Deliverables provided by a subcontractor to Contractor in connection with a Purchase Order, all such amounts shall be included in the Service Costs set forth in the Purchase Order. The Service Costs set forth in the applicable Purchase Order shall remain in effect for the purchase of all Goods and performance of all Services under such Purchase Order, regardless of changes in currency rates, revenue laws, treasury regulations or tariffs, increases in the appraisal of the value of the Goods purchased or to be purchased under the Purchase Order by the customs authorities of any country, or other variables unless otherwise provided in the Purchase Order or agreed upon in writing by the Parties.
 - 3.3. *Taxes.* Except for sales, use, value-added taxes and taxes on the real property owned by Customer or the SP Entity, any taxes, excise, duties, and assessments in any manner levied, assessed, or imposed upon Contractor or its subcontractor by any Governmental Entity shall be paid for by Contractor without reimbursement from the SP Entity. The SP Entity shall promptly pay and discharge when due, unless the validity or application is being contested by the SP Entity in good faith, all sales, use, any applicable value-added taxes imposed upon the SP Entity. Contractor shall promptly pay and discharge when due, unless the validity or application is being contested by Contractor in good faith, any usual and customary taxes, excises, duties, and assessments, together with any interest and penalties, if any.
 - 3.4. *Invoices.* Contractor shall electronically invoice the SP Entity by electronic mail to apinvoices@s.partners in accordance with the schedule for payment set forth in the Purchase Order. Each invoice shall (a) refer to the Agreement and the applicable Purchase Order and contain other identifying information reasonably satisfactory to the SP Entity and (b) contain supporting information and documentation pertaining to the applicable Deliverables. The SP Entity shall pay the Service Costs set forth in each invoice within 30 days after receipt thereof or as otherwise specified in the applicable Purchase Order; *provided, however*, that if the SP Entity disputes the amount of an invoice, the SP Entity may withhold and offset payment of the disputed amount, and the Parties shall promptly use commercially reasonable efforts to resolve the dispute. The SP Entity shall not be obligated to pay any amount set forth in an invoice delivered more than 120 days after the date on which the Deliverables referenced in the invoice were performed or delivered, as applicable. If a dispute occurs concerning an invoice, the deadline for payment of an invoice set forth in this Subsection shall be determined using the date of delivery of the corrected invoice after such dispute is resolved and not the date of delivery of the disputed invoice. The SP Entity’s payment of an invoice does not constitute acceptance of the Deliverables.
 - 3.5. *Late Fees.* If any Service Payment due from the SP Entity to Contractor or any payment due from Contractor to the SP Entity is delinquent for more than 30 days, such amount will accrue interest at the lesser of one and one-half percent per month or the maximum rate permitted by Law.
 - 3.6. *No Liens.* To the extent Contractor has been paid by the SP Entity in accordance with the Agreement, Contractor shall promptly pay all undisputed amounts owed for services, materials, equipment, and labor used or furnished by any subcontractor to Contractor in the performance of the Deliverables. Contractor shall not permit a Lien caused by, through, or under Contractor to attach to the Deliverables, the Location, Customer’s property, any public fund established for the payment of the Deliverable, the Goods, the SP Entity-Procured Items, or the Project, other than any Lien that arises from the SP Entity’s failure to pay part or all of the Service Costs when due, that exists with the consent or approval of the SP Entity, or that for which Contractor promptly obtains bonds or any other form of security reasonably acceptable to the SP Entity. Contractor shall notify the SP Entity of the assertion of any Lien promptly upon knowledge thereof. If Contractor fails to pay or discharge any such Lien or to provide a bond in an amount and from a surety acceptable to the SP Entity and the Customer to protect against such Lien within 30 days after notice of the existence thereof, the SP Entity may pay, discharge, or obtain a bond or security for such Lien and, upon such payment, discharge, or posting of security therefor, may recover from Contractor the amount thereof, together with all expenses (including reasonable attorneys’ fees) incurred by the SP Entity in connection with such payment or discharge, or set off all such amounts against any sums owed by the SP Entity to Contractor.
 - 3.7. *All Payments Subject to Release of Liens.* Prior to each Service Payment, if requested by the SP Entity, Contractor shall certify to the SP Entity, and provide to the SP Entity sufficient documentation (including an interim conditional Lien waiver and release in form and substance acceptable to the SP Entity) to establish that the Services, Goods, SP Entity-Procured Items, Project, Location, and the Customer’s property are free at that time from Liens arising out of or in connection with the Agreement or performance by Contractor or Contractor’s Personnel of the Deliverables. Prior to the final Service Payment, Contractor shall deliver to the SP Entity a final release, assignment, and waiver of Liens, in form and substance acceptable to the SP Entity,

from each subcontractor who has not previously provided such a final release and Contractor's final Lien waiver in form and substance acceptable to the SP Entity. Contractor shall cause all Lien waivers provided by Contractor and its subcontractors to comply with the Laws of the state in which the Location is located. If Contractor fails to deliver any required release or waiver of a subcontractor, Contractor may provide to the SP Entity, in lieu thereof, a bond, in form, and issued by a Person, satisfactory to the SP Entity, to fully indemnify the SP Group against any Loss resulting from Claims, Liens, or other interests of such subcontractor.

4. Deliverables Generally.

- 4.1. *Authorized Representatives.* Each Party shall designate a representative (an "**Authorized Representative**") who shall have the sole authority to provide any consent, authorization, or rejection of the Party under the Agreement and, in the case of the SP Entity's Authorized Representative, to issue a Change Order for, or add or cancel Deliverables under, a Purchase Order on the SP Entity's behalf.
- 4.2. *Technical Representative.* If deemed necessary or desirable by the Authorized Representatives, each Party shall designate a technical representative (the "**Technical Representative**"), who shall be responsible for day-to-day operations, Contractor's Personnel matters and management, and technical or financial issues related to the Deliverables. The Technical Representatives shall work with their respective Authorized Representatives regarding any Change Orders.
- 4.3. *Notice to Proceed.* Contractor shall commence the Deliverables on the date the Notice to Proceed is issued by the SP Entity to Contractor under the applicable Purchase Order (the "**Commencement Date**"). Prior to the Commencement Date, neither Contractor nor the SP Entity shall be subject to any obligations or liabilities under the applicable Purchase Order.
- 4.4. *Coordination with Customer.* Following the issuance of the Notice to Proceed, the Parties intend that Customer, either directly or through Customer's designee ("**Customer's Representative**"), will coordinate the general administration of the Deliverables with Contractor at the Location. Contractor shall cooperate with Customer's Representative in its performance of the Deliverables.
- 4.5. *Performance Standards.* Contractor shall perform the Deliverables (a) in compliance with all Permits, Laws, and Policies, (b) in a professional manner with the standard of care, skill, and diligence normally provided by a professional person or entity in the performance of services similar to the Deliverables ("**Good Practices**"), (c) in compliance with all final specifications, drawings, metrics, and representations agreed upon or otherwise provided by the SP Entity or Customer ("**Specifications**"), (d) using qualified, competent, experienced, and as applicable, licensed Contractor's Personnel, (e) in accordance with the Delivery Dates, and (f) to the extent applicable to the Deliverables, in accordance with Contractor's Location-Specific EH&S Plan, the Quality Control Plan, the manufacturers' instructions for the Goods and the SP Entity-Procured Items, the Basic Engineering Design Data, the Design Documents, and the real property rights agreements and documents covering the Location.
- 4.6. *Prevent Damage.* Contractor shall, and shall cause Contractor's Personnel to, prevent damage to the Location, any personal property located thereon, all parallel, converging, and intersecting public and private utilities, highways, waterways, railroads, drainage ditches, culverts, and all other property on or adjacent to the Location during the performance of the Deliverables. If damage is caused by Contractor or Contractor's Personnel, then within a reasonable time after the damage occurs, Contractor shall provide the SP Entity with a report detailing the occurrence, any required repairs, and the estimated cost and duration of the repairs. If any such property is damaged or destroyed in the course of the performance of the Deliverables, Contractor shall, at its own expense, rebuild, restore, or replace such damaged or destroyed property.
- 4.7. *Defects.* The SP Entity may reject a Deliverable by notice to Contractor for defect or non-conformance with the requirements of the Agreement (a "**Defective Item**") at any time, if a Service, or within the applicable Warranty Period (as defined in [Appendix B](#)), if a Good, even though the Defective Item may have previously been inspected and accepted (a "**Rejection**"). If a Rejection occurs and Contractor does not deliver a conforming Good or correct the Service (collectively, "**Corrective Work**") within 30 days (or such other reasonable amount of time agreed to by the Parties) after the SP Entity's notice of a Rejection, then at the SP Entity's election, the SP Entity may either (a) cancel the order as to the Defective Item without paying cancellation charges, in which case Contractor shall refund the Service Payments paid for the Defective Item and pay the SP Entity the reasonable costs incurred by the SP Entity installing and removing the Defective Item or (b) cause the non-conformity to be corrected at Contractor's expense.
- 4.8. *Permits; Safety.* Contractor shall (a) obtain all Permits applicable to the Deliverables prior to the commencement thereof and maintain the Permits in full force and effect ("**Constructor Permits**"), (b) be solely responsible for the safety and industrial hygiene of Contractor's Personnel, and (c) cause Contractor's Personnel to comply with United States Occupational Safety's and Health Administration's regulations and all other Laws.
- 4.9. *Records.* Contractor shall, and shall cause its subcontractors to, maintain true, correct, and complete books and records relating to the Deliverables and the amounts billed to the SP Entity (collectively, "**Records**") in accordance with generally accepted accounting principles and the Policies for at least seven years after Contractor receives the final payment under the Purchase Order. Any representative authorized by the SP Entity may audit any and all Records at any reasonable time before the date that is seven years after Contractor receives the final payment under the Purchase Order, so long as (a) such an audit occurs no more than once per calendar year without just cause, (b) such representative shall comply with Contractor's site-specific rules and regulations while on Contractor's premises, (c) any pricing information related to a fixed fee Service Cost may be redacted by Contractor, and (d) all information obtained by the SP Entity in any audit (excluding information related to the SP Entity or the Project) is Contractor's Confidential Information.
- 4.10. *Inspection of Work of Other Contractors.* If any part of the Deliverables depends on proper execution or results of the work of any other contractor of the SP Entity or Customer, Contractor shall inspect and promptly report to the SP Entity any known discrepancies or defects in such work that Contractor discovers or reasonably should have discovered in performance of the Deliverables that renders such work unsuitable. Failure of Contractor to so report any known discrepancies or defects shall constitute an acceptance of the work of the other contractor as fit and proper to receive the Deliverables.
- 4.11. *Inspection and Tests of Deliverables.* SP, the SP Entity, and its personnel may inspect and test all Deliverables at any reasonable time and place, including the plant or yard of Contractor or any of Contractor's Personnel, and Contractor shall assist the SP Entity and the SP Entity's personnel in carrying out such inspections and tests of the Deliverables. While on the premises of Contractor, Contractor's Personnel, or the Manufacturer, the SP Entity shall, and shall cause the SP Entity's personnel to, comply with all site-specific rules and regulations. At the SP Entity's request, Contractor shall supply customary test reports and material certificates. The SP Entity's performance of (or failure to perform) any inspection or test shall not be deemed an assumption of risk, liability, or control over Contractor or Contractor's Personnel, an acceptance or approval of the Deliverables, or a waiver of Contractor's obligation to perform the Deliverables in accordance with the covenants and warranties of the Agreement or the SP Entity's right to make a claim for Losses hereunder.
- 4.12. *Certificate of Acceptance.* From time-to-time in accordance with the Purchase Order, when Contractor believes that the Deliverables have been completed in accordance with the Terms or as otherwise set forth in the Purchase Order, Contractor shall request from the SP Entity one or more unsigned Certificates of Acceptance. Contractor shall promptly deliver to the Customer such Certificate of Acceptance and all other information necessary (or reasonably requested by Customer) to demonstrate completion of the Deliverables. Upon Contractor's receipt of the Certificate of Acceptance signed by Customer, Contractor shall provide such Certificate of Acceptance to the SP Entity along with the same supporting information. The SP Entity, SP, or Customer's Representative, may conduct such investigations and inspections as such person deems reasonably necessary or appropriate to determine if the Deliverables have been completed. Within 5 business days after delivery of the Certificate of Acceptance signed by Customer, the SP Entity shall confirm acceptance by

countersigning the Certificate of Acceptance. If the Customer provides notice that the Deliverables have not been completed in accordance with the scope of the Purchase Order, Contractor shall promptly correct and remedy any defects, deficiencies, and other conditions that prevent the Deliverables from being completed. Upon completion of such corrective and remedial actions, Contractor shall resubmit an updated Certificate of Acceptance to Customer to sign, stating that it believes the Deliverables have been completed and the foregoing procedures shall be repeated until the Deliverables have been completed and Customer and the SP Entity have signed the Certificate of Acceptance (the “**Final Acceptance Date**”).

- 4.13. **Liquidated Damages.** If Contractor fails to comply with the Schedule or the Performance Guarantees, Contractor shall pay to the SP Entity the liquidated damages set forth in the Purchase Order to the extent permitted by Law, up to an amount equal to the total compensation set forth in the applicable Purchase Order. Contractor shall pay such liquidated damages on a daily basis to the account designated by the SP Entity for each day liquidated damages accrue. Damages to the SP Entity caused by Contractor’s failure to comply with the Schedule or the Project’s failure to achieve the Performance Guarantees are difficult to ascertain. Accordingly, liquidated damages may be set forth in the Purchase Order, and such liquidated damages represent a fair, reasonable, and proportionate approximation of the SP Entity’s damages caused thereby and do not constitute a penalty, and shall be the sole damages available to the SP Entity for Contractor’s failure to comply with the Schedule or the Project’s failure to achieve the Performance Guarantees, as applicable, but the liquidated damages shall not preclude the SP Entity’s exercise of other non-monetary remedies that may be available for such default, including termination of a Purchase Order or the Agreement, equitable relief, or a request for adequate assurance, or any remedies (monetary or otherwise) available for other defaults that occur currently with, before, or after such default.
- 4.14. **Contractor Representations.** Contractor represents and warrants to the SP Entity and Customer that, as of the effective date of each Purchase Order:
- 4.14.1. Contractor has sufficient financial capacity to perform the Deliverables,
 - 4.14.2. Contractor has the appropriate experience or capability to perform the Deliverables,
 - 4.14.3. no adverse action by a Governmental Entity is threatened or pending, or has occurred, against Contractor, its affiliates, or to its knowledge, against any member of Contractor’s Personnel,
 - 4.14.4. Contractor has not been in substantial noncompliance with the terms and conditions of prior construction with Customer, or in documented substantial noncompliance with the terms and conditions of prior construction with any Governmental Entity without good cause,
 - 4.14.5. no employee, officer, director, or owner of Contractor are or have been excluded, terminated, suspended, or debarred by a federal or state program,
 - 4.14.6. Contractor has not failed to provide to any Governmental Entity in a timely manner any information required by any Governmental Entity relevant to the five preceding subparagraphs, and
 - 4.14.7. Contractor has not provided false, nonresponsive, misleading, or incomplete information for items required herein.
- Contractor shall immediately notify the SP Entity and Customer of any change in the status of the representations and warranty set forth in this Section
- 4.14.8. Contractor shall comply with all Policies of the Customer applicable to Contractor’s scope of Deliverables.
- 4.15. **Competitive Bidding.** If Customer is a Governmental Entity, then to the extent that Customer or the SP Entity determines that a competitive bidding process is required under Law, the selection of the Goods, sub-suppliers, and subcontractors for the design, procurement, installation and construction, as applicable to the Deliverables, shall be in accordance with provisions of such Laws and conducted jointly by Contractor, the SP Entity, and Customer. The awards will be based on lowest cost qualified bidders or best value bidders over the Deliverables’ expected useful life, consistent with the requirements and analysis provided by the SP Entity. Following the selection of the qualified bidder or bidders, the SP Entity shall provide Contractor with a restated Purchase Order with updated Service Costs reflecting any changes in the expected economics based on the negotiated contracts with the selected bidders. Execution of the restated Purchase Order shall occur prior to proceeding further with the procurement, installation, or construction efforts contemplated by the Agreement, if applicable.
- 4.16. **Subcontractors.** Contractor may engage subcontractors that are listed in the Purchase Order, or approved in advance by the SP Entity, to perform the Deliverables; provided, however, that no such engagement shall relieve Contractor of any of its obligations hereunder. The SP Entity shall have the right to reject, for good cause, any proposed subcontractor not listed in the Purchase Order, and Contractor shall not engage any proposed subcontractor so rejected by the SP Entity. All requirements contained in the Agreement are to be passed down to all subcontractors of all tiers. If a subcontractor cannot maintain like insurance applicable to that subcontractor’s scope of work, then Contractor shall notify SP Entity in writing of the same and advise the SP Entity of the form and amount of insurance maintained by such subcontractor. Contractor must obtain the SP Entity’s written approval of any subcontractor who cannot comply with the insurance requirements set forth herein. Contractor shall ensure that all of its subcontractors discharge their respective obligations in compliance with the Terms. Contractor shall be responsible for the Deliverables and its performance in accordance with the Terms, regardless of any failure of any subcontractors to perform or any disagreement with any subcontractor or between any subcontractors. As between the SP Entity and Contractor, Contractor shall be solely responsible for the acts, omissions and defaults of its subcontractors and Contractor’s Personnel. Nothing in the Agreement shall be construed to impose on the SP Entity any obligation, liability, or duty to a subcontractor or to create any contractual relationship between any subcontractor and the SP Entity. No Subcontractor is intended to be, nor shall be, deemed a third-party beneficiary of the Agreement. Contractor shall be solely responsible for paying each subcontractor all amounts due under the agreement with such subcontractor.
- 4.17. **Additional Terms.** If the Deliverables include the sale of, or provision of, goods, materials, equipment, or supplies, Contractor shall comply with the Terms contained in Appendix B. If the Deliverables include the performance of any services, Contractor shall comply with the Terms contained in Appendix C. If the Deliverables include installation work, Contractor shall comply with the Terms contained in Appendix D. If the Deliverables include engineering or design, Contractor shall comply with the Terms contained in Appendix E.

5. Change Orders.

- 5.1. **Generally.** There shall be no changes to the Deliverables or deviation from the Terms except to the extent provided in a written change order in substantially the form set forth on Appendix A, signed by the Parties’ Authorized Representatives, stating the SP Entity’s and Contractor’s mutual agreement on all of the following: the change in, addition to, or removal from the scope of the Deliverables (the “**Scope Change**”); any change to the Service; and any adjustments in the Schedule (a “**Change Order**”). The SP Entity may request a Change Order at any time for any reason. If a previously unknown physical condition at the Location of an unusual nature or differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for under the Agreement arises, Contractor may request a Change Order. Upon execution of a Change Order, Contractor shall diligently perform the Deliverables set forth therein in accordance with and subject to all of the Terms.
- 5.2. **Change Order Process.** Should a Party desire to make a Scope Change, such Party shall submit a Scope Change request to the other in writing. Regardless of which Party has issued such request, within ten business days after delivery of such request, Contractor shall submit to the SP Entity a detailed proposal (the “**Proposal**”), stating the effect of such request, if any, on the Service Costs and Schedule. The SP Entity shall then accept or reject in writing the Proposal. If the SP Entity accepts the Proposal, the Parties shall execute a Change Order reflecting the Scope Change, adjustments to the Service Costs and

Schedule. If the SP Entity rejects the Proposal, the SP Entity shall notify Contractor of its proposed modifications to the Proposal or the Scope Change, and Contractor shall make any reasonable modifications. The foregoing process shall continue until the requesting Party withdraws its request for a Scope Change or the Parties execute a Change Order, whichever occurs first.

- 5.3. *Disputes Regarding Change Orders.* If the SP Entity is the requesting Party, from the date of the SP Entity's request until the withdrawal of such request or the execution of a Change Order, Contractor shall perform or comply with the SP Entity's requested requirements and the SP Entity shall reimburse Contractor the reasonable and documented costs incurred by Contractor therefore. If within 30 days after the initial request for a Scope Change, the Parties have not executed a Change Order and the requesting Party has not withdrawn its request, either Party may seek any remedies available at law or in equity.
- 5.4. *Rates.* Notwithstanding anything in this Section 5 to the contrary, unless otherwise agreed to by the Parties, any Deliverables performed under a Change Order shall be performed using the rates for equipment, materials and labor set forth in the rate schedule set forth in the Purchase Order.

6. Intellectual Property.

- 6.1. *The SP Entity's Information.* The SP Entity shall own all information, including data in any form, that is captured, stored, processed, or transmitted by the Deliverables or by Contractor on the SP Entity's behalf. The SP Entity grants to Contractor a nonexclusive nontransferable license to such information to the extent necessary for performance of the Deliverables.
- 6.2. *Deliverables.* The SP Entity shall own all right, title and interest in and to the Deliverables (following transfer of title thereof as provided herein) and the SP Entity-Procured Items, including the Deliverables and the SP Entity-Procured Items delivered to the SP Entity as part of cancelled Deliverables prior to cancellation, and all Intellectual Property and other rights in the Deliverables (following transfer of title thereof as provided herein) that are developed specifically and exclusively for the Project and described in the Purchase Order, except to the extent that any of the foregoing contains Contractor Materials (the "Deliverables IP"). For purposes of this Section 6, and unless otherwise provided in a Purchase Order, a Deliverable shall be deemed to be developed specifically and exclusively for a Project if the SP Entity pays for the development of such Deliverable. Contractor shall execute such documents, as are necessary to effectuate the SP Entity's ownership of such rights. All Deliverables IP shall be deemed "works-made-for-hire" within the meaning of the copyright laws of the United States. Contractor assigns, and upon the transfer of title of each Deliverable as provided herein automatically assigns, to the SP Entity, its successors and assigns, all right, title and interest therein and in all applicable United States and international copyrights, including all renewals, extensions and continuations thereto, and all other Deliverables IP therein. Contractor shall execute such further documents and perform such further acts as may be necessary to perfect the foregoing assignment and to protect the SP Entity's rights in such copyrights and other Intellectual Property. If Contractor fails or refuses to execute such documents or perform such acts, Contractor appoints the SP Entity as Contractor's attorney-in-fact (this appointment to be irrevocable and coupled with an interest) solely to act on Contractor's behalf and to execute such documents and perform such acts. Contractor's services are on behalf of and for the exclusive use for the Project.
- 6.3. *Intellectual Property of Contractor.* Contractor shall own its working papers, preexisting materials, software and associated source code, trade secrets, and Intellectual Property, general skills, know-how, processes, reports, notes, calculations, and estimates, except for Intellectual Property developed specifically and exclusively for the Project and described in the Purchase Order (collectively, "**Contractor Materials**"). To the extent that any Contractor Materials are incorporated into any Deliverables provided hereunder, Contractor grants to the SP Entity a perpetual, irrevocable, nonexclusive, non-transferable (except to Customer and any assignee or successor of the SP Entity), worldwide, royalty-free right and license to use, all Contractor Materials incorporated into the Deliverables as necessary to use the Deliverables as permitted herein. To the extent any Deliverable includes any third-party software or other works licensed by Contractor from third-parties, Contractor shall cause the SP Entity to have a perpetual, irrevocable, nonexclusive, worldwide, royalty-free right and license to use such third-party software or other works.
- 6.4. *Contractor's Representation.* Contractor represents and warrants that, as of the Commencement Date under each Purchase Order:
 - 6.4.1. Contractor owns or has sufficient rights (or will own or have sufficient rights as of delivery to the Location) as a licensee to all Deliverable IP necessary for the transfer of title in the Deliverables and transfer of all rights for the complete and unfettered enjoyment of ownership of and dominion over such Deliverables;
 - 6.4.2. Contractor has all necessary rights to fulfill its obligations and grant all licenses and rights granted under the Agreement;
 - 6.4.3. the Deliverables, and the SP Entity's receipt and use thereof (including the Deliverable IP and the Documents) as contemplated by the Agreement, do not infringe or violate any Intellectual Property or other rights of any Person, and
 - 6.4.4. the Deliverable IP includes all Intellectual Property reasonably necessary and sufficient for the performance of the Deliverables.

7. Limitations on Liability.

- 7.1. TO THE EXTENT PERMITTED UNDER LAW, NEITHER PARTY NOR ITS RELATED PARTIES SHALL BE HELD LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION OR HARM TO REPUTATION) ARISING OUT OF THEIR PERFORMANCE OR NON-PERFORMANCE OF THE AGREEMENT, EXCEPT TO THE EXTENT LIABILITY ARISES FROM A PARTY'S (A) INDEMNIFICATION OBLIGATIONS HEREUNDER IN CONNECTION WITH A THIRD PARTY CLAIM, (B) INTELLECTUAL PROPERTY INFRINGEMENT, (C) BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER, OR (D) GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.
- 7.2. TO THE EXTENT PERMITTED UNDER LAW, NEITHER PARTY'S AGGREGATE LIABILITY UNDER THE AGREEMENT ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF THE AGREEMENT SHALL EXCEED THE TOTAL COMPENSATION SET FORTH IN THE APPLICABLE PURCHASE ORDER, EXCEPT TO THE EXTENT LIABILITY ARISES FROM A PARTY'S (A) INDEMNIFICATION OBLIGATIONS HEREUNDER IN CONNECTION WITH A THIRD PARTY CLAIM, (B) INTELLECTUAL PROPERTY INFRINGEMENT, (C) BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER, OR (D) GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

8. Default; Remedies.

- 8.1. *Payment Default.* If a Party fails to pay any undisputed material amount due and payable under the Agreement within 30 days after its due date and fails to cure such failure within seven days after notice thereof, then such Party shall be in default (a "**Payment Default**").
- 8.2. *Performance Default by the SP Entity.* If any of the following conditions remain un-remedied for seven days after written notice thereof by Contractor to the SP Entity, the SP Entity will be in default:
 - 8.2.1. the SP Entity is adjudged bankrupt or insolvent,
 - 8.2.2. the SP Entity makes a general assignment for the benefit of its creditors,
 - 8.2.3. the SP Entity files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws, or
 - 8.2.4. the SP Entity commits any material breach of the Agreement.

- 8.3. *Performance Default by Contractor.* If any of the following conditions remain un-remedied for seven days after notice thereof by the SP Entity to Contractor, Contractor will be in default:
- 8.3.1. Contractor is adjudged bankrupt or insolvent,
 - 8.3.2. Contractor makes a general assignment for the benefit of its creditors,
 - 8.3.3. a trustee or receiver is appointed for Contractor or for any of its property,
 - 8.3.4. Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws,
 - 8.3.5. Contractor abandons the Project or ceases or suspends performance of all or a material portion of the Deliverables (other than as provided in Sections 9 or 13.6 or pursuant to a Change Order),
 - 8.3.6. any of Contractor's representations set forth herein is untrue in any material respect,
 - 8.3.7. Contractor commits any other material breach of the Agreement, except that no cure period or notice from the SP Entity shall be required if the default involves a breach of the Sections entitled "Confidentiality," "Intellectual Property," "Independent Contractor," or "Exclusions," or a violation of Law that materially affects the Project in an adverse manner,
 - 8.3.8. any Guaranteed Milestone is not achieved on or before the applicable Guaranteed Milestone Date, unless liquidated damages are being paid,
 - 8.3.9. Contractor fails to supply sufficient labor, material, services or equipment so as to complete the Deliverables timely and in accordance with the Terms,
 - 8.3.10. the maximum amount of any liquidated damages has accrued unless the Contractor continues to pay liquidated damages and SP Entity agrees to continued performance,
 - 8.3.11. Contractor is in default, or has defaulted, in the same manner and due to the same set of circumstances, under at least one other agreement entered into by Contractor and the same SP Entity;

provided, however that no cure period or notice from the SP Entity shall be required in the case of Section 8.3.8 or 8.3.11 or if any of the above events occurs more than once during any six-month period.

- 8.4. *Remedies.* Upon a Payment Default or a default pursuant to Section 8.2 or 8.3 (a "**Performance Default**"), the non-defaulting Party shall be entitled to any of the following remedies upon notice to the defaulting Party:
- 8.4.1. Suspend some or all of its performance under the Agreement, or
 - 8.4.2. Terminate the Agreement and have no further obligation under the Agreement, or
 - 8.4.3. Declare all or part of the defaulting Party's obligations under the Agreement immediately due.

The non-defaulting Party may set off against all amounts the non-defaulting Party owes the defaulting Party all amounts the defaulting Party owes the non-defaulting Party. The remedies of the Parties hereunder are cumulative and in addition to all rights and remedies at law and in equity with respect to the non-defaulting party's obligations performed.

9. Termination and Suspension.

- 9.1. *Right to Suspend Performance of the Deliverables.* The SP Entity may elect to suspend performance of all or any part of the Deliverables upon at least 5 days' prior notice to Contractor (or, in emergency situations, upon such prior notice as circumstances permit) indicating the portion of the Deliverables the performance of which the SP Entity has elected to suspend, the SP Entity's estimate of the duration of such suspension, and the effective date of such suspension of the Deliverables. Upon the effective date of such suspension, Contractor shall stop performance of the Deliverables that the SP Entity has elected to suspend and shall continue to complete performance of the balance of the Deliverables. This Subsection shall not apply to any suspension of all or any part of the Deliverables requested or directed by the SP Entity as a result of Contractor's or Contractor's Personnel's failure to comply with the Agreement. Any reasonable and documented standby, demobilization and remobilization costs incurred by Contractor resulting from a suspension of Deliverables under this Subsection shall be reimbursed to Contractor monthly as such costs are incurred. Contractor shall mitigate such costs to the fullest extent reasonably possible.
- 9.2. *Termination for the SP Entity's Convenience.* The SP Entity may, for its convenience and without cause, terminate any part of the Deliverables or all remaining Deliverables at any time by delivering notice to Contractor specifying the part of the Deliverables to be terminated and the effective date of termination. The SP Entity may terminate the Agreement prior to the Commencement Date without liability or penalty. Immediately upon receipt of such notice, Contractor shall stop performance of the terminated Deliverables and shall immediately order and commence demobilization with regard to the terminated Deliverables. In the event of a partial termination, Contractor shall continue to prosecute the part of the Deliverables not terminated. In the event of a termination by the SP Entity under this Subsection after the Commencement Date, the SP Entity shall pay to Contractor the applicable portion of the "termination payment" amount set forth in the Purchase Order for such termination and such payment shall be Contractor's sole and exclusive remedy, and the SP Entity's sole and exclusive liability, with respect to such termination. Damages to Contractor caused by the SP Entity's termination of the Deliverables under this Subsection are difficult to ascertain, but the termination payment referenced in this Subsection represents a fair, reasonable, and proportionate approximate of the damages caused thereby and does not constitute a penalty.
- 9.3. *Transition of Deliverables.* Upon expiration or termination of the Agreement, Contractor shall use its best efforts to ensure the transition of Deliverables from Contractor back to the SP Entity (or another service provider) is completed in a manner that is efficient and cooperative, and that provides the SP Entity with the information and resources in Contractor's possession that would be reasonably necessary for the SP Entity (or another services provider) to perform the remaining Deliverables.
- 9.4. *Surviving Obligations.* Neither termination nor expiration of the Agreement shall relieve (a) Contractor of its obligations with respect to confidentiality set forth herein, (b) either Party of any obligation under the Agreement that expressly survives termination of the Agreement, (c) either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination, except as otherwise provided in any provision of the Agreement expressly limiting the liability of either Party, or (d) Contractor of its obligations as to portions of the Deliverables already performed or obligations assumed by Contractor prior to the date of termination, unless otherwise agreed by the SP Entity in writing.
- 9.5. *Condition of Location.* If the Agreement is terminated for cause by the SP Entity, Contractor shall use reasonable efforts to restore the Location to its prior condition, removing the effects of any work done by or through Contractor Group, at the Contractor's own cost and expense, if requested in writing by the SP Entity.

10. Indemnification.

- 10.1. *Indemnity by Contractor.* To the extent permitted by Law, Contractor shall indemnify and hold harmless SP Group from and against Losses sustained

or incurred by a member of SP Group, to the extent the Losses arise out of:

- 10.1.1. bodily injury or property damages directly or indirectly caused by a member of Contractor Group or Contractor's Personnel,
- 10.1.2. a negligent or wrongful act or omission of, or a breach of the representations, warranties, or covenants of the Agreement by, any member of Contractor Group or Contractor's Personnel;
- 10.1.3. infringement of the Intellectual Property of a third party by the Deliverables or otherwise directly or indirectly caused by Contractor Group or Contractor's Personnel;
- 10.1.4. any Hazardous Substances brought on to the Location by Contractor Group or Contractor's Personnel;
- 10.1.5. any negligent exacerbation or intentional release by Contractor Group or Contractor's Personnel of any pre-existing Hazardous Substances at the Location or Hazardous Substances introduced upon the Location by any party, or
- 10.1.6. injury to Contractor Group or Contractor's Personnel while performing the Deliverables.

Each of the foregoing Sections 10.1.1. through 10.1.6 except to the extent the Losses are caused by or result from the negligence of a member of the SP Group.

- 10.2. *Indemnity by the SP Entity.* To the extent permitted by Law, the SP Entity shall indemnify and hold harmless Contractor from and against Losses sustained or incurred by Contractor, to the extent the Losses arise out of:

- 10.2.1. bodily injury or property damages to Customer or any third party directly or indirectly caused by the SP Entity;
- 10.2.2. a negligent or wrongful act or omission of, or a breach of the representations, warranties, or covenants of the Agreement by, the SP Entity;
- 10.2.3. any negligent exacerbation or intentional release by the SP Entity of Hazardous Substances introduced upon the Location by the Contractor Group or Contractor's Personnel, or
- 10.2.4. bodily injury to and damage to property of the SP Entity or its personnel (other than by the actions of Contractor's Personnel, Contractor Group, or any Project contractor under Contractor's control).

Each of the foregoing Sections 10.2.1. through 10.2.4 except to the extent the Losses are caused by or result from the negligence of a member of the Contractor Group.

- 10.3. *Procedure.* If a Party becomes aware of (a) a Third Party Claim against a member of such Party (the "**Indemnified Party**") that could reasonably be expected to result in a Loss that is subject to the indemnification obligations of this Section 10 or (b) any inquiry or investigation that such Party believes may involve or expect to lead to a Third Party Claim against the Indemnified Party that could reasonably be expected to result in such a Loss, such Party shall promptly give the other party (the "**Indemnifying Party**") notice of such claim, inquiry or investigation, except that any delay in providing notice shall not serve as a bar to indemnification hereunder except to the extent that Indemnifying Party's ability to defend against or avoid claims has been prejudiced by such delay. No later than 30 days after receiving notice of a claim, the Indemnified Party shall notify the Indemnifying Party whether the Indemnified Party or the Indemnifying Party shall assume control of the defense of the claim. If the Indemnified Party elects to assume control of the defense, the Indemnifying Party shall reimburse the Indemnified Party as expenses are incurred in connection with such defense. If the Indemnified Party elects that the Indemnifying Party shall assume the defense, the Indemnifying Party shall use counsel that is reasonably approved by the Indemnified Party, and the Indemnified Party may have its own counsel present at its own cost to monitor proceedings related to the claim and shall cooperate with the Indemnifying Party at the Indemnifying Party's reasonable request in defending the claim. The Indemnifying Party shall not settle or compromise any claim without the prior consent of the Indemnified Party.

- 10.4. *Additional Procedure for Infringement.* Without limiting Contractor's obligations under Section 10.1, if a third-party claim, demand, or action ("**Third Party Claim**") has been made that the Deliverables have infringed any Intellectual Property, or if, in any Party's judgment, the Deliverables are likely to be infringing (in each case, an "**Infringing Item**"), then Contractor shall (a) procure for Customer the right to continue using the Infringing Item, or (b) replace the Infringing Item to make its use non-infringing while yielding substantially equivalent results. If neither option is available, Contractor shall refund to the SP Entity the Service Cost paid for the Infringing Item.

- 10.5. *Effect of Insurance.* The obligations of this Section 10 shall apply regardless of the amount of insurance coverage held by Contractor or any other Law that would limit the amount or type of damages, compensation, or benefits payable by or for Contractor.

11. Confidentiality.

- 11.1. *Confidential Information.* "**Confidential Information**" means, with respect to both Parties, the Terms, and with respect to a Party making a disclosure (the "**Disclosing Party**"), all (a) non-public documents and information designated by the Disclosing Party as "Proprietary" or "Confidential" or that the other Party (the "**Receiving Party**") knows or has reason to believe the Disclosing Party treats as confidential, (b) business and investment opportunities disclosed by the Disclosing Party, (c) proprietary information of the Disclosing Party disclosed in oral or other media form that is identified in writing as confidential within 30 days following the disclosure, (d) business plans and methods, customer information, engineering, and operating and technical data of the Disclosing Party, and (e) if the SP Entity is the Disclosing Party, the contents of the Documents (excluding Contractor Materials), the and Project Documents. "Confidential Information" of a Disclosing Party shall not include information that (i) was in the public domain, or that subsequently becomes part of the public domain, except by the wrongful disclosure hereunder by the Receiving Party, (ii) as evidenced in writing, was in the Receiving Party's possession prior to receipt of the same hereunder and was not acquired from a third party under any obligation of confidentiality known to the Receiving Party with respect to such information, (iii) as evidenced in writing, was received from a third party who had a right to make such disclosure, or (iv) can be proven to have been independently developed by the Receiving Party, excluding, in all cases, the contents of the Documents (other than Contractor Materials).

- 11.2. *Confidentiality Obligations.* Subject to the following Subsections, the Receiving Party shall (a) keep the Confidential Information of the Disclosing Party in strict confidence (in no event exercising less care than the degree of care used to protect its own confidential information), (b) not use (except for the purpose of performance under this Agreement or as requested or directed by the Disclosing Party), publish or disclose to third parties the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent, and (c) upon the request of the Disclosing Party, promptly return to the Disclosing Party or destroy all written copies of the Disclosing Party's Confidential Information.

- 11.3. *Disclosure to Advisors.* The Receiving Party may disclose Confidential Information to its third-party advisors, consultants, and contractors, or others working for the Receiving Party in connection with a Project that are acting solely for the Receiving Party's benefit in connection with a Project and that have a need to know such information in order to provide advice or services to the Receiving Party for Receiving Party's performance of the Deliverables, provided that such advisors are bound by an agreement to not disclose the Confidential Information to any third party without the Disclosing Party's prior consent.

- 11.4. *Disclosure Compelled by Law.* If the Receiving Party is compelled to produce Confidential Information of the Disclosing Party by Law, the Receiving

Party shall give the Disclosing Party prompt notice of such legal process and shall reasonably cooperate with the Disclosing Party in seeking a protective order or other appropriate protection. If a protective order or other appropriate protection is not obtained, or if the Disclosing Party waives its right to seek a protective order or other appropriate protection, the Receiving Party shall furnish only that portion of the Confidential Information that, upon the advice of legal counsel, it is legally required to disclose, and exercise reasonable efforts to obtain assurance that confidential treatment shall be afforded such Confidential Information.

- 11.5. *Information Security.* Contractor shall establish and maintain an information security program that is designed to: (a) ensure the security and confidentiality of the SP Group's Confidential Information, (b) protect against any anticipated threats or hazards to the security or integrity of the SP Group's Confidential Information, (c) protect against unauthorized access to or use of the SP Group's Confidential Information, and (d) ensure the proper disposal of the SP Group's Confidential Information (the "**Information Security Program**"). In no case shall the safeguards of the Information Security Program be less stringent than the relevant information security safeguards set forth in the Policies. Upon the SP Entity's request, Contractor shall submit its Information Security Program to the SP Entity for review and comply with the SP Entity's reasonable requests for corrective actions if any deficiencies are observed by the SP Entity. Contractor shall promptly report to the SP Entity all security related incidents involving the SP Group's Confidential Information or information systems that capture, process or transmit the SP Group's Confidential Information within 24 hours after the incident is initially detected. Contractor shall promptly address the underlying reasons for such security related incident to the extent commercially reasonable.
- 11.6. *Documents Protected.* Each Party understands and agrees that any and all contracts prepared by the other Party hereto are protected by copyright or by the Terms. The Receiving Party may not copy or use in any manner, all or any portion of, such documents for any purpose other than in connection with a Project with an SP Entity.

12. Governing Law; Dispute Resolution.

- 12.1. *Governing Law; Jurisdiction.* The laws of the Location State will govern the Agreement, without giving effect to conflict of laws principles. Subject to Section 12.2 below, each Party consents to the exclusive jurisdiction of the state and federal courts in the Location State and agrees that the exclusive location of such courts is convenient, proper and is an integral part of the Agreement. Each Party will bear its own costs for any disputes arising under the Agreement, provided that the substantially prevailing Party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such Party may be entitled. The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Agreement.
- 12.2. *Arbitration.* Subject to Section 12.3, any claim or dispute directly or indirectly arising from or relating to the Agreement or any related actions or omissions shall be subject to arbitration in the Location State. The arbitration shall be administered by a JAMS Neutral and in accordance with JAMS comprehensive rules and procedures. Judgment on any award rendered in such arbitration shall be binding upon the Parties and may be entered in any court having jurisdiction. If the Parties agree, a mediator may be consulted prior to arbitration. **THE PARTIES KNOWINGLY AND VOLUNTARILY WAIVE ANY AND ALL RIGHTS TO LITIGATE MATTERS IN COURT, INCLUDING ANY RIGHTS TO TRIAL BY JURY.**
- 12.3. *Injunctive Relief.* Notwithstanding Section 12.2, if a Party violates, or threatens to violate, Sections 6, 11, or 13.4, the other Party may seek immediate and permanent injunctive relief in addition to all other rights and remedies the other Party has at law or in equity, and posting of a bond or cash shall not be required as a pre-condition to such relief.
- 12.4. *Obligation to Proceed.* Unless directed otherwise by the SP Entity in writing, Contractor will proceed with the Deliverables so as to complete the Deliverables in accordance with the Schedule even if it has a dispute with the SP Entity.

13. Miscellaneous.

- 13.1. *Insurance.* Contractor shall, at its sole expense, obtain and maintain for at least the longer of the Warranty Period and the applicable State statute of repose the applicable insurance identified in the applicable Purchase Order (the "**Required Insurance**") underwritten by carriers with an AM Best's insurance rating of A-VIII or higher or otherwise acceptable to the SP Entity and licensed to do business in the respective State of the Location. Upon the SP Entity's request, Contractor shall provide to the SP Entity certificates of insurance, policies, and endorsements evidencing the Required Insurance. Contractor shall cause the Required Insurance to be (a) endorsed to name the SP Group as additional insureds (except for the workers' compensation and professional liability insurance policies, if applicable), (b) the primary coverage without any right of contribution from any other insurance held by the SP Group, and (c) so written or endorsed to include waivers of all subrogation rights of the insurers against the SP Group. The additional insured endorsements shall not limit coverage available to additional insureds to the minimum limit requirements identified in the Agreement. Contractor shall notify the SP Entity at least 30 days prior to any reduction, cancellation, or expiration of any insurance policy provided hereunder. Contractor shall cause its subcontractors to carry the Required Insurance and to act in accordance with all of the other Terms. If Contractor fails to furnish and maintain the Required Insurance, the SP Entity shall have the right, at its option, to terminate the Agreement or to take out and maintain such insurance and hold Contractor liable for the cost.
- 13.2. *Anti-Corruption Laws.* Each Party shall comply with all Laws related to anti-bribery and anti-corruption (the "**Anti-Corruption Laws**"). Each Party shall create and maintain in place throughout the Term its own policies and procedures to ensure compliance with the Anti-Corruption Laws, enforce such policies and procedures as appropriate, promptly report to the other Party any request or demand for any undue financial or other advantage of any kind received by it related to, or that could reasonably impact the performance of, the Agreement, immediately notify the other Party if a foreign public official becomes an officer or employee of such Party or acquires a direct or indirect interest in such Party, promptly upon the other Party's reasonable request, certify to the other Party in a writing signed by an authorized officer of such Party compliance with the Anti-Corruption Laws and the forgoing requirements of this Section 13.2 (such laws, policies, and requirements, the "**Anti-Corruption Terms**") and provide to the other Party such supporting evidence thereof as the other Party may reasonably request, and ensure that all of its employees or contractors performing services in connection with the Agreement do so on the basis of a written agreement that imposes on and secures from such employees and contractors terms equivalent to those imposed by the Anti-Corruption Terms. Each Party shall be responsible for the observance and performance by such employees and contractors of the Anti-Corruption Terms. Nothing in this Section 13.2 shall prohibit customary supplier discounts to private parties.
- 13.3. *SP Entity Agent.* The Parties acknowledge and agree that, unless otherwise directed in writing by the SP Entity, the SP Entity has authorized SP to give and receive notices, invoice, and collect payments, make SP Entity decisions contemplated by the Agreement, give instructions contemplated by the Agreement, and take SP Entity actions contemplated by the Agreement.
- 13.4. *Nature of Agreement; Independent Contractor.* The Parties intend the Agreement to be a "service contract" and agree to characterize it accordingly, and not to assert it as a financing, lease, purchase, or other arrangement. Contractor Group shall be deemed independent contractors for all purposes, and not employees, agents, or representatives of any member of the SP Group. Contractor shall not hold itself out as an agent of any member of the SP Group or enter into any contract that purports to bind any member of the SP Group without such member's prior consent, and any such contract shall be void.
- 13.5. *Mutual Representations.* Each Party represents and warrants that the Agreement is (a) valid, binding, and enforceable against it in accordance with the Terms, (b) has been duly authorized for execution and performance in accordance with Law and with any articles, charter, or other organizational documents or authorities applicable to such Party, and (c) does not result in the breach of any agreement by which such Party is bound.

- 13.6. *Force Majeure.* To the extent a Party is rendered wholly or partly unable to perform, or is delayed in the performance of, its obligations under the Agreement due to an event that is beyond its reasonable control, is not the result of negligence, willful misconduct, breach of contract, or intentional act or omission of the affected Party, and could not reasonably be anticipated as of the date of the applicable Purchase Order (a “**Force Majeure**”), such failure to perform or delay in performance shall not constitute a default under the Agreement, so long as the affected Party (i) notifies the other Party as soon as practicable following the commencement of the Force Majeure (such notice shall include documentation reasonably satisfactory to the SP Entity substantiating its claim of Force Majeure, including copies of all applicable subcontracts, order documents, delay notifications and any other documentation applicable thereto, together with a written certification signed by an officer or other authorized representative of the affected Party that the provided documentation is true, correct, and complete and that the delay meets the definition of Force Majeure), (ii) takes reasonable steps to avoid, remove, or diminish the impact of the Force Majeure, and (iii) resumes performance when and to the extent the Force Majeure no longer exists. If Contractor fails to take the required actions specified in subclauses (i), (ii) and (iii) above, Contractor shall be deemed to have waived any potential claim for Force Majeure. Unless a Force Majeure substantially frustrates the performance of a Party’s obligations under the Agreement, the Force Majeure shall not operate to excuse, but only delay performance, and the time to perform the obligations of such Party shall be extended in an amount of time equal to the time of such delay. If a Force Majeure substantially frustrates the performance of a Party’s obligations under the Agreement, then (a) the SP Entity may cancel the Purchase Order in whole or in part as to Deliverables not yet completed without liability for cancellation charges and (b) Contractor shall reimburse the SP Entity for any payments previously made by the SP Entity to Contractor for such cancelled Deliverables. If a Force Majeure damages the Project, the Location, or any Goods or SP Entity-Procured Items, and such damage results in additional cost to Contractor to complete the Deliverables or a delay in Contractor’s performance of the Deliverables, Contractor may request a Change Order to cover such cost or delay.
- 13.7. *No Publication.* Contractor Group shall not use the SP Entity’s or Customer’s name or the fact that Contractor Group is involved in any way with Deliverables for the SP Entity or Customer in any press releases, media statements, or public communications without the SP Entity’s prior written consent. Contractor shall not use the SP Entity’s or Customer’s name, logos, copyrights, trademarks, service marks, trade names, or trade secrets in any way without the SP Entity’s prior written consent, and the SP Entity shall not be deemed to have granted Contractor Group a license of, or granted Contractor Group any rights in, any of the foregoing by entering into the Agreement. Unless the Purchase Order is terminated, SP may use Contractor’s logo and trademarks for the purpose of SP’s advertising and marketing to prospective customers.
- 13.8. *Further Assurances.* The Parties shall cooperate fully with each other and execute such further instruments, documents, and agreements, and shall give such further written assurances, as may be reasonably requested by another Party to better evidence and reflect the transactions described herein and contemplated hereby, and to carry into effect the intent and purposes of the Agreement.
- 13.9. *Entire Agreement.* The Agreement completely and exclusively states the entire understanding of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter. If any Deliverables are performed pursuant to a Contractor Document that contains terms or conditions that are different from, or in addition to, the Terms (“**Proposed Terms**”), the SP Entity rejects the Proposed Terms unless otherwise specified in writing, regardless of when a Contractor Document containing Proposed Terms is received by the SP Entity. The Terms contained in the body of the Agreement shall be deemed incorporated into and made a part of each Purchase Order.
- 13.10. *Amendment.* Except as otherwise specified in the Agreement, the Agreement may be modified only by a document signed by both Parties.
- 13.11. *Assignment.* Except as otherwise set forth in the Terms, Contractor shall not assign, delegate, or subcontract any portion of the Agreement without the SP Entity’s prior consent. Any assignment, delegation, or subcontracting without such prior consent shall be void. If the SP Entity consents to an assignment, Contractor shall ensure that such assignee complies with the Agreement, and Contractor shall be liable for any Losses arising out of such assignee’s non-compliance.
- 13.12. *Survival.* The Terms, including all indemnification obligations, warranties, and guarantees of each Party set forth in the Terms herein, shall survive the expiration or termination of the Agreement to the full extent necessary for their enforcement or for the protection of the Party in whose favor they operate.
- 13.13. *Severability; Interpretation.* If any provision of the Agreement is found unenforceable or invalid, such unenforceability or invalidity will not render the Agreement unenforceable or invalid as a whole; provided that each provision that is so found to be unenforceable or invalid because of the amount or size of the burden or benefit shall be automatically reduced to the extent and by such amount such that the burden or benefit becomes enforceable and valid, and, in particular, the amount or size of any such burden or benefit provision found to be so invalid or unenforceable shall be read, notwithstanding any other provision of the Agreement, as if such provision read “to the maximum extent permitted by Law”.
- 13.14. *Third-Party Beneficiaries.* The Parties hereby designate Customer and SP as third-party beneficiaries of the Agreement having the right to enforce Contractor’s obligations and the SP Entity’s, SP’s, and Customer’s rights under the Agreement and to direct Contractor’s Deliverables at the Location. Except as otherwise set forth in the foregoing sentence, the Agreement and all associated rights are intended for the sole benefit of the Parties and will not imply or create any rights on the part of, or obligations to, any third-party.
- 13.15. *Notices.* Except as set forth in [Section 3.4](#) with respect to invoicing, all consents, notices, or other communications hereunder shall be sufficient if given in writing and delivered in person or by email, overnight courier, or certified mail to the receiving Party at the address or email address shown for the signatory in the Purchase Order, or to such other address or email address as such Party may have given to the other by notice pursuant to this Section. All consents, notices, or other communications hereunder shall be deemed delivered, given, and received (a) on the date of delivery, in the case of delivery via personal delivery or email, (b) on the delivery or refusal date, as specified on the return receipt in the case of certified mail, or (c) on the tracking report, in the case of overnight courier.
- 13.16. *Use of Agreement by SP Entity.* By executing such Purchase Order, the SP Entity shall be bound by the Terms. The SP Entity that executes the applicable Purchase Order shall be solely responsible to comply with its obligations under such Purchase Order. Neither SP nor any other SP Entity shall have any obligation or liability for or under any Purchase Order executed by any other SP Entity. For a Purchase Order that is executed by an SP Entity, the term “SP Entity” in the Agreement shall be interpreted to mean the SP Entity that signs such Purchase Order.
- 13.17. *Interpretation.* As used in the Agreement: the singular includes the plural and vice versa; reference to a document, Law, or Policy means such document, Law, or Policy as amended from time to time; the term “or” is not exclusive; “include” or “including” and variations thereof means including, without limitation; headings are not a part of the Agreement; references to money refers to United States currency; references to the SP Entity and Customer include their affiliates, successors, and assigns; and the terms “hereof,” “hereunder,” “herein,” “hereby,” and derivatives or similar words refer to the entire Agreement.
- 13.18. *Assurance.* The SP Entity may request written or financial assurance that Contractor shall complete its performance of the Deliverables on time. If Contractor fails to give the SP Entity adequate assurance of performance after written demand therefor when reasonable grounds for insecurity arise, then (a) the SP Entity may cancel the Purchase Order in whole or in part as to Deliverables not yet completed without liability for cancellation charges and may procure elsewhere deliverables similar to the cancelled Deliverables; and (b) Contractor shall reimburse the SP Entity for any payments previously made by the SP Entity to Contractor for such cancelled Deliverables.

- 13.19. *Controlling Agreement.* If a conflict exists among the Terms, the terms contained in the Purchase Order, and the terms contained in the Certificate of Acceptance, the Purchase Order controls over these Terms, and the Certificate of Acceptance controls over the Purchase Order and these Terms, except as otherwise specified in the applicable provision in the body of the Agreement. If a conflict exists between any of the provisions of the Terms, the provisions of the Terms shall control in accordance with the following order of priority: Law, Contractor's Location-Specific EH&S Plan (if applicable), Specifications, Policies of Customer, Policies of the SP Entity, Design Documents (if applicable), manufacturers' instructions of the Goods and the SP Entity-Procured Items, Basic Engineering and Design Data, Quality Control Plan (if applicable), and Good Practices. If Contractor commenced Deliverables prior to execution of the Agreement or a particular Purchase Order, or the performance of Deliverables continues after the termination or expiration of the Agreement or a particular Purchase Order, the Terms shall govern such Deliverables.
- 13.20. *Counterparts and Electronic Signatures.* A Purchase Order may be executed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one agreement. A signature page in "PDF" format or an electronic signature to the Purchase Order shall be deemed an original and binding upon the Party against which enforcement is sought.
14. **Glossary.** Capitalized terms not otherwise defined in the Agreement have the following corresponding meanings:
- "**Agreement**" means the applicable Purchase Order, the Terms, the applicable Notice to Proceed, the applicable Certificate of Acceptance, and all appendices, exhibits, and attachments attached to the foregoing.
- "**Basic Engineering Design Data**" means the design basis developed by Contractor using SP Entity-supplied or Customer-supplied information and other available information to document key parameters.
- "**Certificate of Acceptance**" means a certificate of acceptance, work product approval, or other similar document signed by Customer and the SP Entity pursuant to the terms and conditions of the Service Addendum.
- "**Claim**" means any claim, demand, action, judgment, suit, or legal proceeding that could reasonably be expected to result in a Loss.
- "**Contractor Documents**" means proposals, bids, quotations, bill of lading, receipts, invoices, packing slips, acknowledgments, and other documentation issued by Contractor in connection with the performance of the Deliverables, other than a Purchase Order, or provided to Contractor or the SP Entity by a Manufacturer or a subcontractor of Contractor.
- "**Contractor Group**" means Contractor, its affiliates, Contractor's Personnel and its and their respective officers, directors, shareholders, members, and partners, and the successors and assigns of all of the foregoing.
- "**Contractor's Personnel**" means Contractor's employees, subcontractors, affiliates, vendors, agents, and invitees and their respective employees, contractors, subcontractors, affiliates, vendors, agents, and invitees, as applicable.
- "**Customer**" means the SP Entity's customer identified in the applicable Purchase Order.
- "**Documents**" means written materials created, written, or developed for the SP Entity, the Project, or the Deliverables, including the materials described in the Purchase Order.
- "**Design Documents**" means the engineering and design documents.
- "**Delivery Date**" or "**Milestone**" means, with respect to any Deliverable, the date for delivery of such Deliverable set forth in the applicable Schedule.
- "**Goods**" means the Goods set forth in the Purchase Order, if any.
- "**Governmental Entity**" means any state, county or municipality, or any foreign, federal, state, county, or local governmental department or agency.
- "**Guaranteed Final Acceptance Date**" means the date set forth in the Schedule on which Contractor guarantees that Final Acceptance will be achieved.
- "**Guaranteed Milestone Date**" means, with respect to a Milestone, the date set forth in the Schedule on which Contractor guarantees that such Milestone will be achieved.
- "**Hazardous Substance**" means (a) any substance that is listed, defined, designated or classified under any environmental Law as a hazardous material, substance, constituent or waste, toxic material, substance, constituent or waste, radioactive material, substance, constituent or waste, pollutant, contaminant, or special waste, (b) any material, substance, chemical, constituent or waste regulated under any environmental Laws, and (c) petroleum, petroleum products, radioactive materials, polychlorinated biphenyl, pesticides, asbestos, or asbestos-containing materials (ACM).
- "**Intellectual Property**" shall mean all intellectual property rights throughout the world, whether existing under statute or at common law or equity, now or hereafter in force or recognized, including copyrights, trade secrets, trademarks and service marks, patents, inventions, designs, logos and trade dress, "moral rights," mask works, publicity rights, and privacy rights; and any application or right to apply for any of these rights, and all renewals, extensions and restorations, whether or not issued or registered by any Governmental Entity.
- "**Law**" means any applicable foreign, federal, state, local, tribal, or other law, rule, regulation, ordinance, zoning requirement or other legal requirement.
- "**Lien**" means any mortgage, pledge, lien, charge, security interest, encumbrance, or other claim of any nature.
- "**Location**" means the Project location described in the Purchase Order.
- "**Location State**" means the State of Arizona.
- "**Losses**" means losses, expenses, liabilities, damages, fines, and penalties, including court costs, attorneys' and professionals' fees and expenses, and other litigation or settlement expenses.
- "**Milestone**" means each key schedule milestone related to the Deliverables set forth in the Schedule.
- "**Notice to Proceed**" means a written and signed notice from Customer and the SP Entity stating that the Service may commence, subject to the Terms, including a restated Service Addendum attached to such notice with the relevant portions completed or updated, as applicable.
- "**Performance Guarantee Period**" means the period set forth in the Purchase Order for the applicable Performance Guarantee.
- "**Performance Guarantees**" means the performance guarantees for the Deliverables and the Project specified in the Purchase Order.
- "**Performance Tests**" means the performance tests necessary to demonstrate that the Deliverables achieved the Performance Guarantees, as described in the Purchase Order.
- "**Permits**" means all federal, state, and local permits, licenses, clearances, and approvals.
- "**Policies**" mean the Code of Conduct of SP or the SP Entity and other policies, procedures, and regulations of SP, the SP Entity, and Customer, which may include those related to safety and security, those related to environmental matters, those set forth in its Contractor Safety Handbook, Safe Work Practices Manual, Hazard Communication Program, or those specific to a Location.
- "**Project**" means the project described in the Purchase Order.
- "**Schedule**" means the schedule for performance of Deliverables and delivery of Goods set forth in the Purchase Order for the applicable Deliverables and Goods.
- "**Service Addendum**" means that certain service addendum executed by Customer and the SP Entity.
- "**Service Costs**" means the aggregate costs for the Deliverables set forth in the Purchase Order.
- "**Services**" means the services set forth in the Purchase Order.
- "**SP Entity-Procured Items**" means the equipment, materials, supplies, construction utilities, construction fuels, chemicals, tools, appliances and consumables either identified in the Purchase Order or furnished by the SP Entity and to be incorporated into the Project.
- "**SP Group**" means SP, the SP Entity, Customer, and its and their respective officers, directors, shareholders, members, partners, affiliates, employees, and

customers, and the successors and assigns of all of the foregoing.

“**Terms**” means (a) the terms and conditions set forth in these General Terms and Conditions, and (b) the terms and conditions set forth in the Purchase Order.

**Appendix A
to General Terms and Conditions of Purchase**

FORM OF CHANGE ORDER

CHANGE ORDER NO. [●]

Date of Change Order No. ([●]): [●]

This Change Order No. ([●]) (this “Change Order”) is dated as of [●] and entered into pursuant to that certain Purchase Order #[●], dated as of [●] entered into by and between [●] (“Contractor”) and [●] (“the SP Entity”) (the “Agreement”). Capitalized terms used herein but not defined shall have the meanings given to such terms in the Agreement. In accordance with Section 8 of the SP General Terms and Conditions of Purchase, each of Contractor and the SP Entity agrees to the following changes to the Agreement:

1. **Description of change to scope of Deliverables:** The scope of Deliverables is hereby modified as follows: [●].
2. **Description of change to the Schedule:** The Schedule is hereby modified as follows: [●].
3. **Compensation:** The Service Cost shall be [increased/decreased] by the amount of \$[●]. Such adjustments to the Service Cost are supported by the following information or documentation: *[insert detailed supporting information or documentation for such adjustment]*
4. **No other changes:** Except as specifically modified herein, all terms and conditions of the Agreement are ratified and confirmed and shall remain unmodified and in full force and effect.

The Parties have executed and delivered this Change Order as of the date set forth on the first page hereof. This Change Order may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one agreement. A signature page in “PDF” format or electronic signature to this Change Order shall be deemed an original and binding upon the Party against which enforcement is sought.

Contractor:

SP Entity:

By: _____
Name: _____
Title: _____
Phone: _____
Email: _____
Address: _____

By: _____
Name: _____
Title: _____
Phone: _____
Email: _____

Appendix B
to General Terms and Conditions of Purchase

PROCUREMENT TERMS AND CONDITIONS

To the extent Contractor furnishes Goods in connection with the Services, as set forth in the Purchase Order, this Appendix B shall apply to and is incorporated into the Agreement between the Parties. Terms with initial-capitalized letters that are not defined below shall have the meanings given to them in the above-referenced General Terms and Conditions of Purchase.

1. **Specifications.** The Contractor shall cooperate with Customer and the SP Entity in defining the specific design, specifications, and selection of the Goods in addition to the specifications set forth in the Purchase Order.
2. **Cancellation Charges.** The SP Entity may cancel any orders for Goods prior to the Commencement Date without any penalty or liability. If the SP Entity cancels or returns any Goods after the Goods are shipped following the Commencement Date, the SP Entity shall pay the restocking fee set forth in the Purchase Order, if any.
3. **Shipping; Delivery.** Contractor shall ship, package, and deliver the Goods Delivery Duty Paid (DDP) to the delivery location set forth in the Purchase Order, Incoterms 2020 in accordance with the Schedule and the shipment specifications set forth in the applicable Purchase Order, or if none are stated, in such a manner as may be required for the protection of Goods from damage or destruction by hazards during shipping and delivery and in compliance with Law. Within 24 hours after shipment of any Good, Contractor shall deliver to the SP Entity and Customer a shipment notification containing the date the Goods were shipped from Contractor's facility, the name and type of transportation carrier, and the transportation tracking number. All packages shall include labels and tags containing adequate and accurate information with respect to use, safety, and treatment of the packaged Goods. Notwithstanding anything to the contrary within Delivery Duty Paid (DDP), Incoterms® 2020, Contractor shall unload the Goods at the delivery location.
4. **General Warranty.** In addition to warranties contained in the Agreement, Contractor warrants to the SP Entity and Customer that until the date set forth in the Purchase Order (the "**Warranty Period**"), the materials, equipment, and goods described in the Purchase Order, used by Contractor in performing Services, or otherwise provided by Contractor under the Agreement (collectively, the "**Goods**") will (a) conform to the Specifications, (b) be free of defects in material and workmanship, without variation, and of even kind, quality, and quantity within each unit and among all units, fit for the purpose for which the Goods are ordinarily used, free and clear of any Liens, except as provided in Section 3.6, and (c) comply with all Law. The foregoing warranties shall survive the SP Entity's and Customer's inspection, acceptance, and payment.
5. **Additional Warranty.** Contractor warrants to the SP Entity and Customer that none of the software, if any, included in the Goods shall (a) introduce or include any Trojan horse, virus, worm, trap spyware, back door, disabling or destructive code, time, clock, counter, or other limiting design or routine that causes the software or any other part of the Goods to be erased, inoperable or otherwise incapable of being used in the full manner for which it was intended, or (b) contain code or materials subject to non-negotiable licenses, including "open source" or "freeware" software, or other materials requiring that software combined or distributed with such materials be disclosed or distributed in source code form, licensed for the purpose of making derivative works, or re-distributable at no charge or subject to material limitations or conditions.
6. **Performance Guarantees.** Contractor guarantees that the Goods will meet all of the Performance Guarantees required to be achieved during the applicable Performance Guarantee Periods.
7. **Assignment of Manufacturer Warranties.** If Contractor is not the manufacturer of a Good (the "**Manufacturer**"), Contractor shall (a) secure the warranties, service life policies, and remedies set forth in the Terms from the Manufacturer, (b) assign the warranties, service life policies, and remedies to the SP Entity effective upon the expiration of the Warranty Period, and (c) before the expiration of the Warranty Period, upon the SP Entity's request, serve as the SP Entity's agent for purposes of administering the warranties, service life policies, and remedies provided by the Manufacturer in accordance with the Terms and otherwise assist the SP Entity in obtaining warranty service from the Manufacturer.
8. **Assignment of Manufacturer Indemnities.** If Contractor is not the Manufacturer, Contractor hereby assigns to the SP Entity all of Contractor's right, title, and interest in each applicable indemnification commitment owed to Contractor by the Manufacturer, including any Manufacturer's indemnification obligations in the event of Intellectual Property Right infringements or violations, personal injury or property damage, or violations of Law. Contractor shall obtain the written consent of each Manufacturer to the assignment of the Manufacturer's indemnification obligations to the SP Entity. Contractor shall execute and deliver such further instruments and take such further acts as may be reasonably requested to enable the SP Entity to exercise and enforce in Contractor's name all of such rights.
9. **Manuals.** Concurrently with delivery of each Good, Contractor shall deliver to the SP Entity in electronic or hard copy form all storage, installation, erection, operation, and maintenance manuals available for such Good not previously delivered to the SP Entity. Contractor shall deliver all updates to such manuals promptly following Contractor's creation thereof or, if Contractor is not the Manufacturer, receipt thereof. If Contractor is not the Manufacturer, Contractor shall deliver all Manufacturer updates to manuals for the Goods promptly following Contractor's creation thereof or, if Contractor is not the Manufacturer, receipt thereof from any Manufacturer.
10. **Title.** Title to each Good shall transfer from Contractor to the SP Entity upon the earlier of the SP Entity's acceptance of the Good at the delivery location or the SP Entity's payment to Contractor of any portion of the Service Payment for such Good. Such transfer of title shall in no way affect the SP Entity's and Contractor's rights as set forth in other provisions of the Agreement.
11. **Security Interest.** If the Goods furnished are for purchase, without affecting the Parties' intention that title to the Goods transfers to the SP Entity as provided in the previous Section, Contractor hereby grants to the SP Entity a purchase money security interest in the Goods upon and to the extent of the SP Entity's payment of any portion of the Service Cost for such Goods to secure the SP Entity's interest in such Goods, and hereby authorizes the SP Entity to file or record any documents or instruments, including Uniform Commercial Code, financing statements or fixture filings, amendments, and continuation statements to give third parties notice that the SP Entity is the owner of the Goods.
12. **Risk of Loss.** Unless Contractor is required to install the Goods, as set forth in the Purchase Order, risk of loss to the Goods shall transfer to the SP Entity upon completion of Contractor's or its carrier's delivery and unloading and the SP Entity's or its Customer's acceptance of the Goods at the delivery location. If Contractor will also perform installation or construction Services, then risk of loss of the Goods shall remain with Contractor until the Certificate of Acceptance is delivered.
13. **Export Laws and Sanctions.** Contractor shall comply with all Laws related to the performance of the Services and the import and export of the Goods and shall not violate, or cause the SP Entity or Customer to violate, any sanctions imposed by the United Nations, the European Union, the United States of America, or any Governmental Entity having jurisdiction over Contractor, Customer, the SP Entity, or the transactions contemplated hereunder. Contractor shall immediately notify

the SP Entity if Contractor is or becomes listed in any United Nations, European Union, or United States sanctioned- or denied-entities list or if Contractor's export privileges under United States or other country law are otherwise denied, suspended, or revoked in whole or in part by any Governmental Entity.

- 14. Actions Upon Termination.** If the Agreement is terminated for any reason, upon the SP Entity's request and payment of all amounts due Contractor under the Agreement that accrued prior to such termination, Contractor shall deliver any non-cancelled Goods and any other associated property of the SP Entity in Contractor's possession or control, to a location identified by the SP Entity within the metropolitan area of the State in which the Location is located, at the SP Entity's sole expense, in undamaged condition and in good working order within 10 business days after such request

Appendix C
to General Terms and Conditions of Purchase

GENERAL SERVICES TERMS AND CONDITIONS

To the extent Contractor provides services, as set forth in the Purchase Order, this Appendix C shall apply to and is incorporated into the Agreement between the Parties. Terms with initial-capitalized letters that are not defined below shall have the meanings given to them in the body of the General Terms and Conditions of Purchase.

1. **Scope.** Contractor shall perform the Services by providing the labor, materials, supplies, tools, equipment, products, appliances, Permits, documentation, reporting, storage, disposal, clean-up, training, oversight, and facilities as may reasonably be required, necessary, incidental, or appropriate (whether or not specifically set forth in the Agreement) to complete the Services such that it satisfies the applicable terms, conditions, guarantees, and requirements set forth in the Agreement. Contractor shall be fully and solely responsible for quality control in connection with all materials, machinery, equipment, products, supplies, appliances, tools, and articles used in the performance of the Services.
2. **Personnel.**
 - 2.1. *Other Personnel.* Contractor shall provide, or shall cause its subcontractors to provide, the personnel required to perform the Services in accordance with the Schedule. Such Contractor's Personnel shall have had appropriate training and experience in performing the Services. If any Contractor's Personnel speak Spanish in a primary English-speaking Location or English in a primary Spanish-speaking Location, Contractor shall ensure that, at all times during the performance of the Services, at least one supervisor present at the Location shall be bilingual in English and Spanish. The SP Entity shall have the right, at all times, to require for just cause that any Contractor's Personnel be removed and replaced by qualified Contractor's Personnel reasonably acceptable to the SP Entity.
 - 2.2. *Subcontractors.* Contractor may engage subcontractors that are listed in the Purchase Order, or approved in advance by the SP Entity, to perform the Services under the Purchase Order; provided, however, that no such engagement shall relieve Contractor of any of its obligations hereunder. The SP Entity shall have the right to reject, for good cause, any subcontractor, and Contractor shall not engage any subcontractor so rejected by the SP Entity. Contractor shall ensure that all of its subcontractors discharge their respective obligations in compliance with the Terms. Contractor shall be responsible for the Services and its performance in accordance with the Terms, regardless of any failure of any subcontractors to perform or any disagreement with any subcontractor or between any subcontractors. As between the SP Entity and Contractor, Contractor shall be solely responsible for the acts, omissions and defaults of its subcontractors and Contractor's Personnel. Nothing in the Agreement shall be construed to impose on the SP Entity any obligation, liability, or duty to a subcontractor or to create any contractual relationship between any subcontractor and the SP Entity. No Subcontractor is intended to be, nor shall be, deemed a third-party beneficiary of the Agreement. Contractor shall be solely responsible for paying each subcontractor all amounts due under the agreement with such subcontractor. Contractor shall, and shall cause Contractor's Personnel, to comply with all personnel and contractor requirements of the Customer and the SP Entity and Location-specific rules and requirements.
 - 2.3. *Cooperation with Other Service Providers.* Contractor shall cooperate with the SP Entity and other contractors to coordinate the performance of the Services with Customer and the services of other contractors of the SP Entity.
3. **Environment, Health, and Safety at the Location.**
 - 3.1. *Location.* Neither the SP Entity nor Customer assume any affirmative duties with respect to the safety of Contractor's Personnel. If an accident involving Contractor's Personnel occurs at a Location, Contractor shall notify the SP Entity and Customer immediately. Contractor shall promptly furnish the SP Entity full written reports of any accidents involving individuals or property associated with the Services.
 - 3.2. *Hazardous Substances.* Contractor shall not, nor shall it permit Contractor's Personnel to, bring any Hazardous Substance onto the Location or incorporate any Hazardous Substance into the Location, other than Hazardous Substances to be used by Contractor or Contractor's Personnel in a manner that does not violate any Law and is consistent with Good Practices. Contractor shall minimize the use of Hazardous Substances in the performance of the Services. Before completion of the Services, Contractor shall remove from the Location all Hazardous Substances previously brought onto the Location by Contractor or Contractor's Personnel, unless the same have been permanently incorporated into the Location in accordance with the Agreement. Contractor shall provide written notice of the presence at the Location of Hazardous Substances to the SP Entity and, if required by Law, any Governmental Entities.
 - 3.3. *Encountering Hazardous Substances at the Location.* If Contractor or Contractor's Personnel encounters any Hazardous Substances or other hazardous conditions at the Location, Contractor shall immediately stop the Services in the area affected and report the condition to the SP Entity and Customer, unless encounter with such Hazardous Substances is inherent with the Services. Contractor shall not have any liability arising from pre-existing Hazardous Substances at the Location or Hazardous Substances introduced upon the Location by Customer or any third party (except any member of Contractor Group) other than due to the intentional release thereof by Contractor Group or the negligent exacerbation of such Hazardous Substances by Contractor Group.
4. **Access.** During the Term, to the extent permitted under Law, Location security protocols, and other Policies, the Parties intend that Customer will provide Contractor and Contractor's Personnel access to the Location to perform the Services and, if necessary, to protect the Goods and the SP Items.
5. **Interference.** Except as otherwise provided by the Agreement or otherwise authorized by the SP Entity or Customer in writing, Contractor will not allow any service, alteration, modification, interference, or other infringement upon the Goods or the SP Items.
6. **Monitoring by the SP Entity.** During the performance of the Services, Contractor shall permit (and, as applicable, shall cause Contractor's Personnel to permit) the SP Entity, Customer, and their representatives and engineers to monitor and inspect the Services and the progress of the Services against the Schedule to verify compliance with the Terms and the Schedule.
7. **Progress Reports.** In intervals acceptable to the SP Entity and Customer, Contractor shall provide progress reports describing the activities in connection with the Services, any safety incidents, the names of the individuals at the Location, and the progress of the Services toward achievement of the Schedule.
8. **Standards for Completion.** Prior to Contractor's delivery of a Certificate of Acceptance, the Services must conform to the Terms and satisfy Customer's expectations.
9. **No Waiver of Warranties.** None of the SP Entity's or Customer's inspection or review of the Services or verification of completion of the Services at a Location shall be deemed a waiver of the warranties set forth in the Agreement.

Appendix D to General Terms and Conditions of Purchase

INSTALLATION TERMS AND CONDITIONS

To the extent Contractor provides installation Services, as set forth in the Purchase Order, this Appendix D shall apply to and is incorporated into the Agreement between the Parties. Terms with initial-capitalized letters that are not defined below shall have the meanings given to them in the above-referenced General Terms and Conditions of Purchase.

1. **Scope.** Contractor shall perform the Services by providing the labor, materials, supplies, tools, equipment, products, appliances, Permits, documentation, reporting, storage, disposal, clean-up, training, oversight, and facilities as may reasonably be required, necessary, incidental, or appropriate (whether or not specifically set forth in the Agreement) to complete the Services such that it satisfies the applicable terms, conditions, guarantees, and requirements set forth in the Agreement. Contractor shall be fully and solely responsible for quality control in connection with all materials, machinery, equipment, products, supplies, appliances, tools, and articles used in the performance of the Services, except for the SP Entity-Procured Items, if any.
2. **SP Entity-Procured Items.** The SP Entity shall procure, or shall cause the procurement of, the SP Entity-Procured Items, if any. Title to the SP Entity-Procured Items shall remain with the SP Entity at all times. EACH SP ENTITY-PROCURED ITEM IS PROVIDED ON AN “AS IS” BASIS. TO THE EXTENT PERMITTED UNDER LAW, THE SP ENTITY MAKES NO WARRANTIES HEREUNDER WITH RESPECT TO THE SP ENTITY-PROCURED ITEMS, EXPRESS OR IMPLIED, AND THE SP ENTITY HEREBY DISCLAIMS ALL WARRANTIES, INCLUDING THE WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY. The SP Entity accordingly agrees not to assert any claim or offset whatsoever against Contractor based on design or manufacturing defects of the SP Entity-Procured Items. Risk of loss of the SP Entity-Procured Item shall transfer from the SP Entity to Contractor upon delivery of the SP Entity-Procured Item to Contractor. Contractor shall provide or arrange for the off-loading and handling of the SP Entity-Procured Items. After delivery of the SP Entity-Procured Item to Contractor, Contractor shall be responsible for competently protecting the SP Entity-Procured Item from damage, modification, vandalism, interference, and risk of loss. In the event of loss or damage to the SP Entity-Procured Item, Contractor, at the option of the SP Entity, shall either repair the SP Entity-Procured Item to put it in good condition and working order or replace the SP Entity-Procured Item, with like property of the same or greater quality and functionality.
3. **Receiving; Storage.** Contractor shall provide or arrange for the receiving and storage of Goods and SP Entity-Procured Items, as applicable, at the Location or off-site at another location agreed to by the SP Entity until the installation thereof.
4. **Personnel.**
 - 4.1. **Other Personnel.** Contractor shall provide, or shall cause its subcontractors to provide, the personnel required to perform the Services and achieve each Milestone by the applicable Guaranteed Milestone Date. Such Contractor’s Personnel shall have had appropriate training and experience in installing and testing Goods at facilities in technology and magnitude similar to the Location. If any Contractor’s Personnel speak Spanish in a primary English-speaking Location or English in a primary Spanish-speaking Location, Contractor shall ensure that, at all times during the performance of the Services, at least one supervisor present at the Location shall be bilingual in English and Spanish. The SP Entity shall have the right, at all times, to require for just cause that any Contractor’s Personnel be removed and replaced by qualified Contractor’s Personnel reasonably acceptable to the SP Entity.
 - 4.2. **Screening Measures.** Contractor shall perform employment eligibility and verification checks required by the SP Entity or Customer from time to time, a seven-year criminal background check (including checks for felony convictions), and all other screening measures as a reasonably prudent employer in Contractor’s position would deem appropriate (collectively, “**Screening Measures**”) of Contractor’s Personnel prior to their performance of Services and shall not permit any Contractor Personnel to perform Services if such Screening Measures reveal any information that could reasonably be expected to adversely affect such Contractor Personnel’s suitability for the provision of Services. By providing Contractor’s Personnel to perform the Services, Contractor represents that it has completed Screening Measures and that such Screening Measures did not reveal any information that could adversely affect such Contractor’s Personnel’s suitability for employment or engagement by Contractor or competence or ability to perform duties under the Agreement. Nothing in this Section shall be interpreted as authorizing or requiring Contractor to perform any screening activities that violate the Federal Fair Credit Reporting Act, Title VII of the Civil Rights Act of 1964, or any other Law. Contractor shall comply, and shall cause its subcontractors to comply, in all respects with all Law related to labor and immigration that may impact the performance of the Services, including the Immigration Reform and Control Act of 1986 and Form I-9 requirements, and shall participate in E-Verify. Contractor shall maintain all required employment records until the later of the date that is three years after an employee’s date of hire, or one year following an employee’s termination.
 - 4.3. **Alcohol and Drug Program.** Contractor shall implement an alcohol and drug abuse program for all Contractor’s Personnel performing the Services that is consistent with the Policies and shall engage a local company to provide drug screening in accordance with Contractor’s policy.
 - 4.4. **Non-Discrimination.** Each Party shall comply with Law requiring nondiscrimination in employment, and not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, disability, protected veteran status, sex, sexual orientation, or gender identity.
 - 4.5. **Payroll Reporting.** To the extent required by Law or if requested by the SP Entity, Contractor will submit a certified payroll to the SP Entity on a monthly basis for the contracts they have been awarded, and no invoices will be processed without certified payroll reports.
 - 4.6. **Cooperation with Other Service Providers.** Contractor shall cooperate with the SP Entity and other contractors to coordinate the performance of the Services with Customer and the services of other contractors of the SP Entity, except that Contractor shall not be required to delay the performance of the Services for such cooperation.
5. **Environment, Health, and Safety at the Location.**
 - 5.1. **Location.** Prior to performing Services at a Location, Contractor shall inspect the condition of, the ingress and egress to and from, and Customer’s operations at, the Location. While at a Location, Contractor shall, and shall cause Contractor’s Personnel to, comply with Policies and Location-specific rules and requirements. Contractor voluntarily accepts all hazards and risks that may be presented in the performance of the Services at a Location. Neither the SP Entity nor Customer assume any affirmative duties with respect to the safety of Contractor’s Personnel. If an accident involving Contractor’s Personnel occurs at a Location, Contractor shall notify the SP Entity and Customer immediately and submit a written accident report to the SP Entity. Contractor shall promptly furnish the SP Entity full reports of any accidents involving individuals or property associated with the Services.
 - 5.2. **Hazardous Substances.** Contractor shall not, nor shall it permit Contractor’s Personnel to, bring any Hazardous Substance onto the Location or incorporate any Hazardous Substance into the Location, other than Hazardous Substances to be used by Contractor or Contractor’s Personnel in a manner that does not violate any Law and is consistent with Good Practices. Contractor shall minimize the use of Hazardous Substances in the performance of the Services. Before

completion of the Services, Contractor shall remove from the Location all Hazardous Substances previously brought onto the Location by Contractor or Contractor's Personnel, unless the same have been permanently incorporated into the Location in accordance with the Agreement. Contractor shall provide written notice of the presence at the Location of Hazardous Substances to the SP Entity and, if required by Law, any Governmental Entities. Contractor shall maintain an updated file of all safety data sheets for all Hazardous Substances used in connection with performance of the Services or used by or on behalf of Contractor or Contractor's Personnel at the Location and shall deliver an update of such file to the SP Entity prior to the Hazardous Substances being brought to the Location. Contractor shall implement and administer a Hazardous Substances handling program for all of Contractor's Personnel that includes guidelines and training with respect to the proper handling, use, and disposal of Hazardous Substances and the development, implementation and enforcement of procedures for notification of the SP Entity and appropriate Governmental Entities about, and clean-up of, spills and other emissions of Hazardous Substances in connection with the performance of the Services.

- 5.3. *Encountering Hazardous Substances at the Location.* If Contractor or Contractor's Personnel encounters any Hazardous Substances or other hazardous conditions at the Location, Contractor shall immediately stop the Services in the area affected and report the condition to the SP Entity and Customer, unless encounter with such Hazardous Substances is inherent with the Services. Contractor shall not have any liability arising from pre-existing Hazardous Substances at the Location or Hazardous Substances introduced upon the Location by Customer or any third party (except any member of Contractor Group) other than due to the intentional release thereof by Contractor Group or the negligent exacerbation of such Hazardous Substances by Contractor Group.
- 5.4. *OSHA.* All chemicals, equipment, and materials used in the performance of the Services shall conform to the standards required by Occupational Safety and Health Administration.
6. **Performance and Payment Security.** To the extent required by Customer, on or before the Commencement Date, Contractor shall provide, or cause to be provided to the SP Entity performance and payment security to secure its obligations under the Agreement ("**Contractor Security**"). The Contractor Security shall be in an amount not less than the total aggregate Service Cost, maintained at Contractor's expense, originated by a bank or other entity ("**Issuer**") meeting the requirements set forth below, and in the form of one or more of the following instruments:
 - 6.1. *Letter of Credit.* An irrevocable standby letter of credit, in form and substance reasonably acceptable to the SP Entity, from an Issuer with an unsecured bond rating (unenhanced by third-party support) equivalent to A- or better as determined by either Standard & Poor's or Moody's (a "**Qualified L/C**"). Each Qualified L/C shall include a provision for at least 30 days advance notice to the SP Entity of any expiration or earlier termination to allow the SP Entity sufficient time to exercise its rights if Contractor fails to extend or replace the Qualified L/C and be issued for a minimum term of 360 days. If a Qualified L/C is not renewed or extended, the SP Entity may draw immediately upon the Qualified L/C and place the amounts so drawn, at Contractor's cost, into an interest-bearing escrow account in which the SP Entity shall hold a first perfected security interest, until Contractor provides a substitute form of Contractor Security meeting the requirements of this Section.
 - 6.2. *Bond.* A payment and performance bond, naming the SP Entity as a co-obligee, from a surety company approved by the SP Entity, in its reasonable discretion.
7. **Access.** During the Term, to the extent permitted under Law, Location security protocols, and other Policies, the Parties intend that Customer will provide Contractor and Contractor's Personnel access to the Location to perform the Services and, if necessary, to protect the Goods and the SP Entity-Procured Items.
8. **Obstructions; Interference.** Contractor will keep all areas in and around where Services are performed free from debris. Except as otherwise provided by the Agreement or otherwise authorized by the SP Entity or Customer in writing, Contractor will not allow any service, alteration, modification, interference, or other infringement upon the Goods or the SP Entity-Procured Items.
9. **Monitoring by the SP Entity.** During the performance of the Services, Contractor shall permit (and, as applicable, shall cause Contractor's Personnel to permit) the SP Entity, Customer, and their representatives and engineers to monitor and inspect the Services and the progress of the Services against the Schedule to verify compliance with the Terms and completion of each Milestone. Contractor shall give the SP Entity and Customer access to the facilities of Contractor and its subcontractors for inspection of the Services during regular business hours. Contractor shall give the SP Entity five business days' advance notice of the covering of any portion of the Services or the occurrence of a hold point, if any, specified in the Purchase Order. If any portion of the Services is covered or any hold point occurs without notice to the SP Entity or Customer, then if requested by the SP Entity or Customer, Contractor shall uncover such portion of the Services for inspection and recover the Services at Contractor's expense. If during the SP Entity's or Customer's monitoring or inspection of the Services, it is discovered that Services or Goods that do not comply with the Terms, Contractor shall promptly re-perform the non-complying Services or repair, modify, or replace the non-complying Goods. The SP Entity's and Customer's monitoring or inspection (or failure to conduct any monitoring or inspection) of any part of the Services shall in no way relieve Contractor of its obligations to perform the Services in accordance with the Agreement, nor be deemed to be a waiver of the SP Entity's right to subsequently reject defective Services or Goods, or make a warranty claim hereunder.
10. **Progress Reports.** Contractor shall provide progress reports upon request by the SP Entity, but not less frequently than weekly, describing the applicable week's activities in connection with the Services, any safety incidents, the names of the individuals, and the progress of the Services toward achievement of the Milestones.
11. **Standards for Completion.** Prior to Contractor's delivery of a Certificate of Acceptance, (a) the Services must conform to the Terms, (b) Contractor must demonstrate to the SP Entity and Customer that all portions of the installation Services can legally, safely, and reliably be placed into operation for ten consecutive days at an average capacity meeting the design intent and meeting on average the design recovery guarantee and the Specifications ("**Continuous Operation**"); (c) the Performance Tests performed by the SP Entity or Customer must demonstrate that the installation Services, when corrected to the conditions on which the Performance Guarantees are contingent, as set forth in the Purchase Order (the "**Performance Conditions**"), are capable of meeting the Performance Guarantees, and (d) all systems interconnected or affected by the installation Services are performing effectively upon completion of the installation Services.
12. **Inspection and Tests.** Upon receipt thereof, the SP Entity and Customer may conduct such investigations and inspections as the SP Entity deems necessary or appropriate to determine if the installation Services are complete. Contractor shall make Contractor's Personnel available to the SP Entity to assist the SP Entity and Customer in the Startup, Continuous Operation, and performance of the Performance Tests and to correct any defects identified during Startup, Continuous Operation, or the Performance Tests. "**Startup**" means the process of starting and completing initial operation of the systems, sub-systems, and components of the Project pursuant to the procedures for Startup set forth in the applicable Purchase Order or otherwise agreed to between the Parties.
13. **Access Following Provisional Acceptance.** After the SP Entity delivers to Contractor the countersigned Certificate of Acceptance, Contractor shall promptly complete the remaining Services. Contractor shall have reasonable access to the Location and the reasonable cooperation of the SP Entity so as to complete the Services. Contractor's completion of the Services shall be accomplished with minimal interference to the operations of the SP Entity or the Customer.
14. **Retainage.** To the extent permitted by Law, the SP Entity may withhold from each payment to be made pursuant to an invoice the percent of such payment set forth in the Purchase Order as retainage ("**Retainage**"). The Retainage shall be held by the SP Entity as security for the performance of Contractor's obligations hereunder, and any interest thereon shall accrue for the account of the SP Entity and not Contractor. The SP Entity may use the Retainage, among other uses, to cure a Contractor event of default, for damages owed by Contractor hereunder, for payment of unpaid subcontractors of Contractor and payments made to remove Liens filed by Contractor's subcontractors, for payment of unpaid liquidated damages owed by Contractor, and to satisfy any and all other amounts payable to the SP Entity hereunder. Unless otherwise set forth in a Purchase Order, the SP Entity shall pay Contractor any remaining unused Retainage with the final payment

made pursuant to the applicable Purchase Order.

15. **Final Payment.** Prior to final payment of the applicable portion of the Services Cost, (a) Contractor shall deliver to the SP Entity final waivers of Liens and releases from Contractor, its subcontractors, and its and their subcontractors, (b) all remaining waste materials, rubbish and other debris, (c) all of Contractor's work equipment must be removed in accordance with Law and Good Practices, (d) Contractor shall provide to the SP Entity copies of the Contractor Permits, all operating manuals for the Goods, a final list and summary prepared by Contractor of the Services performed by each subcontractor, all training manuals, all completion checklists, all Design Documents (if Contractor provided design or engineering Services), and any other close-out documents reasonably requested by the SP Entity or Customer.
16. **No Waiver of Warranties.** None of the SP Entity's or Customer's inspection or review of the Services or verification of completion of the Services shall be deemed a waiver of the warranties set forth in the Agreement.

Appendix E
to General Terms and Conditions of Purchase

DESIGN AND ENGINEERING TERMS AND CONDITIONS

To the extent Contractor provides design or engineering Services, as set forth in the Purchase Order, this Appendix E shall apply to and is incorporated into the Agreement between the Parties. Terms with initial-capitalized letters that are not defined below shall have the meanings given to them in the above-referenced General Terms and Conditions of Purchase.

1. **Basic Engineering Design Data.** Contractor shall compile the Basic Engineering Design Data and obtain the SP Entity's approval thereof prior to the Commencement Date.
2. **Deliverables.** Contractor shall submit to the SP Entity copies of the engineering and design documents listed in the Purchase Order (collectively, the "**Design Documents**") by the dates specified therein. All Design Documents shall be for informational purposes only, except for the Design Documents specifically identified for the SP Entity's review and approval in the Purchase Order. The SP Entity shall provide any comments to the Design Documents within the applicable time period set forth in the Purchase Order, if any, and Contractor shall incorporate any changes to the Design Documents reasonably requested by the SP Entity if Contractor reasonably expects that such changes will not adversely impact Contractor's costs to perform the Services, Contractor's ability to satisfy the Performance Guarantees, or Contractor's ability to meet the Schedule. If such changes do have such an impact, Contractor may request a Scope Change pursuant to Section 5 of the General Terms and Conditions of Purchase.
3. **Deliverables in Progress.** Upon termination of the Agreement, Contractor shall deliver copies of all Deliverables held by Contractor, whether the Deliverables are in progress or completed, and purge and destroy all copies of documents and records not delivered to the SP Entity that contain the SP Entity's Confidential Information, subject to the confidentiality provisions hereof, and, upon the SP Entity's request, provide written certification by Contractor's Authorized Representative of compliance with the foregoing. If any segment of a Deliverable is incomplete at the time of delivery to the SP Entity under this Subsection, such segment of the Deliverable shall be deemed to be delivered "AS-IS," and shall not be subject to the standards or warranties set forth herein.
4. **Cooperation with Customer.** Coordinate with the Customer during the design process and attend all meetings requested by the SP Entity with Customer during the design process, and attend meetings reasonably requested by the SP Entity and Customer, as necessary, to facilitate the design of the Project.