

ARIZONA SPECIFIC LESSOR - SERVICE PROVIDER ADDENDUM TERMS AND CONDITIONS LONG FORM

PREAMBLE

THESE TERMS AND CONDITIONS ("AGREEMENT") APPLY TO THE EQUIPMENT AND OPERATING PERSONNEL SUPPLIED BY COMPANY (ALSO REFERRED TO AS "SUPPLIER" OR "LESSOR") AND /OR THE CUSTOMER AND ALL THEIR AFFILIATED ENTITIES. EACH IS KNOWN AS A PARTY AND JOINTLY AS PARTIES. IT IS THE PARTIES' INTENT THAT THESE TERMS AND CONDITIONS ("T&C'S") SHALL SUPPLEMENT AND/OR CLARIFY THE T&C'S OF ANY PRIOR AGREEMENTS/CONTRACTS, MASTER SERVICE AGREEMENT, PURCHASE ORDERS, CONSTRUCTION AGREEMENT, MASTER RENTAL AGREEMENT, UPPER-TIER AGREEMENT, PRIME AGREEMENT, RENTAL/LEASE AGREEMENTS (ALL REFERRED TO "UT AGREEMENTS" or "UT AGREEMENT) (CONTRACT AND AGREEMENT HAVE THE SAME MEANING) FOR THE SCOPE OF WORK OF COMPANY. WITH CUSTOMER RELATING TO THE SUBJECT JOB OR ANY OTHER JOB INVOLVING THE PARTIES TO THIS AGREEMENT. IF ANY OF THESE T&C'S ARE INCONSISTENT WITH ANY T&C'S OF ANY SUCH PRIOR UT AGREEMENTS WITH CUSTOMER, THEN THESE T&C'S SHALL PREVAIL OVER SUCH PRIOR INCONSISTENT T&C'S AND/OR ANY OF THE PROVISIONS OF ANY AGREEMENTS ISSUED BY CUSTOMER OR COMPANY AT ANY TIME, INCLUDING OR BASED ON ANY BID, ESTIMATE, OR PROPOSAL (BEP) OR QUOTE UNLESS OTHERWISE AGREED TO IN A SUBSEQUENT WRITING SIGNED BY BOTH PARTIES (AMENDMENT). CUSTOMER SHALL BE CONCLUSIVELY DEEMED TO HAVE ACCEPTED THE T&C'S OF THIS AGREEMENT, HEREIN, AND TO HAVE ENTERED INTO THIS AGREEMENT OR FORMS THIS NEW AGREEMENT WITH COMPANY, IF CUSTOMER REQUESTS COMPANY TO PERFORM ANY WORK AFTER THE CUSTOMER'S RECEIPT OF THE QUOTE, BEP OR THESE T&C'S INCLUDING CALLING COMPANY TO SCHEDULE OR PERFORM ANY PART OF THE SCOPE OF WORK FROM THE BEP OR QUOTE SENDING A PURCHASE ORDER OR ELECTRONIC MAIL/DOCUMENT ACCEPTING THE PRICING OR ASKING COMPANY TO PERFORM ANY PORTION OF THE SCOPE OF WORK. IN ADDITION, A MATERIAL PART OF THE PRICING ARE THESE TERMS AND CONDITIONS WHICH ARE INCLUDED AS THE PART OF SCOPE OF WORK. ADDITIONALLY, THESE TERMS AND CONDITIONS SHALL BE DEEMED EXECUTED AND BINDING EVEN IF CUSTOMER DOES NOT SIGN THE BEP, QUOTE OR THESE TERMS AND CONDITIONS. IF THE CUSTOMER CONTACTS THE COMPANY (BY PHONE, EMAIL, OR ANY OTHER METHOD) AND REQUESTS EQUIPMENT OR OPERATING PERSONNEL, THEN THE CUSTOMER AUTOMATICALLY AGREES TO PAY ON A QUANTUM MERUIT BASIS (I.E., REASONABLE VALUE OF THE SERVICES). THIS AGREEMENT INCLUDES AND SUPPLEMENTS ALL TERMS AND CONDITIONS IN THE BEP OR QUOTE, INCLUDING ANY SUPPLEMENTARY TERMS ATTACHED TO THE CONTRACT, ONCE THE COMPANY BEGINS WORK—STARTING FROM THE MOMENT THE COMPANY LEAVES ITS TERMINAL. WORK WILL PROCEED WHEN DIRECTED BY CUSTOMER OR "LIFT DIRECTOR", OR THE SITE SUPERVISOR (SEE ASME B30.5 (2025) FOR THE ROLES THAT EACH OF THESE ON-SITE PERSONNEL PLAY). THIS AGREEMENT SHALL BE INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE THE WORK IS BEING DONE AND ANY FEDERAL RULE, REGULATION STATUTE OR CASE LAW INCLUDING ANY FEDERAL TRANSPORTATION LAW WHILE ANY CARGO OR EQUIPMENT IS IN TRANSIT.

GENERAL TERMS AND CONDITIONS. If Customer requests an increase in the Scope of Work to be performed or Company supplies any additional Equipment or Operating Personnel after Customer's receipt of these T&C's, these T&C's shall again be deemed executed and binding with respect to all Work, Equipment, or Operating Personnel. Work will proceed when directed by Customer, Customer's Field Representative, Site Supervisor, Lift Director, Superintendent or Foreman. This Agreement shall be interpreted in accordance with the laws of the State where the Work is being done. However, for any accident occurring outside the state noted in Sections 34 (State Indemnity) and 35 (State Insurance) below, Sections 34 and 35 are deleted and incorporated by reference into this Agreement as the state Indemnity provision (Section 34) and the state insurance provision (Section 35) for the state where the accident occurs, [URL: WWW.YOURCOMPANY.COM/\(SPECIFIC STATE\) CRANE 50 STATE COMPENDIUM](http://WWW.YOURCOMPANY.COM/(SPECIFIC STATE) CRANE 50 STATE COMPENDIUM) (Update this when actual URL is activated.)

Lessor is a Service Provider of Cranes and additional Equipment, such as forklifts or hoisting Equipment which may include Operating Personnel. The Lessor is providing a Service and is not providing typical Subcontractor services such as installing materials and supplies like a plumber, electrician, or HVAC Trade. Lessor leases Equipment and Personnel to Customer pursuant to the following terms and conditions which shall apply. Even if the UT Agreement uses other terms describing the Lessor, the Parties agree the Lessor is providing only services of Equipment along with Operating Personnel and is not providing any materials or goods for installation, or any warranties associated with the UT Agreement's Statement of Work. The term "Operating Personnel" is defined as all crane operators, oilers, riggers, millwrights, helpers, technicians, mechanics, or any other personnel who perform crane operations including rigging, welding, assembling, disassembling, lifting, mobilizing, demobilizing and/or maintenance work or repair work on the Equipment. For Bare Rentals/Leases, if any Operating Personnel are provided by Service Provider along with the Equipment at Contractor's request, or recommended to Contractor by Service Provider, such Operating Personnel shall be deemed Special Employees or Borrowed Servants, and Contractor shall be responsible for payment of the wages and benefits of such Operating Personnel and Borrowed Servant, which shall be included in Contractor's rental invoices as part of the rental charges, even though such wages and benefits may be administered by Lessor.

GOVERNING TERMS

1. PREVAILING TERMS. As noted in the Preamble, these terms and conditions found in this SERVICE PROVIDER ADDENDUM TERMS AND CONDITIONS shall apply instead of and shall prevail over, all other similar, additional or inconsistent provisions in any other contract or contract documents related to the Work, including the Prime Contract, Upper Tier Contract, Contract Documents, Master Service Agreement, the Crane Services Agreement, Equipment Rental Agreement, any Project Supplement, any Purchase Order, or any Change Order or any other agreement, issued at any time. The Lessor's most recent quote has pricing for the Scope of Work for Lessor. The pricing Scope of Work includes as a material element of the pricing Lessor's terms and conditions. Any change to the terms and conditions of the quote materially changes the pricing and are not agreed to by Lessor. **Any attempt to modify the pricing or eliminating or changing the Scope of Work such as by deleting the quote or any of these Terms and Conditions deems the UT Agreement null and void along with any prior negotiations from any subsequent contract are null and void.**

2. FINAL TERMS. THE PERSON EXECUTING THIS AGREEMENT ON BEHALF OF THE CUSTOMER AND THE CUSTOMER REPRESENT THAT SAID PERSON HAS THE AUTHORITY TO EXECUTE THIS AGREEMENT AND TO BIND THE CUSTOMER TO THE TERMS OF THIS AGREEMENT. THESE TERMS AND CONDITIONS ARE THE FINAL TERMS AND CONDITIONS BETWEEN THE PARTIES. Customer shall be conclusively deemed to have accepted these Terms and Conditions and any incorporated terms (herein "Agreement"), and to have entered into this Agreement with Company. Company and Customer, each shall be known as a Party and together they shall be known as Parties. The rental period shall commence upon either the start of performance by Company or the execution of this Agreement or any quote by Customer. This Agreement is valid for the greater of 364 days, or the duration of the project, for this any and any other Equipment leased to Customer. The Company's quote is incorporated by reference into these T & C's. Customer agrees to sign the Company's Daily Work Ticket or LEM Ticket at the beginning of the shift and the end of the shift confirming that the Scope of Work was performed.

3. INTERPRETATION. This Agreement shall be interpreted as an understanding of Parties on equal footing and without resort to any rule of construction resolving ambiguity against the drafter.

4. SURVIVAL- SEVERABILITY. The provisions of this Agreement shall be interpreted and enforced to the fullest extent permitted under applicable law in the state where the Equipment is used. If any provision of this Agreement is determined by a court or other authority of competent jurisdiction to be invalid, illegal, or unenforceable, such provision shall be deemed modified to the minimum extent necessary to render it valid and enforceable, or, if modification is not possible, deemed severed from this Agreement, without affecting the validity, legality, or enforceability of the remaining provisions, which shall remain in full force and effect. In such event, the invalid or unenforceable provision shall be replaced with a valid provision that most closely reflects the original intent and economic effect of the Parties. This Agreement constitutes the complete and exclusive statement of the terms between Company and Customer and supersedes all prior or contemporaneous agreements, negotiations, representations, and understandings, whether written or oral. No amendment or modification of this Agreement shall be binding unless in writing and executed by authorized representatives of both Parties. All representations, warranties, indemnities, payment obligations, limitation of liability provisions, confidentiality obligations, and any provisions which by their nature are intended to survive and shall survive the expiration, suspension, or termination of this Agreement.

5. NO ASSIGNMENT. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns, except that Customer shall not be permitted to assign this Agreement without the express written consent of the Company.

6. HEADINGS. The section or section headings in this Agreement are inserted only as a matter of convenience and for reference and in no way, define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement or its interpretation.

7. VALIDITY OF PROVISIONS. If any provision of this Agreement is ever held to be invalid or unenforceable, that provision will be severed from the rest of this Agreement, and all of the other provisions of this Agreement will remain in effect. The Parties agree that it is the intention of the Parties that this Agreement is valid and complies with all laws.

8. EXECUTION/COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same, document. The terms of this Agreement shall not be altered in any manner except by written instrument signed by Company and Customer and shall be binding upon and inure to the benefit of their permitted successors and assigns.

9. AUTHORIZED SIGNATURE. In the event this Agreement has been executed by an individual on behalf of a corporation or other business entity, the person whose signature is affixed hereto and the entity for which the individual has signed this Agreement, represent to Company that the individual signing has full authority to execute this Agreement on behalf of said corporation or other business entity. Company is relying on this representation by Customer and as such, Company is providing Equipment and Operating Personnel.

SCOPE OF WORK AND RESPONSIBILITIES

10. RESPONSIBILITIES OF COMPANY. Company shall provide the Operating Personnel and Equipment shown in this Agreement, Quote, BEP or its equivalent, in good working order. The Equipment and Operating Personnel shall be made available pursuant to the schedule

agreed by the Parties. **Company is not supplying any materials, supplies or product under this Agreement. Company does not warrant the suitability or fitness of any supplies, supplies, product or material for any particular purpose and further disclaims all liability arising from the suitability or fitness of any supplies, product, or material for any particular purpose.**

11. RESPONSIBILITIES OF CUSTOMER. The Customer shall a.) Abide by these terms and conditions, including all terms and conditions incorporated herein; b.) Provide safe and reasonable access to and egress from job site (See Section 17 (Free and Clear Access); c.) **Company is not responsible for providing any supplies, materials or goods for installation into any personal or real property;** d.) Provide for reasonable scheduling of deliveries while Company Equipment is on site; e.) Provide for a reasonable on-site area for Company's Equipment assembly, disassembly, erection, mobilization, demobilization repairs or maintenance ("A&D"); e). Perform all necessary cleanup of any A&D area, Company is not responsible for any cleanup of A&D area; f.) Provide labor where required for access, egress, or ingress as needed; g.) Provide timely notice of any schedule changes, with a minimum of 4 business day notice for any delays or cancellations; and h.) Secure any necessary permits, easements or licenses required by Federal, state or local agencies for the performance of the lifting service by Company on the job site. Customer retains sole, exclusive, and non-delegable control over the manner, means, methods, sequencing, coordination, and safety of the Work Site as set forth in Section 12 (Control-Job Site Safety), and all Work performed by Company Operating Personnel shall be performed strictly in accordance with Customer's exclusive direction supervision and control. Company furnished Operating Personnel shall be qualified and competent for their assigned tasks, however, Company shall not provide any rigging personnel, signal personnel. Company shall deliver the Equipment for use in good operating condition. If the Equipment is damaged as result of Customer's directions including A&D, use, placement, transportation on the project site, repair/maintenance location, then Customer shall be responsible for all repairs to the Equipment. No back charges shall be levied against Company for delays or stoppage which arise out of this Agreement. Customer and Controlling Entity are responsible for directing, controlling, and supervising the manner, means and methods of the Work. Additional Responsibilities of Customer are contained in all the other sections of this Agreement.

OPERATIONS, CONTROL OF WORK AND SAFETY

12. CONTROL-JOB SITE SAFETY. Customer is the Controlling and Supervising entity at the job site and shall have sole, exclusive, and non-delegable control over the manner, means, methods, sequencing, coordination, and safety of the work site and all other entities working on the job site. Customer shall be solely and exclusively responsible for compliance with all applicable safety laws, regulations, and standards, including OSHA requirements for all job site conditions unless caused by the negligence of the Company. Company shall have no authority to direct or control the job site conditions and shall have no duty to supervise, inspect, or ensure jobsite safety except to the extent as required by OSHA and applicable ASME Standards. Customer shall be solely and exclusively responsible for all jobsite safety conditions including but not limited to the identification, evaluation, elimination, and control of all hazards; compliance with all applicable federal, state, and local safety laws, regulations, and standards (including OSHA); and the implementation and enforcement of all safety programs, procedures, and protocols. It shall be the duty of Customer and any Controlling Entity to give specific instructions and directions to all persons working on the job site. Customer agrees to provide or otherwise select competent and experienced Operating Personnel to direct all operations and further agrees that the standard of care and responsibilities will be in accordance with all applicable safety standards.

13. LIFT DIRECTOR. It shall be the sole duty and responsibility of the Customer to designate, for all Work, an experienced, trained, and competent Lift Director and Site Supervisor, as defined by applicable OSHA, ANSI and ASME standards, including but not limited to ASME B30.5 (2025) and P30.1 (2024) (or current editions) and such individuals shall act exclusively as agents of the Customer with full, sole, and exclusive authority and responsibility to direct, supervise, and control all aspects of the Work, including but not limited to the operation, signaling, rigging, spotting, welding, technical work, mobilization, demobilization, maintenance, and assembly or disassembly of the Equipment by all personnel involved, (collectively, "Operating Personnel"), with the Customer retaining exclusive responsibility for all instructions, supervision, safety, and the means, methods, and sequencing of the Work and the operation of the Equipment, and with the express understanding that Company does not supply the Lift Director and shall have absolutely no control, authority, or right to direct the Lift Director, Site Supervisor, or any Operating Personnel, all of whom shall remain under the exclusive direction and control of the Customer at all times, regardless of whether any personnel are provided, recommended, or supplied by Company, and any such personnel shall be deemed Borrowed Servants of the Customer under the Borrowed Servant Doctrine and shall be considered employees of the Customer for all purposes, including liability. Lift Director shall have the exclusive right and obligation to supervise and control the use, operation, and direction of the Equipment and all Operating Personnel, including the authority to stop all operations for safety concerns and to remove or reject any personnel or practices deemed unsafe. Actions taken by any personnel, including refusal by an operator to follow a direction due to safety concerns, shall not alter or diminish the Lift Director's exclusive authority and responsibility, and the Customer acknowledges that all Equipment use and Work performed shall be solely within and in furtherance of the Customer's contractual Scope of Work on the project. Company shall have no authority to replace, substitute, or direct Operating Personnel except with the prior express approval of the Lift Director. Any approved substitution remains under the sole direction and control of the Customer, and the Customer assumes full responsibility and liability for any and all loss, damage, injury, or death arising out of or related to the acts or omissions of the Lift Director, Site Supervisor, or any Operating Personnel, including Special Employees, regardless of any

involvement, recommendation, or provision of personnel by Company.

14. OPERATIONS LHE. Customer shall, at all times, direct the operation and movement of the Equipment (also referred to as load handling Equipment or "LHE") in a safe and competent fashion and shall be responsible for the actions of all those persons involved in the operation or movement of the Equipment. Customer shall, at all times, comply with all applicable local, state, federal and provincial statutes, rules, regulations, and National Standards including OSHA 29CFR1926.1400-1444 including subpart CC, ANSI and ASME B30.5(2025) and P30.1(2024) relating to the operation of the LHE. During use and operation of the Equipment, Customer, directly and through its agents, servants, and employees, shall at all times, assume the roles and fulfill all the responsibilities of the a) Lift Director, b) Lift Planner, c) Site Supervisor, d) controlling entity as defined by OSHA, e) Site Safety Officer, f) Crane User and/or LHE User, g) Signaller, h) Rigger, and i) Spotter; as those terms are defined in 29CFR1926.1400-1444 including subpart CC (OSHA), ASME P30.1 (2024) Lift Planning and ASME B30.5 (2025). If Company supplies any lift plans for use by the Customer and/or the Lift Director, Customer agrees that the lift plans are supplied for informational purposes only, and the Lift Director is ultimately responsible to review and approve the lift plan for use. Customer is solely responsible for gathering and providing all information used in the lift plan. Customer hereby guarantees that those agents, servants, and employees assigned the roles and functions set forth above shall be, at all times, through education, training, experience, skill, and physical fitness, as necessary, competent and capable to perform the functions they are assigned. Company is not providing any Signaller, Lift Director, Site Supervisor, Site Safety Supervisor, nor any rigging services unless provided in the Company's BEP or Scope of Work.

15. RIGGING. Customer is required to provide any and all Rigging or similar devices to be used with the Equipment. In addition, rigging is not limited to, chokers, slings, straps, chains, hooks, spreaders, fittings, rope, or wire. Customer and the Lift Director assume responsibility for the manner, means, and method of rigging; the condition of the rigging, the condition and use of any lifting lugs, and hereby guarantee that those agents, servants and employees involved in the rigging of any load shall be, at all times, through education, training, experience, skill, and physical fitness, as necessary, competent and capable to perform the functions they are assigned. If Company supplies any rigging, then the Lift Director is solely and exclusively responsible for inspection and approval of rigging to be used.

16. LOAD CALCULATIONS AND DEVICES. If any Equipment includes a load measuring device, the Customer acknowledges and agrees that such device is provided for convenience only and that Company makes no warranties or representations, express or implied, regarding its accuracy, reliability, or consistency. Customer expressly agrees not to rely on any such device for determining load weight under any circumstances. Customer assumes full and exclusive responsibility for independently determining the weight of each load, calculating the Equipment's lifting capacity for every lift, and determining whether any lift may be safely performed, all based solely on the Customer's own expertise and judgment in coordination with the Lift Director. Customer further assumes all risks, liabilities, losses, and damages arising out of or related to (i) any reliance on a load measuring device, or (ii) any failure to properly determine load weight or lifting capacity, regardless of any alleged negligence, error, or omission by Company.

17. FREE AND CLEAR ACCESS. Company requires safe, free and clear access, ingress and egress, to any work/project site for Operating Personnel and Equipment, and a safe site with a clear area for Assembly, Disassembly, Mobilization, Demobilization ("A&D") and for operation of Equipment. Customer is solely responsible for providing a safe site for any access, ingress and egress and operation of the Equipment, along with relocation or removal of all obstacles including but not limited to overhead power lines, curbing, signs, fencing, or other obstructions, stable and compacted ground conditions suitable for the A&D and operation of all Equipment.

18. GROUND/POWERLINES. Customer, as the controlling entity under applicable OSHA regulations including but not limited to 29 CFR 1926.1402, 1926.1408, and 1926.1409, and as set forth in Section 12 (Control-Job Site Safety), shall assume sole, absolute, and non-delegable responsibility for all ground conditions, supporting materials, site preparation, and protection against power line hazards in connection with the transportation, assembly/disassembly, mobilization/demobilization, use, operation, storage, and placement of the Equipment. "Ground conditions" are defined as the ability of the ground to support the size, weight, configuration, and operational loads of the Equipment, including all counterweights, taking into account slope, compaction, stability, drainage, and firmness. "Supporting materials" are defined as blocking, mats, cribbing, or similar devices. Customer shall ensure that all Equipment manufacturer specifications and requirements are strictly satisfied and that Equipment shall not be assembled or used unless ground conditions are firm, properly compacted, drained, and graded to achieve adequate support and level, including through the use of supporting materials, as necessary. The Customer shall be solely responsible for all site preparation, including the identification, evaluation, communication, and elimination of hazards in, on, around, and beneath the Equipment set-up area, including subsurface and below-grade conditions, and shall perform or cause to be performed all necessary inspections, engineering evaluations, and soil testing to confirm that ground conditions meet or exceed applicable standards, including AASHTO H-20 / HS-20 where applicable. If site conditions are inadequate to support Equipment operations or require reinforcement, relocation of utilities, or other corrective measures, all such Work and associated coordination shall be performed by the Customer at its sole cost and expense. Any delays, additional mobilization, towing, pushing, damage, or costs resulting from inadequate site conditions shall be the sole responsibility of the Customer and shall be reimbursed to

Company at cost plus applicable markup. The Customer further assumes sole responsibility for ensuring that Equipment and Operating Personnel are not exposed to energized power lines, requiring that all power lines in the work area be identified prior to commencement of Work and de-energized through coordination with the appropriate utility or authorized entity. Where de-energization is not possible, the Customer shall be solely responsible for implementing all required safety measures, including insulation, grounding, maintaining minimum clearance distances, and compliance with all applicable OSHA, ANSI, and ASME standards. Customer shall not rely on proximity warning devices as a substitute for maintaining required clearances, and Company shall have no responsibility, duty, or control over ground conditions, site preparation, subsurface conditions, supporting materials, or power line safety. Customer assumes full responsibility and liability for any and all loss, damage, delay, injury, or death arising out of or related to ground conditions, site conditions, or exposure to power lines, regardless of any recommendations, inspections, or involvement by Company. Customer acknowledges and agrees that it is the "controlling employer" and "exposing employer," as those terms are defined under OSHA regulations and the multi-employer worksite doctrine, and assumes all duties and liabilities associated therewith.

19. OPERATING PERSONNEL. "Operating Personnel" "Operator" or "Employee" shall mean all individuals furnished, arranged, or utilized in connection with the Equipment or Work, including but not limited to Lifting Equipment ("Equipment") operators, oilers, iron workers, riggers, millwrights, leadmen, signal persons, spotters, helpers, technicians, mechanics, welders, and any other Operating Personnel performing or supporting operations, including assembling, disassembling, mobilizing, demobilizing, lifting, hoisting, signaling, maintenance, inspection, repair, or any other Work related to the Equipment. Where Operating Personnel are provided with the Equipment, all compensation, wages, benefits, payroll taxes, and related costs shall be included in the rental charges and payable by Customer, regardless of whether such amounts are administered, processed, or paid by Company on behalf of such Operating Personnel. Customer is directly paying Company all wages and benefits of the Operating Personnel. All Operating Personnel shall remain at all times Special Employees of the Company. Customer shall have exclusive responsibility for jobsite conditions, safety of the work environment, and direction of all lifting operations, including designation of qualified signal persons and lifting methods, and assumes all risks arising therefrom. Company shall not be responsible for acts, omissions, or errors in judgment related to site conditions, load integrity, or instructions provided by Customer or its representatives.

20. SPECIAL EMPLOYEE. All Operating Personnel who participate in the operation, maintenance or use of the Equipment are deemed Special Employees and are employees of Customer. Such Operating Personnel may not operate or use the Equipment without Customer's acceptance and approval and shall at all times act under Customer's sole and exclusive direction, supervision, and control of the manner, means and methods for all Work. Further, Customer shall be fully liable for any and all loss or damage, including property damage and bodily injury or death as a result of the acts or omissions of such SE, in accordance with the scope and all provisions of this Agreement or any written and executed additions to this Agreement.

21. PANDEMIC SAFETY RULES. Customer shall ensure that all Operating Personnel, agents, contractors, and invitees present at or performing Services on the job site are properly trained regarding the symptoms, transmission risks, and mitigation measures associated with any communicable, infectious, or contagious disease, including without limitation any pandemic, epidemic, outbreak, or declared public health emergency. Customer shall implement, enforce, and continuously update all health and safety measures necessary to limit or prevent the spread of such diseases, including full compliance with all applicable laws, regulations, emergency orders, and authoritative guidance issued by the Centers for Disease Control and Prevention (CDC), the Occupational Safety and Health Administration (OSHA), and any federal, state, or local governmental authority having jurisdiction. Customer shall establish, maintain, and document appropriate screening, monitoring, reporting, isolation, quarantine, and return-to-work protocols consistent with then-current public health requirements and industry standards. Customer shall not permit any individual to enter the job site or perform Services if such individual is experiencing symptoms consistent with a communicable disease, has tested positive for such disease, has been directed by a medical professional or public health authority to isolate or restrict activities, or has had close or household contact with an infected individual within applicable public health guidelines. Customer shall promptly notify Company of any actual or suspected exposure, outbreak, or unsafe condition that may impact the Services and shall cooperate fully with any additional safety measures or operational controls required by Company. Customer acknowledges and agrees that it retains sole responsibility for workplace safety conditions under its control, including compliance with applicable occupational safety laws and the OSHA multi-employer worksite doctrine, and shall ensure that its actions or omissions do not create or contribute to hazardous conditions. Customer assumes full responsibility for compliance with this provision and shall indemnify, defend, and hold harmless Company and its affiliates, officers, employees, and agents from and against any and all claims, demands, damages, losses, fines, penalties, costs, and expenses, including attorneys' fees, arising out of or related to Customer's failure to comply with these requirements or any exposure, transmission, or failure to control a communicable disease attributable to Customer or its Operating Personnel.

CHANGES, DELAYS & PERFORMANCE

22. CHANGE IN CONDITIONS. Any changes to the condition of the site, access, or Scope of Work arising after submission of the proposal and prior to or during performance shall be the sole responsibility of Customer. Customer shall immediately notify Company in writing, including by email, of any site, set-up, environmental, subsurface, access, or operational conditions not previously disclosed, and shall

also provide prompt verbal notice where such changes may impact safety or scheduling. Company shall be entitled to rely on the accuracy and completeness of all information provided by Customer. In the event of any increase, decrease, delay, disruption, inefficiency, or inability to access the Work site resulting from such conditions, the contract price, schedule, and scope shall be equitably adjusted, including but not limited to additional charges for standby time, mobilization, demobilization, remobilization, overtime, extended duration, and Equipment or labor costs, calculated at Company's standard or original contract rates. Customer shall provide timely authorization for extra Work, and execution of any Daily Work Ticket, Work Order, time sheet, or similar document shall constitute conclusive evidence of acceptance of such changes and authorization of all associated costs. Failure to provide advance notice shall not relieve Customer of responsibility for resulting costs or impacts. Customer shall ensure uninterrupted and safe access to the Work site sufficient for Company to perform, operate, assemble, disassemble, mobilize, and demobilize its Equipment, and any interference, restriction, or unsafe condition shall entitle Company to suspend performance and recover all resulting costs and time extensions.

23. DELAYS, STOPPAGES AND BACK CHARGES. a.) Company shall have no liability for back charges or other amounts for delays or stoppages which result from: i.) Breach of the Responsibilities of Customer above in Section 11 (Responsibilities of Customer); ii.) **The condition of any supplies, goods or materials including, but not limited to, unliftable supplies,** iii.) Mechanical breakdown or failure of lifting Equipment iv.) The first one (1) hour of any other mechanical breakdown or failure of the lifting Equipment; v.) Late arrival of supplies, goods or materials or other material; vi.) Damage to asphalt, concrete, driveway, curbs, sidewalks, suspended slabs, or slab on grade; viii.) damage to personal or real property beyond curb line, b.) In no event shall back charges or other amounts accruing exceed the total price chargeable by Company for that one (1) day period and Company shall not be liable for, and Customer hereby waives, discharges and releases Company for all damages including ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, INDIRECT, DIRECT, SPECIAL, LIQUIDATED, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF THE EQUIPMENT OR SERVICES PERFORMED HEREUNDER OR FAILURE TO PERFORM ANY SERVICES OR OBLIGATIONS HEREUNDER. See Section 32 (Limitation of Liability) for additional T&C's.

24. FORCE MAJEURE. Except as otherwise expressly set forth herein, in the event a Party shall be delayed or hindered in, or prevented from, the performance of any act required of it hereunder by reason of strike, inability to procure materials, failure of power, telecommunications or connectivity failure, exercise of civil authority, restrictive governmental laws, including, but not limited to, the Defense Production Act, disaster declarations, regulations, slowdowns, stay in place orders/shelter at home orders, material adverse change, governmental shutdowns or similar governmental requirements, riot, insurrection, war, civil unrest, protests, wind or other inclement weather, act of God, pandemic, epidemic or other widespread illness, viral slowdowns/issues, or other event outside the reasonable control of that Party (each such cause or event being hereinafter referred to as a "Force Majeure"), then performance of such acts will be excused for the period of the delay and the period for performance of any such act shall be extended for a period equivalent to the period of such delay. Any time a Party is experiencing a Force Majeure that is expected to result in a significant failure or delay, that Party will endeavor to give notice to the other party describing the Force Majeure and the nature of the failure or delay and giving an estimate as to how long the delay will last. A Party claiming an excusable delay or failure under this paragraph shall use reasonable efforts to alleviate or overcome the Force Majeure as soon as practicable. A Force Majeure event shall not excuse the Customer from payment of the rental rate as originally agreed upon including any Operating Personnel wages and benefits. If this agreement is cancelled or terminated early due to Force Majeure, then Customer shall pay an additional two (2) months' rent as a cancellation fee.

25. RENTAL DECISIONS. CUSTOMER HAS MADE THE DECISION TO RENT THIS EQUIPMENT AND OPERATING PERSONNEL BASED ON CUSTOMER'S REQUIREMENTS FOR THIS PROJECT. COMPANY MADE THIS EQUIPMENT AND OPERATING PERSONNEL AVAILABLE FROM A POOL OF AVAILABLE OPERATING PERSONNEL AND MACHINES FOR CUSTOMER'S USE AND THE DECISION TO USE THIS EQUIPMENT AND ANY OPERATING PERSONNEL IS SOLELY CUSTOMER'S DECISION. **THE PROVIDED OPERATING PERSONNEL IS NOT THE LIFT DIRECTOR NOR SITE SUPERVISOR.** CUSTOMER RENTS THE EQUIPMENT IN GOOD WORKING ORDER, BUT COMPANY SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOSS, DELAY, OR DAMAGE RESULTING FROM DEFECTS IN THE EQUIPMENT OR ANY ACCIDENTAL BREAKAGE. NOTWITHSTANDING THE FOREGOING, COMPANY SHALL REPLACE THE EQUIPMENT WITH SIMILAR EQUIPMENT IF THE EQUIPMENT FAILS TO OPERATE IN ACCORDANCE WITH THE MANUFACTURERS SPECIFICATIONS AND/OR OPERATING INSTRUCTIONS CAUSED BY THE NEGLIGENCE OF THE COMPANY. SUCH REPLACEMENT SHALL BE MADE AS SOON AS REASONABLY POSSIBLE AFTER CUSTOMER RETURNS THE NON-CONFORMING EQUIPMENT. Customer acknowledges that the equipment is of size, design, capacity, and manufacturer selected by Customer. Company has not made, and does not make, any representation, warranty, or covenant express or implied with respect to condition quality durability or suitability of the Equipment. Company makes no representations or warranty of any kind that the Equipment is or shall be fit or suitable for any specific purpose or purposes of Customer. This document is a complete and exclusive statement of all the terms of this agreement and includes all the representations of the Parties. Company makes no other express or implied warranties respecting the Equipment nor shall this contract be varied, supplemented, qualified, or interpreted by any prior course of dealing between the Parties or by any usage of trade. The

Company is not the manufacturer of the Equipment nor the manufacturer's agent for any purpose.

DISSATISFACTION WITH LEASED EQUIPMENT AFTER ACCEPTANCE: If the leased Equipment is or becomes defective or unfit FROM ANYCAUSE WHATSOEVER INCLUDING ANY MANUFACTURING DEFECTS or the Customer desires to cease the use of the leased Equipment for any reason whatsoever, **THE CUSTOMER'S SOLE RIGHT AND REMEDY SHALL BE THE RETURN OF THE LEASED EQUIPMENT TO COMPANY AND THE TERMINATION OF THIS LEASE.** In the event that Equipment is returned, the Customer charges shall in no event, shall be less than the transportation costs and the minimum rental as provided.

26. WARRANTIES. Contractor is a Lifting service company, lifting supplies, goods or cargo at the Customer's sole and exclusive direction. There is no warranty after Work is completed on each shift.

PRICING, PAYMENT & COMMERCIAL TERMS

27. PAYMENT. In accordance with this Agreement, Customer shall pay Company within 30 days of the date of invoice. Paid when Paid is not permitted under this Agreement notwithstanding any other language in any document.

28. RETENTION. No retention or withholding of contract sums by the Customer is permitted.

29. SUSPENSION PERIOD. If Customer notifies Company in writing that Customer will not need the Equipment for such period(s) of time as are specified in such notice (the "Idle Periods"), and Company desires to rent the Equipment to a third party during some or all of the Idle Periods, then Company shall have the right to suspend this Agreement by notifying Customer in writing (no oral approval of Suspension Period is allowed) of those portions of the Idle Periods during which this Agreement will be suspended (each, a "Suspension Period"; together, the "Suspension Periods"). During each Suspension Period:

- (1) Subject to the provisions of (2) below, this Agreement will remain in full force and effect.
- (2) All of Customer's obligations under this Agreement are not suspended except for Customer's obligation to pay Rent during the Suspension Period or Periods.
- (3) Company will have the right to rent the Equipment to one or more other Third-Parties.
- (4) Customer will not be entitled to use the Equipment during the Suspension Period or Periods.

At the end of each Suspension Period, Company shall once again make the Equipment available to Customer in substantially the same condition and repair as it was in at the start of such Suspension Period, normal wear and tear excepted.

30. OCIP-CCIP-CONTRACTOR CONTROLLED PROGRAMS. Company is not responsible for providing any on-site insurance coverage when an OCIP-CCIP-Contractor Controlled Program is in place.

31. TAXES; FEES; PERMITS. Customer shall be responsible for any sales, use, excise, value added, utility, personal property or other taxes and any license fees, and/or assessments relating to Customer's use or possession of the Equipment. Customer shall pay such taxes and other charges to Company in accordance with invoices submitted by Company. Customer shall, at its sole cost and expense, obtain and maintain all licenses, permits or certificates required by any applicable law and directly related to the performance of Work or Work performed at a specific project or work site.

RISK ALLOCATION & LIABILITY

32. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR ANY OTHER AGREEMENT, COMPANY SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, REMOTE, LIQUIDATED, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOST INCOME, LOST OR DELAYED PROFITS OR REVENUE, LOSS OF BUSINESS OR GOODWILL, UNABSORBED OVERHEAD, INCREASED EXPENSES, OR BUSINESS INTERRUPTION, ARISING OUT OF OR RELATING TO THE FURNISHING, PERFORMANCE, OR USE OF EQUIPMENT OR SERVICES, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY (EXPRESS OR IMPLIED), STRICT LIABILITY, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION APPLIES TO ALL LOSSES, INCLUDING THOSE ARISING FROM GOVERNMENTAL ACTIONS, LAWS, REGULATIONS, DISASTER DECLARATIONS, PANDEMICS, WEATHER EVENTS, LABOR DISRUPTIONS, SUPPLY CHAIN INTERRUPTIONS, CIVIL UNREST, OR OTHER EVENTS BEYOND COMPANY'S REASONABLE CONTROL. COMPANY'S TOTAL CUMULATIVE LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE GREATER OF (I) THE AMOUNTS PAID TO COMPANY FOR THE APPLICABLE EQUIPMENT OR SERVICES DURING THE THREE (3) MONTHS PRECEDING THE CLAIM, OR (II) \$10,000 (THE "DAMAGES CAP"), AND SUCH AMOUNT SHALL CONSTITUTE THE EXCLUSIVE MONETARY REMEDY AVAILABLE TO CUSTOMER, AND UNDER NO CIRCUMSTANCES SHALL COMPANY'S LIABILITY EXCEED THE DAMAGES CAP. FOR TRANSPORTED CARGO, LIABILITY IS FURTHER LIMITED TO A RELEASED VALUE OF \$2.50 PER POUND, WITH A MAXIMUM RECOVERY OF \$100,000 PER TRUCKLOAD. COMPANY SHALL HAVE NO LIABILITY FOR ANY CLAIMS

ARISING FROM OR RELATING TO HAZARDOUS MATERIALS, INCLUDING BUT NOT LIMITED TO ASBESTOS, LEAD PAINT, MOLD, OR OTHER REGULATED OR UNREGULATED HAZARDOUS SUBSTANCES, AND IF SUCH CONDITIONS OR MATERIALLY DIFFERING SITE OR SUBSURFACE CONDITIONS ARE ENCOUNTERED, COMPANY SHALL BE ENTITLED TO AN EQUITABLE ADJUSTMENT IN PRICE, SCHEDULE, AND SCOPE. CUSTOMER SHALL BE RESPONSIBLE FOR ALL PROPERTY DAMAGE AND BODILY INJURY, INCLUDING DAMAGE TO UNDERGROUND, OVERHEAD, SURFACE, OR EMBEDDED UTILITIES OR STRUCTURES, AND FOR WATER-RELATED LOSSES, EXCEPT TO THE EXTENT CAUSED BY THE SOLE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF COMPANY. TO THE FULLEST EXTENT PERMITTED BY LAW, THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT, AND CUSTOMER AGREES THAT INSURANCE MAINTAINED BY COMPANY, IF ANY, SHALL NOT EXPAND COMPANY'S LIABILITY BEYOND THE LIMITATIONS SET FORTH HEREIN. Furthermore, Company Liability for Goods/Cargo, Upper Tier entity, or Owner controlled Goods/Cargo under the Company's care, custody, or control is limited to \$100,000 even if held in storage or as bailment of Company. Company's liability for Goods/Cargo damage shall not exceed \$100,000 unless the Customer requests and purchases additional coverage. Requests for additional coverage will be accommodated by Company at additional costs to Customer. Also see posted tariffs/rates at [Company's Website](#). This includes all Goods/Cargo that are held by Company at any warehouse or storage facility or are in Temporary Transit and or Storage using the Company's asset-based trucks or USDOT Brokerage Services.

33. ASSUMPTION AND RELEASE. The Customer assumes all risks associated with the performance of any and all Work occurring under or arising out of this Agreement, including, without limitation, any risks, claims, demands, damages, losses, suits, or causes of action arising from or related to the acts or omissions, negligence, or carelessness of the Customer, any Customer Site Supervisor or Field Representative, or the Customer's agents, servants, employees, subcontractors, independent contractors, invitees, or any other person or entity acting on its behalf or under its control. The Customer further expressly assumes all risks of loss, damage, injury, or death to persons or property, whether arising before, during, or after the performance of such Work, and regardless of whether such risks are known or unknown, foreseeable or unforeseeable. To the fullest extent permitted by applicable law, Customer waives, releases, and forever discharges Company and its parent, affiliates, subsidiaries, officers, directors, members, managers, agents, servants, employees, representatives, and insurers from any and all liability, claims, demands, damages, costs, and expenses (including attorneys' fees), of any kind or nature whatsoever, whether arising in contract, tort (including negligence), strict liability, or otherwise, for any death, disability, personal injury, property damage, economic loss, or other harm arising out of or in any way related to the performance of Work under or in connection with this Agreement, except to the extent caused by Company's gross negligence or willful misconduct, if such limitation is required by applicable law. This assumption of risk and release shall survive the completion, termination, or expiration of this Agreement and shall be binding upon the Customer and its heirs, successors, and assigns.

34. INDEMNIFICATION AND RELEASE. Parties understand and agree that a safe workplace with no accidents is the goal of both Parties. However, in the event of an accident or incident, Parties agree to each pay their fair share of damages based on their pro-rata share of liability. In accordance with the Preamble and General Terms and Conditions of this Agreement, this Section supersedes any other contract provision involving or dealing with Indemnity. Customer shall indemnify, defend, and hold harmless Company from and against any and all claims, damages, losses, or expenses arising out of or related to jobsite safety, site conditions, or hazards, except to the extent caused by the sole negligence, gross negligence or willful misconduct of Company.

ARIZONA INDEMNIFICATION AND RELEASE PROVISIONS. IT IS THE PARTIES' INTENT THAT THIS PROVISION IS SPECIFICALLY IN COMPLIANCE WITH ALL ARIZONA LAWS including §32-1159; §34-226 and §41- 2586, AND TO THE FULLEST EXTENT PERMITTED BY ARIZONA LAW, LESSEE AGREES TO INDEMNIFY, RELEASE, AND SAVE LESSOR, ITS EMPLOYEES AND AGENTS HARMLESS FROM ALL CLAIMS OR LOSS FOR DEATH OR INJURY TO PERSONS INCLUDING LESSOR'S AND LESSEE'S EMPLOYEES, OF ALL LOSS, DAMAGE OR INJURY TO PROPERTY, INCLUDING THE EQUIPMENT, ARISING IN ANY MANNER OUT OF LESSEE'S OPERATION OR USE OF THE EQUIPMENT. LESSEE'S OBLIGATION TO INDEMNIFY SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO, INDEMNITY FOR ANY AND ALL LIABILITY OF LESSOR ARISING OUT OF ANY STATUTE, REGULATION OR DUTY IMPOSED BY LAW. LESSEE'S OBLIGATION TO INDEMNIFY SHALL ALSO INCLUDE, BUT NOT BE LIMITED TO, LESSOR'S COMPLETE SCOPE OF WORK, INCLUDING ALL SERVICES, ADVICE, RECOMMENDATIONS, PLANS AND SPECIFICATIONS PROVIDED. IT IS THE PARTIES' INTENT THAT THIS DUTY TO INDEMNIFY IS AS BROAD AS PERMITTED BY ARIZONA LAW. Lessee's duty to indemnify hereunder shall include all costs or expenses arising out of all claims specified herein, including all court and/or arbitration costs, filing fees, private investigator/adjustor fees and costs, expert fees and costs, costs of storage and down time for inability to use the Equipment, and costs of testing of property, Equipment, or other items initiated by the Lessor, attorneys' fees and costs of settlement. Lessee shall be required to indemnify Lessor for Lessor's own negligence or fault, whether the negligence or fault of the Lessor be direct, indirect or derivative in nature. However, the Lessee shall not be required to indemnify Lessor for liability for loss or damage resulting from the sole negligence of the Lessor or the Lessor's agents, employees or Indemnitees. Notwithstanding the foregoing sentence and in accordance with §32-1159.01, for any Work regarding a dwelling as defined by §12-1361, Lessee shall be not

required to indemnify Lessor from or against liability for loss or damage resulting from the negligence of Lessor or the Lessor's indemnitees, employees, subcontractors, consultants or agents. The Lessee's obligations hereunder shall further not be limited by the amount of its liability insurance and the purchase of such insurance for Lessor shall not operate to waive any of the above obligations. This provision is separate and distinct from any other provision or paragraph in this contract, including any provision or paragraph concerning partial indemnification or procurement of insurance. If this paragraph is declared invalid, then all other paragraphs of this contract shall stand.

35. INSURANCE. Parties understand and agree that a safe workplace with no accidents is the goal of both Parties. However, in the event of an accident or incident, Parties agree to each pay their fair share of damages based on their pro-rata share of liability. In accordance with the Preamble and General Terms and Conditions of this Agreement this section supersedes any other contract provision involving or dealing with Insurance.

ARIZONA INSURANCE. To the fullest extent permitted by Arizona law, the Lessee agrees to purchase, maintain and carry the following insurance coverages prior to the Equipment's arrival on the job site. The Lessee shall procure the following coverages for Lessor: a. Workers' Compensation and Employers' Liability insurance, with limits of at least the statutory minimum or \$1,000,000, whichever is greater; b. Primary non-contributory Commercial General Liability ("CGL"), Commercial Auto (CA) and Rigger's Liability (RL) insurance including loss of use coverage on an occurrence basis, along with bodily injury and property damage coverages with minimum limits of \$1,000,000 per occurrence and \$2,000,000, in the aggregate; c. Excess/umbrella following form non-contributory insurance in the amount of at least \$5,000,000 and Lessee's primary and excess/umbrella policies must be endorsed so that they are primary and non-contributory to all of Lessor's insurance policies; d. Inland marine/all-risk and or builder's risk which includes an all-risk physical damage insurance, on a primary non-contributory basis, to cover the full insurable value of the Equipment, including any boom or jib, for its loss or damage from any and all causes, including, but not limited to, overloading, misuse, fire, theft, flood, explosion, overturn, accident, and acts of God during the rental term and Lessee shall pay all deductibles and or coinsurance requirements of the inland marine/builders risk policies provided by Lessee and Lessee shall also provide the greater of 6 months or \$500,000.00 rental reimbursement coverage or similar coverages for the Lessor's benefit for any loss or if the Equipment is damaged, stolen, lost or destroyed; e. All policies are to be written by insurance companies acceptable to the Lessor including naming Lessor as Loss Payee, Additional Insured and Certificate Holder; f. For all liability insurance policies (including any excess/umbrella policies) Lessee shall name as an additional insured, Lessor and Lessor's officers, directors, shareholders, members, managers, partners and employees, all affiliated partnerships, joint ventures and corporations of Lessor and anyone whom Lessor is required by contract to name as an additional insured; g. Lessee shall use all of the following ISO endorsements to provide additional insured status and coverage for Lessor: CG 2001 04 13, CG 2007 12 19, CG 2010 04 13, CG 2010 12 19, CG 2026 04 13, CG 2026 12 19, CG 2028 07 04, CG 2028 12 19, CG 2033 12 19, CG 2034 03 97, CG 2034 12 19, CG 2037 04 13, CG 2037 12 19, CG 2038 12 19, CG 2040 12 19, CG 2503 03 97, CG 2039 12 19, CG 2040 12 19, and CG 2404 05 09, CA 0449 11 16, CX 2433 11 16, CU 2478 11 16; except that for any Work regarding a dwelling as defined by §12-1361, Lessee shall only use additional insured endorsements that are in compliance with §32-1159.01; h. Additional Insured coverage shall include, but not be limited to, coverage for any and all liability of Lessor arising out of any statute, regulation or duty imposed by law; i. Additional Insured coverage shall include, but not be limited to, coverage for Lessor's complete Scope of Work, including all services, advice, recommendations, plans or specifications provided; j. Lessee shall provide punitive damage coverage for Lessor's benefit on all liability policies, unless prohibited by state law; k. Lessee shall name Lessor as a Primary Loss Payee on all insurance policies; l. Lessee shall provide all insurance certificates to Lessor when requested by Lessor including prior to start of Work by Parties, if the insurance certificate and or attachments including endorsements show or indicate that the Lessee does not have the required insurance, Lessor does not waive any right to withhold money, or bring Arbitration or Suit against the Lessee for Lessee's failure to provide the required insurance as provided by this term and conditions along with all other terms and conditions of the Agreement between the Parties; Lessor does not waive any rights that Lessor has if the Lessee fails to provide the required insurance; the Parties agree that the required insurance is customary and proper for the type of Work being provided by Lessor and that the Lessee may request and negotiate Lessee providing other types of coverages and/or limits for the Work provided by Lessor.; m. All of Lessor's policies, and the policies of anyone Lessor is required to insure shall be excess over all of Lessee's policies; n. All Lessee's policies shall be endorsed to require the insurer to give at least thirty (30) days advance notice to all insured's, including additional insured's, prior to cancellation or non-renewal; o. All Lessee's policies must remove any exclusion for explosion, collapse and underground operations (XCU); p. All Lessee's policies must remove certain exclusions including (1) the "employer's liability exclusion," for all insureds, including notices and endorsements for injuries to an insured's employee(s); and (2) any Professional Services liability exclusion for "Professional Services" performed on a job, as that term is defined to include services performed requiring a "license, advanced degree or certification"; and/or any policy exclusion that defines Professional Services as Rigging, Lift Director Operations, Signaling Operation, House Moving Operations, Pile Driving Operations, Demolition Operations, Concrete Pump Operations, Pilot Car Operations, Millwright Operations, Crane Operations or Crane Usage; (3) any coverage exclusions for Work performed in the state of New York, including the City of New York; (4) any coverage exclusions for Work performed in the state of New Jersey.; q. All Lessee's policies must include coverage for blanket contractual liability for the obligations assumed here-under and also for the liabilities assumed in the Indemnity section above and along with providing an "On Hook" or Care Custody and Control endorsement so that any item that is under the Care Custody or Control of the Leased Employee is

covered by the CGL policy, and J (4) and J (5) of the CGL Property Damage policy exclusions are deleted. In the event of loss, proceeds of property damage insurance on the Equipment shall be first made payable to Lessor. Lessee's agreements to indemnify and hold Lessor harmless from any liability, damage, and loss are in addition to, and not an alternative to, these insurance provisions and the purchase of any of the above coverages shall not operate to waive any of the above indemnity provisions. To the extent that the Lessee may perform under this Agreement without obtaining the above coverages, such an occurrence shall not operate, in any way, as a waiver of the Lessor's right to maintain any breach of contract action against the Lessee. Lessee hereby agrees to waive any and all rights of subrogation and any and all lien rights (including those arising from Workers' Compensation/Employers' Liability policies or other employee benefit programs, CGL policies, or similar policies) which may accrue to it or its insurers. The Lessee understands that this waiver shall bind its insurers of all levels and agrees to put these insurers on notice of this waiver and to have any necessary endorsements added to the insurance policies applicable to this Agreement to provide the coverage under this Agreement.

36. ACCIDENT INVESTIGATION. As part of Customer's obligations under this Agreement, Customer shall bear and promptly reimburse all costs and expenses associated with any investigation initiated by Company, its insurers, or its third-party adjusters or representatives (collectively, "Representatives") relating to any accident, incident, loss, or claim of any kind occurring during the term of this Agreement that directly or indirectly involves the Equipment or Operating Personnel, regardless of fault and whether such event results in personal injury, death, property damage, or any combination thereof. The determination to initiate an investigation, the timing thereof, and the scope, methods, and extent of such investigation shall be in the sole and absolute discretion of Company or its Representatives. Recoverable costs shall include, without limitation, attorneys' fees (including for site inspections, document review, and witness interviews), expert and forensic expert fees, investigator and adjuster fees, costs of travel and lodging, photography and videography, costs of obtaining, preserving, collecting, reviewing, and reproducing documents and evidence, electronic discovery costs, site inspection expenses, testing of any kind (including destructive and non-destructive testing), accident reconstruction, data retrieval, costs to secure the Equipment or Job Site, transport, dismantle, store, preserve, and maintain Equipment or the Job Site or any other property as evidence, and any related administrative or overhead charges. Customer shall fully cooperate with all such investigations, including preserving evidence, providing access to Operating Personnel, records, and sites, and complying with all reasonable requests of Company and its Representatives. All such costs shall be invoiced to Customer and shall be immediately due and payable in accordance with the payment terms of this Agreement, and failure to pay shall constitute a material breach. Customer's obligations under this section shall survive termination or expiration of the Agreement.

CLAIMS & LEGAL ENFORCEMENT

37. NOTICE AND WAIVER. Back charges and claims for damages resulting from delay due to the fault of Company shall be deemed waived by Customer unless claim is made in writing to Company within forty-eight (48) hours from the beginning of the delay. Any action, demand, lawsuit, arbitration or any other claim by Customer against Company arising out of or related to this Agreement must be commenced within one (1) year from the date on which any such right, claim, or cause of action shall have first accrued.

38. SUIT LIMITATION. Any action, demand, lawsuit, arbitration or any other claim by Customer against Company arising out of or related to this Agreement must be commenced within one (1) year from the date on which any such right, claim, or cause of action shall have first accrued.

39. ATTORNEY'S FEES. Customer shall pay or reimburse to Company all costs and expenses, including attorneys' fees, incurred by Company in exercising any of its rights or remedies or enforcing any of the terms or conditions found in this Agreement.

40. WAIVERS. No delay or failure to exercise any right or remedy accruing to Company or any breach or default of Customer under this Agreement will impair any such right or remedy of Company or be construed as a waiver of any such breach or default, or an acquiescence therein, or a waiver of or acquiescence in any breach or default thereafter occurring; nor will waiver of a single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of Company of any breach or default by Customer under this Agreement, or any waiver on the part of Company of any provision or condition of this Agreement, must be in writing and will be effective only to the extent specifically set forth in such writing.

41. CHOICE OF LAW; VENUE. This proposal and any Contracts arising from acceptance hereof shall be governed by and interpreted in accordance with the laws of the State where work is being performed, and the Federal laws of the United States of America applicable therein, including, but not limited to, federal transportation law while the cargo is in transit. However, if a state law requires that a construction indemnity statute apply to Equipment rented in the state where the Equipment is being used, then that State's laws shall apply.

42. NOTICE. All notices to be given pursuant to this Agreement shall be provided to the respective Party at the addresses contained in this Agreement shall be deemed to have been properly given when either (i) personally delivered, or (ii) mailed by registered or certified

mail, postage prepaid with return receipt requested, or (iii) delivered by private courier, or (iv) email, electronic receipt requested. A copy of any such notice, although not constituting official notice, shall be provided to the respective Party by electronic mail. Notice by electronic mail shall become official notice under this Agreement, upon acknowledgment of receipt sent by the Parties through an email system such as Microsoft Outlook.

DEFAULT & REMEDIES

43. DEFAULT AND REMEDIES.

- a. If:
 - (1) Customer fails to make any payment, as and when required under this Agreement.
 - (2) Customer breaches or fails to perform at the time and in the manner herein specified any term, covenant or condition contained in this Agreement and such breach or failure continues for five (5) days after written notice thereof to Customer.
 - (3) Customer files or has filed against it a petition in bankruptcy, or a custodian, receiver or trustee is appointed for Customer or for a substantial part of its assets, or Customer becomes insolvent or unable to pay its debts as they become due, or any substantial part of Customer's property becomes subject to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency; or (4) Customer is acquired by or merges with any other entity, unless this Agreement is assumed in writing by the new entity and such assumption is agreed to by Company.
- b. Then: In the case of any of the foregoing events, each an "Event of Default", then Company shall, without notice, demand or action of any kind by Company, all of which are hereby waived by Customer:
 - (1) Take possession of the Equipment (damages occasioned by such taking of possession being expressly waived by Customer), send an electronic message to the Equipment which disables the Equipment from use, or otherwise require Customer to produce the Equipment and to make it available to Company at any place designated by Company, and thereupon Customer's right to the possession of the Equipment will terminate, and Customer shall remain and be liable for the payment of the remaining Rent and all other obligations imposed upon Customer hereunder, all of which will become immediately due and payable.
 - (2) Rent the Equipment or any portion thereof for the remainder of the term of this Agreement to such third-party as Company may elect, in which event Company will apply the net proceeds from any such Agreement in payment of the Rent and other obligations due from Customer to Company hereunder (by acceleration or otherwise), and Customer shall remain liable to Company for any deficiency.
 - (3) Sell the Equipment or any portion thereof to a third-party at public or private sale without demand or notice of intention to sell or of such sale, in which event Company will apply the net proceeds of any such sale in payment of the Rent and other obligations due from Customer to Company hereunder (by acceleration or otherwise), and Customer shall remain liable for any deficiency.
 - (4) Deduct all costs and expenses incurred in connection with the recovery, repair, storage, renting or sale of the Equipment from the proceeds of such renting and/or sale; and/or
 - (5) Terminate Customer's rights hereunder.
- c. No right or remedy conferred upon or reserved to Company by this Agreement is exclusive of any other right or remedy granted herein or provided by law; all rights and remedies of Company conferred upon Company by this Agreement or by law are cumulative and in addition to every other right and remedy available to Company.
- d. In the event of any default or failure specified above, Customer shall be liable for all costs and expenses expended or incurred by Company in the enforcement of its rights hereunder (including reasonable attorneys' fees and court or Arbitration Costs).
- e. If any of the above Events of Default occur to any guarantor or any other Party liable for payment or performance of Customer's obligations under this Agreement, such event shall also be considered an Event of Default under this Agreement.
- f. Company has the right to choose among the remedies available to it and to exercise any or all of them at any time after a default by Customer.
- g. A waiver of one default by Company does not apply to any future or other default.

44. RIGHT TO CURE. If Customer fails to pay or perform any of its obligations under this Agreement, then Company may itself pay or perform such obligations and the amount of any payment plus Company's reasonable expenses in connection with such payment or performance, together with any interest due hereunder, shall be deemed additional Rent, payable by Customer on demand.

COMPLIANCE & GENERAL LEGAL

45. COMPLIANCE WITH LAW; SPECIFIC FEDERAL LAWS.

Customer shall, at all times:

- a. Comply with all federal, state, provincial and local laws and regulations in all material respects relating to this Agreement; and
- b. Have in place and maintain any and all licenses, permits, and other authorizations required by federal, state, provincial and local

laws.

Customer certifies that:

- a. It is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control.
- b. It is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity, or nation.

Finally, Customer shall, at all times, perform its obligation under this Agreement in compliance with all applicable financial sanction laws, rules and regulations, including, but not limited to, all applicable laws, rules and regulations regarding bribery or money laundering. Customer further agrees that any and all transactions or funds transfers occurring under this Agreement shall be subject to scrutiny for compliance with all such laws, rules and regulations and that any and all transactions or funds transfers may be embargoed or otherwise restricted until compliance with these laws, rules and regulations can be verified.

46. INDEPENDENT COMPANY. This Agreement does not create or evidence a partnership or joint venture and Customer and its agents, servants and employees, shall at all times, be an independent Company, and employees of Customer shall in no event be considered employees of Company, nor shall they be eligible for any employee benefits or other benefits from Company.

47. THIRD PARTY BENEFICIARY. Nothing in this Agreement, expressed or implied, is intended to confer upon any person or entity, other than the parties and their legal successors and permitted assigns, any rights, benefits, or obligations.

48. TRADE SECRETS. Company and Customer shall maintain in strict confidence all Trade Secrets as defined under the federal Defend Trade Secrets Act of 2016 (DTSA) (codified at 18 U.S.C. § 1836 et seq.) and applicable state Uniform Trade Secrets Acts, including without limitation any quote, bid, estimate, proposal, drawing, operational sequence, lift plan, site plan, and all job- or project-specific details, together with this Agreement and its terms (collectively, the "Submission"). Customer shall not disclose, distribute, or make available any Submission or part of any Submission to any competitor of the Company. Each Party shall use the other Party's Trade Secrets solely for purposes of performing under this Agreement and for no other purpose. "Trade Secret" includes all financial, business, scientific, technical, economic, and engineering information, including but not limited to patterns, plans, lift plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible and regardless of the medium in which such information is stored or memorialized. Disclosure of Trade Secrets shall be permitted only to a Party's directors, officers, employees, attorneys, insurers, lenders, and authorized agents who have a need to know such information for purposes of this Agreement and who are bound by confidentiality obligations at least as protective as those contained herein. Disclosure may also be made where required by law, regulation, or court order, provided that the disclosing Party gives prompt prior written notice (to the extent legally permitted) and cooperates in seeking confidential treatment or protective orders. Each Party shall implement and maintain commercially reasonable administrative, technical, and physical safeguards to protect Trade Secrets from unauthorized access, disclosure, or use, including cybersecurity protections consistent with industry standards. Any unauthorized disclosure or suspected breach shall be promptly reported to the other Party, and the disclosing Party shall cooperate fully in mitigating any resulting harm. All Trade Secrets shall remain the exclusive property of the disclosing Party, and no license or ownership rights are granted except as strictly necessary to perform under this Agreement. Upon termination or request, all Trade Secrets, including copies, shall be promptly returned or securely destroyed, with written certification of destruction upon request. The obligations set forth herein shall survive termination or expiration of this Agreement for so long as the information qualifies as a Trade Secret under applicable law. The Parties acknowledge that any breach or threatened breach will cause irreparable harm for which monetary damages would be inadequate; therefore, the non-breaching Party shall be entitled to immediate injunctive relief, specific performance, and any other remedies available at law or in equity, without the requirement to post bond. These rights are cumulative and in addition to any other remedies available.

ADDITIONAL TERMS AND CONDITIONS FOR DISPUTE RESOLUTION

DISPUTE RESOLUTION AGREEMENT

DISPUTES. ALL DISPUTES WILL BE RESOLVED ACCORDING TO THE T&C'S SET FORTH BELOW

SECTION 1. DISPUTE RESOLUTION

- a. In the event of a dispute between the Company and Customer arising out of or relating to this Agreement, or any underlying contract or agreement whether written or oral, or the Work to be performed by Company or Customer, or a breach of this Agreement, or any underlying contract or agreement, whether written or oral, by any Party, any and all disputes shall be decided in accordance

with these conditions. Such disputes include, but are not limited to, any claim the Customer or Company may have related in whole or in part concerning the conduct of any other Party or Company and/or their employees or agents. Company and Customer each shall be afforded a reasonable opportunity to present information and testimony involving its claims, rights or defenses and shall be solely responsible for the presentation of any information or testimony concerning its claims, rights or defenses.

b. Company and Customer agree to continue performance of all Work, and payments on all non-disputed amounts despite the existence of disputes between them. The existence of a dispute shall not be sufficient cause or justification for any failure to otherwise comply with this Agreement or with any underlying contract or agreement.

SECTION 2. MEDIATION

a. Negotiation Prior to Arbitration ("Mediation"): Prior to any arbitration and/or litigation after arbitration being instituted by any Party arising out of or relating to this Agreement, or any underlying contract or agreement whether written or oral, or a breach of this Agreement, or any underlying contract or agreement, whether written or oral, the Parties shall each appoint an executive corporate officer to meet to negotiate the claim/dispute through an in-person settlement meeting ("Mediation"). An Insurance representative for each Party shall attend the Mediation in order to bind the insurer to any settlement. Corporate officers attending shall have full settlement authority to resolve the claim/dispute. This Mediation shall be a condition precedent to the filing of any arbitration and shall be in accordance with Section 2(b). Prior to engaging in any mediation, all Parties shall provide notice of any dispute to their respective insurers.

b. Submission of Itemized Claims. Within Thirty (30) business days of the Company or Customer filing and serving a demand for Mediation, the Party filing the Mediation demand ("Claimant") shall provide the other Party ("Respondent") with a written, itemized statement of its claim, that shall include copies of all documents supporting its liability statement and damages along with citations to specific provisions of the Agreement that support Claimant's position ("Claimant's Itemized Statement of Claim"). The Claimant shall make all requests for documents from the Respondent when the demand for Mediation is filed. The Respondent shall have 15 days to respond and turn over the requested documents. Claimant's Itemized Statement of Claim shall be served via email or overnight delivery service that provides proof of delivery and shall be deemed served as of the date of Respondent's receipt from email or overnight delivery service of the Itemized Statement of Claim. Within Thirty (30) business days after Respondent receives Claimant's Itemized Statement of Claim, Respondent shall provide the Claimant with its answer, affirmative defenses and counterclaim, if any, which shall include a written, itemized statement in support of its defense and/or counterclaim, along with copies of all documents supporting its damages and citations to specific provisions of any underlying contract or agreement, whether written or oral. (Respondent's Itemized Statement of Claim). The Respondent shall make all requests for documents from the Claimant when the Respondent's Itemized Statement of Claim is filed. The Claimant shall have 15 days to respond and turn over the requested documents. Respondent's Itemized Statement of Claim shall be served via email or overnight delivery service that provides proof of delivery and shall be deemed served as of the date of Claimant's receipt from email or overnight delivery service of the Itemized Statement of Claim. If any Party fails to turn over any reasonably requested documents, or either Party fails to participate in the Mediation process in good faith, the arbitrator may make such a finding and take such finding into account when determining liability and damages, in any later arbitration of these claims. Each Party shall provide copies of all Statements of Claim and relevant supporting documents to their respective insurers. The Parties shall meet and mediate all claims as soon as possible thereafter. Notwithstanding the foregoing, the Mediation process, including the exchange of information and documents shall be completed within 90 days of the filing of a demand for Mediation.

c. Venue for Mediation. All claims, counterclaims or disputes between Company and Customer, which are subject to Mediation pursuant to Section 2, shall be mediated in the county in which the related job or project is located, or as otherwise agreed.

d. Offers of Settlement. Within thirty (30) days of receiving Respondent's Itemized Statement of Claim, or if Respondent does not serve one, within thirty (30) days from when Respondent's Itemized Statement of Claim was due, Claimant shall serve Respondent with a written settlement offer that will include both Claimant's Itemized Statement of Claim and Respondent's Itemized Statement of Claim, if any. Claimant's settlement offer shall be served via email or overnight delivery service that provides proof of delivery and shall be deemed received upon Respondent's receipt of Claimant's settlement offer. Claimant's settlement offer shall state the amount it will accept from or pay to Respondent to settle all claims asserted in the arbitration. Within thirty (30) business days of Respondent's receipt of Claimant's settlement offer, Respondent shall serve a written settlement offer to Claimant that will include both Claimant's Itemized Statement of Claim and Respondent's Itemized Statement of Claim, if any. Respondent's settlement offer shall be served via email or overnight delivery service that provides proof of delivery and shall be deemed served upon Claimant's receipt of Respondent's settlement offer. Respondent's settlement offer shall state the amount it will accept from or pay to Claimant to settle all claims asserted in the arbitration. Claimant's filing of an amended demand for arbitration or Respondent's filing of an amended counterclaim shall in no way alter the timing requirements set forth herein for purposes of determining the prevailing Party. If Respondent does not submit a written settlement offer to Claimant as provided herein, then Respondent's settlement offer for

purpose of determining the prevailing Party shall be considered the greater of: (i) the amount set forth in Respondent's Itemized Statement of Claim, (ii) the amount requested in Respondent's initial counterclaim, (iii) the amount requested by Respondent at the final arbitration hearing, or (iv) \$0.00.

SECTION 3. ARBITRATION

a. **Scope and Venue of Arbitration:** All claims, counterclaims or disputes between Company and Customer arising out of or relating to this Agreement, or any underlying contract or agreement, whether written or oral, or the Work to be performed by Company or Customer at any applicable job site, or a breach of this Agreement, or any underlying contract or agreement, whether written or oral, whether based on contract or tort, which are not resolved pursuant to Section 2, shall be decided by a final, binding, non-appealable arbitration, to take place in the county in which the related job or project is located, or as otherwise agreed. The arbitration shall be in accordance with the Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association ("AAA") then existing subject, to the requirements and limitations set forth herein. The arbitration shall be further subject to the Federal Arbitration Act, 9 U.S.C. § 1 et seq., and any applicable state statutes governing arbitration.

b. **Arbitrator's Selection and Authority:** Any matters to be arbitrated under this Agreement shall be decided by a single arbitrator selected by agreement of the Parties. The appointed arbitrator shall be an impartial person with extensive experience and who has an expert understanding of the industry. If within seven (7) calendar days of either Party filing for arbitration, the Parties have not agreed on an arbitrator, then the appointment of an arbitrator shall be referred to the AAA office in or nearest to the county in which the related job or project is located. The AAA shall appoint a single arbitrator who is an impartial local person with extensive experience and who has an expert understanding of the industry to serve in this matter. The arbitrator shall have full and complete authority to decide any and all claims that have been properly noticed and preserved in accordance with this Agreement. Any judgment entered by the arbitrator shall be final, binding and non-appealable. The arbitrator is required to enforce the terms of this Agreement, including but not limited to, the determination of the prevailing Party for purposes of awarding attorney's fees and costs. The arbitrator shall not be authorized to award any punitive damages and shall only be permitted to award consequential damages if the Parties have not waived consequential damages by contract and only to the extent permitted under the express terms of this Agreement. Should either Party assert that a claim(s) submitted to arbitration has not been properly noticed and/or has been waived or released, then the Arbitrator shall first decide any such issues by way of a declaratory judgment action decided by solely by the arbitrator, with both Parties waiving any right to a trial by jury. Any arbitration between the Parties for non-Declaratory Action issues shall be stayed pending any such declaratory judgment action so that the Arbitrator can first decide what claims should proceed forward in arbitration. If the Arbitrator finds that a claim(s) was not properly noticed and preserved and/or was released, then the arbitrator shall dismiss that claim(s) and shall not decide such claim(s). The arbitration shall only proceed after a final decision on any declaratory judgment action brought hereunder and shall only include those claims found to have been properly noticed, preserved and not released. All Parties consent to such jurisdiction.

c. **Choice of Law.** This Agreement shall be construed according to the laws of the state where the Work is performed, unless otherwise determined by law.

d. **Prevailing Party in Arbitration.** The prevailing Party in any arbitration shall be entitled to an award of attorney's fees and costs. The prevailing Party in any arbitration shall be the Party whose last written settlement offer, as set forth in Section 2 above, is closer to the initial arbitration award, prior to considering costs (including AAA and arbitrator costs), interest, attorney fees and/or expert fees. If the difference between the initial arbitration award and the Parties' last settlement offers are equal, then neither Party shall be the prevailing Party for purposes of an award of attorneys' fees and costs.

e. **Nondisclosure of Settlement Offers to the Arbitrator:** Settlement offers shall only be disclosed to the arbitrator after the initial arbitration award has been entered and shall only be used to determine the prevailing Party for purposes of the award of attorney's fees and costs.

f. **Venue of Litigation.** Any dispute arising out of or relating to this Agreement, or any underlying contract or agreement whether written or oral, or the Work to be performed by Company or Customer at any applicable job site, or a breach of this Agreement, or any underlying contract or agreement, whether written or oral, which is not subject to mediation and arbitration under this Agreement or which the Parties have mutually waived their right to arbitrate under this Agreement shall be litigated in the state where the Work is performed, unless otherwise determined by law. Such action shall proceed in The United States District Court in or nearest to the county in which the related job or project is located. Both Parties acknowledge that should litigation ensue, the United States District Court in or nearest to the county in which the related job or project is located, shall have exclusive jurisdiction and venue over any lawsuits arising under this Agreement, or any underlying contract or agreement, whether written or oral, including any motion to confirm an arbitration award. The prevailing Party in any such litigation shall additionally be entitled to an award of all attorneys' fees and costs.

g. Waiver of Right to Jury Trial: COMPANY AND CUSTOMER FURTHER AGREE THAT SHOULD ANY LITIGATION OR ARBITRATION ARISE DIRECTLY OR INDIRECTLY, THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL, AND THE PARTIES HEREBY STIPULATE THAT ANY SUCH TRIAL SHALL OCCUR WITHOUT A JURY.

h. Transfer of Venue. Should either Party file any action in court against the other Party arising out of a dispute as defined in this Agreement, said Party agrees to transfer the action to the Arbitrator to make any and all decisions concerning any dispute including the authority stated in Section 3, including the authority to decide if the action is a dispute covered by this Agreement. If the Arbitrator decides that the dispute should be decided in accordance with this Agreement, the Party that filed the action shall pay all costs incurred by the other Party, including attorneys' fees, incurred in dismissing and/or transferring the venue of such matter to the Arbitrator.

i. Discovery in Arbitration. Discovery in any arbitration hereunder shall be limited to the following and must be done in accordance with the Federal Rules on Civil Procedure:

(1) The production of each side's job/project/work files as they are maintained in the ordinary course of business and any file index related to same, with all such documents being produced electronically if reasonably feasible or otherwise in hard copy, in the arbitration venue herein indicated.

(2) Other than the documents produced pursuant to Section 2 and Section 3(e)(i) no other written discovery shall be permitted, except on a showing of good cause to the arbitrator. The Party requesting any documents, other than those produced pursuant to Section 2 and Section 3(e)(i) shall be responsible to pay for all costs associated with such production, including attorneys' fees incurred in the review for privilege and relevance, third party consultant fees and any other costs associated with such production. The payment of all such costs is an express condition precedent to either side's right to any such production. The cost associated with obtaining electronic discovery shall not be taxed to the prevailing Party as costs/fees and to the extent these conflicts with any provision in the AAA rules, this provision shall control.

(3) Three (3) fact depositions with one being a corporate representative under the Federal Rules of Civil Procedure, if so requested, with all such depositions to take place in the arbitration venue herein indicated.

(4) The opinions and the depositions of any designated expert witnesses. The deposition of all experts that intend to testify or submit opinions at the arbitration hearing must be concluded sixty (60) days before the scheduled arbitration date. Each side will pay for their own expert time and expenses to appear for deposition in the county and state where the contract was being performed. Thirty (30) days prior to any expert deposition, all experts that will testify or submit opinions at the final hearing shall provide a report containing all of his/her opinions and all information, documents and facts relied upon in arriving at such opinions, or if no such report is prepared, the subject matter on which the witness is expected to present evidence and a summary of the facts and opinions to which the witness is expected to testify and all information/documents/facts relied upon in arriving at such opinions, along with the witness's qualifications, including a list of all publications authored in the previous 10 years and a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition and a statement of the compensation to be paid for the study and testimony in the case.

(5) Each Party shall be entitled to have the arbitrator issue six subpoenas for documents. The other side shall be entitled to a copy of all documents provided in response to any third-party subpoena, provided however, that it must pay for the costs of reproduction, but shall be entitled to use a third party to make such copies.

(6) No other discovery shall be permitted by the Arbitrator, unless mutually agreed to by the Parties, upon good cause shown.

j. These sections and provisions (including all sub-parts) shall survive the termination of this Agreement, or any related or underlying contract and/or completion of the related Work or project.

49. TERMS AND CONDITIONS PREVAIL. IT IS THE INTENTION OF THE PARTIES THAT THESE TERMS AND CONDITIONS OF CONTRACT SHALL PREVAIL OVER ALL INCONSISTENT PROVISIONS IN ANY OTHER CONTRACT DOCUMENTS, INCLUDING ANY PURCHASE ORDER, BILL OF LADING, CONTRACTOR CONTRACT, PRIME CONTRACT, OR UPPER TIER CONTRACT ISSUED AT ANY TIME RELATING TO ANY BID OR QUOTE. THE TERM BID OR QUOTE INCLUDES ANY DOCUMENT ENTITLED PROPOSAL. Contractor SHALL BE CONCLUSIVELY DEEMED TO HAVE ACCEPTED THE TERMS AND CONDITION OF CONTRACT HEREIN, AND TO HAVE ENTERED INTO THIS CONTRACT WITH SUPPLIER. IF CONTRACTOR REQUESTS SUPPLIER TO PERFORM ANY SCOPE OF WORK OR REQUESTS ACCEPTANCE OF GOODS AT WAREHOUSE, AFTER THE CONTRACTOR'S RECEIPT OF THE QUOTE, BID, PROPOSAL OR THESE TERMS AND CONDITIONS, THESE TERMS AND CONDITIONS SHALL BE DEEMED EXECUTED AND BINDING. IF CONTRACTOR CONTACTS, CALLS OR TENDERS GOODS TO SUPPLIER AND REQUESTS SUBCONTRACTOR TO SUPPLY EQUIPMENT OR OPERATING PERSONNEL OR ACCEPTANCE OF GOODS, THEN CONTRACTOR AGREES TO ALL TERMS AND CONDITIONS TO THE QUOTE OR PROPOSAL AS WELL AS THESE TERMS AND CONDITIONS.

