

## GENERAL TERMS AND CONDITIONS

This Agreement sets forth the General Terms and Conditions for the provision of Goods and/or Services to **MODEC Guyana Inc.**

The term **"SELLER"** as used in this document shall mean the entity furnishing the goods, materials, equipment or services as described in the Purchase Order. The term **"BUYER"** as used in this document shall mean **MODEC Guyana Inc.**, or its affiliate or subsidiary as identified in the Purchase Order. Collectively BUYER and SELLER are referred to as the **"PARTIES"** and individually as **"PARTY"**. These General Terms and Conditions incorporate any Special Conditions of Purchase attached hereto as Attachment "A". In the event of any conflict between these General Terms and Conditions of Purchase and the Attachment A - Special Conditions, the Attachment A - Special Conditions shall prevail.

### DEFINITIONS AND INTERPRETATIONS

**"Bulletin of Measurement"** or **"BM"** means a document used to record and verify and confirm the details of services provided by a SELLER, including description, quantities and costs."

**"CLIENT"** means BUYER'S Client(s) in the projects for which the GOODS or SERVICES are destined.

**"GOODS"** means any goods, materials or equipment provided by SELLER to BUYER, as set out in the relevant PO.

**"PO"** means Purchase Order, which consists of the document validly issued by an authorized representative of the BUYER to the SELLER, referring to these General Terms and Conditions and specifies the scope of the GOODS and/or SERVICES to be provided, and any applicable special conditions.

"REQUESTER" means the BUYER's internal and designated representative, usually the end user within the organization, responsible for initiating the request for these hiring services. Additionally, the requester typically approves the SES in the SAP system.

**"SALESFORCE"** means the BUYER-approved customer relationship management platform used for managing purchases, SELLER services, payments, and other business operations.

**"SERVICES"** means any service provided by SELLER to BUYER, as set out in the relevant PO.

**"TAXES"** includes all compulsory charges imposed pursuant to the authority of a country, or political subdivision thereof, to levy taxes or fees on an entity or activity. Taxes include, but are not limited to, income taxes, withholding taxes, employment taxes, personnel income taxes, franchise taxes, sales and use taxes, value added taxes ("VAT"), VAT applicable to non-residents, industry and commerce tax, property, ad valorem and excise taxes.

**"T&C"** means these General Terms and Conditions and its Appendixes (as applicable), to which SELLER shall be entirely bound, except as may be otherwise and specifically provided in writing in the relevant P

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- 1. ENTIRE AGREEMENT:** These **T&C, together with any PO** issued pursuant hereto, embodies the entire agreement between BUYER and SELLER with respect to the GOODS and/or SERVICES. The PARTIES shall not be bound by nor liable for any statement, representation, promise or understanding not set forth herein or in the relevant PO. Nothing contained in any proposals, correspondence, discussions, or negotiations prior to the date of the issuance of a PO has any effect on these **T&C** unless specifically incorporated herein. No changes, amendments, substitutions, or modifications of any of the terms and conditions hereof shall be valid unless reduced to writing and signed by both PARTIES in accordance with Article 2 (Changes) of these **T&C**. No terms contained in any document by SELLER shall have any force or effect unless specifically agreed to by BUYER and incorporated herein.
- 2. CHANGES:** BUYER, through its authorized procurement representative, may at any time direct, in writing, changes, including but not limited to changes in any one or more of the following: (1) drawings or specifications; (2) additions to or deletions from quantities ordered; (3) delivery schedule; (4) method of shipment or packing; and/or (5) place of delivery. If any such change causes an increase or decrease in the cost of or the time required for performance of any part of the work or affects warranties and guarantees, an adjustment may be made in the price or delivery schedule once reasonably justified, or both, and the PO shall be modified by written amendments or change orders executed by the authorized representatives of both PARTIES before. Any request by SELLER for adjustment under this Article 2 (Changes) must be asserted within ten (10) calendar days from the date of receipt by SELLER of the notification of change. However, nothing in this Article shall excuse SELLER from proceeding with the PO as changed. If these T&C requires BUYER to review and comment on SELLER's technical documents, then SELLER shall submit within ten (10) calendar days from the date of SELLER's receipt of such review and comments any requests for adjustment which would result from implementation of BUYER's comments. No adjustment will be made hereunder unless BUYER, through its assigned procurement representative, confirms the change in writing.
- 3. SURVIVAL:** Notwithstanding anything to the contrary contained in these T&C, the provisions of this Article 3 (Survival) and Articles 4, 7, 10, 11, 12, 13, 18, 19, 20, 22, 23, 25, 26, 27, 29, 30, 32, 33, 35, 36, 37, 38, 39 and 40 shall

survive the completion, expiration, cancellation, or termination of any PO issued pursuant hereto.

- 4. PARENT COMPANY GUARANTEE:** Upon the request of BUYER, SELLER shall, within fifteen (15) calendar days of such request, deliver to BUYER a guarantee from SELLER's ultimate parent company in a form acceptable to BUYER. Such parent company guarantee shall bind SELLER's ultimate parent company to all terms, conditions and warranties contained in these T&C and/or any PO in the same manner that SELLER is so bound. If the PARTIES agree, SELLER may deliver to BUYER, in lieu of the above Parent Company Guarantee, an irrevocable standby letter of credit drawn on or confirmed by a Guyana bank in a form and amount acceptable to BUYER.

### 5. PRICE AND PAYMENT:

- 5.1 The prices herein specified are firm and not subject to escalation, and unless otherwise expressly stated, shall include all taxes and duties of any kind which are required to be paid with respect to the sale of the GOODS or provision of SERVICES covered by these T&C, as well as all charges and expenses in connection with the packing of the GOODS and their carriage to the place of delivery to BUYER, as well as mobilization and demobilization costs (where applicable), unless specifically excluded. SELLER shall be paid, except as otherwise stated in herein and/or under any PO issued pursuant hereto, within 45 days of the submission of proper invoices and approval confirmation on SALESFORCE, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted. Payment may be withheld or portions thereof may be deducted if, in BUYER's reasonable opinion, SELLER is not performing work in accordance with the provisions of these T&C or if setoffs in favor of BUYER in other transactions are asserted.

All bank fees and related transaction costs incurred in the processing of payments under this agreement shall be borne by the SELLER.

### 5.2 Invoice and Supporting Documentation Submittal

5.2.1 To submit GOODS invoices, the steps below must be followed:

- a) Original Electronic Invoice: Modec of Guyana (MOG)
- b) Send the information to Buyer Payables: " vendors.mog@modec.com ". Only after the BUYER's

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response message confirming the documentation sent is received, will the payment date begin to be counted and the payment made.

The information shall include, but not be limited to:

- i) A copy of PO
- ii) Approved service entry sheet
- iii) Invoice issued
- iv) Payment and bank information should be included on the invoice, such as: Currency, SELLER's Account Number, Payee Name, Routing or ABA Number, Swift code, Bank name, Address, City and Country.

Any changes in SELLER's banking information or payment instructions shall be submitted in writing to BUYER'S Representative with a copy to BUYER'S Payables Coordinator.

- v) the SELLER's Value Added Tax (VAT) number.

- c) Invoices issued in different currencies other than Guyanese Dollars must use the Bank of Guyana sales conversion rate published on their website (<https://bankofguyana.org.gy/bog/>).

If SELLER has a legal responsibility to collect any TAXES directly from BUYER for payment to the appropriate taxing authorities, the portion of any payment from BUYER to SELLER representing such TAXES shall be separately stated in the invoice in a manner and with all accompanying documentation necessary to satisfy legal invoicing requirements for TAXES imposed on BUYER. BUYER shall not be obligated to pay invoices that do not comply with invoicing procedures.

For billing process of every PO, SELLER must comply with the requirements of applicable tax law. In addition to including reference to the corresponding PO in the invoice for payment, SELLER must attach the required tax documentation and technical documentation supporting the performance under the corresponding PO. SELLER must ensure that Invoice(s) issued to BUYER do not exceed the amount of the corresponding PO(s).

5.2.2 To submit SERVICES invoices, the steps outlined below must be followed:

- a) BM submission-The SELLER is required to submit the Bulletin of Measurement (BM) through the Supplier Portal, accessible at <https://modec.my.salesforcesites.com/ModecG>

uyana, utilizing a registered login and password. The BM submission must include all pertinent supporting documentation related to the SERVICES provided, including but not limited to timesheets, confirmation emails from the requester following the completion of the Service, daily and/or monthly reports (e.g., calculations), and must be forwarded for the BUYER's approval in accordance with commercial terms.

- b) Governance requirements- BMs that do not adhere to the agreed-upon conditions will be rejected by the BUYER. In such cases, the BUYER will reject the BM indicating the main rejection reason and SELLER must proceed with a creation of a new BM with the necessary adjustments. If additional clarification is required, SELLER must contact the Requester indicated on related PO to confirm what was wrong or missing on the previously submitted information.
- c) Internal approval- Upon submission of the BM via the Supplier Portal, the document will undergo the internal approval process within the BUYER's system (SAP). The SELLER will have the capability to track the status of the BM through the Portal.
- d) Invoice submission- After BM approval, the SELLER must submit the invoice for the Services through the Supplier Portal. This submission shall be performed following the guidance provided by the BUYER. The SELLER should access "My Payment" within the Supplier Portal, select the option to "Upload Files," indicate the invoice reference, and then follow the steps to attach the document and submit it to the BUYER. After this action, the BUYER's finance department will have access to the document.
- e) Invoice issuance aspects- The SELLER bears responsibility for the accurate issuance of the invoice. The invoice must be issued within the current month of the BM's approval. Invoices issued with dates prior to the sending date of submission must be canceled by the SELLER and a credit note relevant to such invoices must be issued, including all applicable taxes. All invoices must comply with the Value Added Tax Act 2005, as amended from time to time. Additionally, the invoice must conform to the details specified in the PO, including the PO number, which must

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adhere to the coding standard 4500099999. Non-compliance with these requirements may result in the BUYER withholding approval of the invoice.

- 6. DELIVERY:** Timely performance is a material provision of these T&C and BUYER relies upon SELLER's timely performance in accordance with the delivery date provided within the PO.

In the event of a delay in the delivery of GOODS or SERVICES beyond the contractually agreed delivery date, if such delivery is not excused under the terms of the PO, SELLER shall be liable for liquidated damages, at a rate of 2% of the PO value per week, which shall not exceed 15% of the value of the PO. BUYER may set off Liquidated Damages sum from any outstanding invoices to be paid to the SELLER. **NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT (i) SUCH LIQUIDATED DAMAGES ARE NOT A PENALTY AND REPRESENT A FAIR AND REASONABLE ESTIMATE OF THE DAMAGE BUYER MAY SUFFER AS A RESULT OF DELAY, AND (ii) SUCH LIQUIDATED DAMAGES SHALL CONSTITUTE THE SOLE AND EXCLUSIVE LIABILITY OF SELLER AND THE SOLE AND EXCLUSIVE REMEDY OF BUYER FOR DELAY DURING THE PERIOD COVERED BY SUCH LIQUIDATED DAMAGES.**

SELLER will not be liable for delays in performing its obligations to the extent such delays are caused by any unforeseeable condition which is beyond SELLER's reasonable control (referred to as "Force Majeure") and without SELLER's fault or negligence. Acts of God, such as named tropical storms or floods, as well as government priorities, acts of civil or military authorities, fires, epidemics, war or riot are examples of events which may be excusable for being beyond SELLER's reasonable control, only upon fulfillment of the following conditions: (1) within three (3) calendar days of the commencement of any excusable delay as described herein, SELLER shall provide BUYER with written notice of the cause and extent thereof as well as a request for a schedule extension for the estimated duration thereof; and, (2) within seven (7) calendar days of the cessation of the event causing such delay, SELLER shall provide BUYER with written notice of actual delay incurred, upon receipt of which the date of promised delivery shall be extended for the time actually lost by reason of an excusable delay. Failure to so notify BUYER shall not relieve the SELLER from complying with the delivery date set forth herein and/or in any PO issued pursuant hereto.

Force Majeure shall not include rain, storms, snow, winds, seas, tides and currents or other prevailing weather conditions which SELLER could reasonably have anticipated. Financial

hardship of a PARTY does not constitute Force Majeure. If BUYER claims a Force Majeure situation and as a result of the Force Majeure is prevented from delivering the BUYER supplied items or otherwise carrying out its obligations to SELLER, SELLER's sole remedy shall be to submit a change request for an extension of the delivery date. The PARTY prevented from performing its obligations as a result of Force Majeure shall mitigate the impact of the Force Majeure event on all obligations under these T&C and resume its performance as soon as possible after the Force Majeure condition ceases. Should a Force Majeure claimed by SELLER continue for a period of seven (7) calendar days from the date SELLER was affected, and if in BUYER's opinion the Force Majeure condition will prevent SELLER from delivering the GOODS or providing the SERVICES per the terms of these T&C, then BUYER shall have the right to terminate these T&C by notice to SELLER pursuant to Article 15 (Termination for Convenience).

**7. TITLE AND RISK OF LOSS:** Title to all GOODS furnished by SELLER hereunder, as well as to all deliverables arising from the SERVICES shall be transferred to BUYER or CLIENT, as the case may be, upon the earlier of: (1) delivery to BUYER; or (2) purchase and delivery to SELLER's facility of goods and materials comprising the GOODS. Notwithstanding the foregoing, SELLER shall be responsible for and shall bear any and all risk of loss or damage to any GOODS furnished until delivery thereof in accordance with the delivery provisions of these T&C as per INCOTERMS 2010. Notwithstanding the foregoing, any loss or damage, whenever occurring, which results from SELLER's nonconforming packaging or crating shall be borne by SELLER. All dies, tools, patterns, drawings, fixtures, etc. furnished or specifically paid for by the BUYER shall become the property of the BUYER or CLIENT, as the case may be, and BUYER (or CLIENT, as the case may be) shall be entitled to possession thereof upon request. The SELLER is not permitted to use the same for any other customer without BUYER's prior written approval.

**8. EXPEDITING:** Any GOODS and/or SERVICES furnished under these T&C, including all warranty work, shall be subject to expediting by BUYER. BUYER's representatives shall be afforded free access during working hours to SELLER's facilities, and SELLER agrees to obtain a similar right for BUYER, for expediting purposes with respect to SELLER's subcontractors and vendors. As required by BUYER, SELLER shall supply schedules, progress reports and unpriced copies of SELLER's PO and subcontracts for BUYER's use in expediting. SELLER shall notify BUYER in writing of any actual or anticipated delays immediately upon discovery. Such notice shall include an estimated

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period of delay, cause, and corrective actions being taken. Slippage in SELLER's schedule may be deemed to be reasonable grounds for insecurity, in which event BUYER may demand in writing that SELLER provide adequate assurances that SELLER will perform on time.

**9. QUALITY STANDARDS:** SELLER shall comply with the standards of quality specified by these T&C in addition to those customary in the industry if no requirement is specified. BUYER's Quality Surveillance Representative shall be afforded free access during working hours to facilities of SELLER and to SELLER's subcontractors and vendors in order to monitor compliance with quality requirements. BUYER's right to inspect, examine, and test any GOODS furnished or SERVICES provided shall extend through the manufacturing process, the time of shipment and for a reasonable time after arrival at the final destination or conclusion of the SERVICES. SELLER's failure to adhere to the standards of quality required under these T&C shall be deemed to be reasonable grounds for insecurity. BUYER may demand, in writing, that SELLER provide adequate assurances of SELLER's ability to meet said standards. Any GOODS furnished shall not be deemed accepted until finally inspected by BUYER's representative at final destination. The making or failure to make an inspection, examination or test of, or payment for, or acceptance of any GOODS furnished shall in no way relieve SELLER from its obligation to conform to all of the requirements of these T&C and shall in no way impair BUYER's right to reject or revoke acceptance of nonconforming Goods or to avail itself of any other remedies to which BUYER may be entitled, notwithstanding BUYER's knowledge of the nonconformity, its substantiality or the ease of its discovery.

**10. WARRANTIES/GUARANTEES:** SELLER warrants that the GOODS and/or SERVICES furnished are fit for the use intended and shall be free from liens and defects in design, material, workmanship, and title, and shall conform in all respects to the terms of these T&C and to the applicable drawings issued for manufacture, and shall be new and of the best quality, if no quality is specified.

Unless the warranty period is otherwise extended, the conditions of which are provided elsewhere in these T&C, the following warranty shall apply: twenty-four (24) months from the date of delivery or twelve (12) months from first beneficial use or start-up of operations whichever is longer. If, at any time prior to expiration of the above warranty period it appears that the GOODS furnished, or any portion thereof, do not conform to these warranties or to the specifications, and BUYER notifies

SELLER promptly after its discovery, SELLER shall, within five (5) calendar days after written notice from BUYER of such breach, submit for BUYER's consideration a detailed proposal to remedy the defect. This proposal shall include a description of the corrective work proposed (including all supporting engineering data and calculations) and a comprehensive schedule showing each work element. In the event of any breach of this warranty, at BUYER's option, either (1) SELLER shall correct such breach at its sole cost, expense and risk, failing which BUYER may reject or revoke acceptance, and cover by making any reasonable purchase of the GOODS in substitution for those rejected and SELLER will be liable to BUYER for any excess costs for such similar GOODS or SERVICES provided in accordance with BUYER's delivery requirements; or (2) BUYER may proceed to correct SELLER's nonconforming work by the most expeditious means available, the costs, expense and risk of which shall be for SELLER's account; or (3) BUYER may retain the nonconforming GOODS and an adjustment reducing the order price to reflect the diminished value of such nonconforming GOODS furnished will be made by written change order. In the event that any such nonconforming GOODS are repaired or replaced, then SELLER's warranty obligations shall be extended for twelve (12) months from BUYER's acceptance of such repaired or replaced defective Goods. BUYER expressly reserves the right to assign any and/or all of the above warranties to any third party, including but not limited to the ultimate end-user of the GOODS (the "CLIENT"), whereupon the assignee shall be deemed to have all of the rights of BUYER under these T&C. Without limiting BUYER's remedies, with respect to the supply of defective Goods, SELLER agrees to release, protect, defend, indemnify and hold harmless all members of BUYER GROUP and the CLIENT from and against any damages, losses, claims, adjustments, suits, penalties, fines, demands, expenses (including reasonable attorneys' fees or other expenses) or causes of action directly or indirectly resulting from any breach of these warranties. Notwithstanding, SELLER's warranty obligations shall not extend to any use by BUYER of the GOODS in conditions more severe than the manufacturer's recommendations nor to any defects which were visually observable by BUYER, but which are not promptly brought to SELLER's attention.

**11. INFRINGEMENT:** SELLER shall, at its own expense, release, protect, defend, indemnify and hold harmless all members of BUYER GROUP and CLIENT under these T&C against any claim, suit, or proceeding brought against any member of BUYER GROUP and/or the CLIENT which is based upon a claim, whether rightful or otherwise, that any equipment, process or material, or any part thereof, furnished by SELLER under these T&C, constitutes an infringement of

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any patent or other intellectual property right and SELLER shall pay all damages and costs awarded against any member of BUYER GROUP and/or the CLIENT, resulting therefrom. In case said equipment, process, or material, or any part thereof, is in such suit held to constitute infringement and/or its use is enjoined, SELLER shall, at its own expense, subject to the following provisions, either procure for the members of BUYER GROUP and the CLIENT an irrevocable, royalty-free license to continue using such equipment, process or material, or with BUYER's prior written approval, replace same with substantially equal but non-infringing equipment or modify it so it becomes noninfringing, provided that no such replacement or modification shall in any way amend or relieve SELLER of its warranties and guarantees set forth in these T&C. The indemnity is given upon the condition that BUYER shall promptly notify SELLER of any claim or suit or proceeding involving BUYER in which such infringement is alleged, and BUYER shall permit SELLER to control completely the defense or compromise of any such allegation of infringement, and BUYER shall render such reasonable assistance at SELLER's cost in the defense thereof as SELLER may require. Notwithstanding any proprietary legends or copyright notices to the contrary, members of BUYER GROUP and the CLIENT may copy or reproduce documents and information furnished by SELLER in connection with SELLER's proposal and these T&C and distribute such copies or reproductions to others for the limited purposes of designing, constructing, operating, maintaining, or licensing members of BUYER GROUP's and the Client's project. SELLER is responsible for obtaining necessary permission and releases from any third parties placing proprietary rights or copyrights on such documents or information and shall, at its own expense, release, protect, defend, indemnify and hold harmless all members of BUYER GROUP and the CLIENT against any and all claims, suits or proceedings based upon a claim whether rightful or otherwise that a proprietary right or copyright has been infringed by copying, reproduction, distribution or use by any member of BUYER GROUP or the CLIENT.

**12. COMPLIANCE WITH APPLICABLE LAWS:** SELLER warrants that the GOODS and/or SERVICES furnished hereunder shall have been produced, sold, delivered, and furnished in strict compliance with all laws and regulations to which GOODS or SERVICES are subject (referred to as "Applicable Laws"). SELLER shall execute and deliver to BUYER any documents as may be required to effect or to evidence such compliance. All Applicable Laws required to be incorporated in agreements of this character are hereby

incorporated by reference. SELLER shall release, protect, defend, indemnify, and hold harmless all members of BUYER GROUP and the Client under these T&C against any claim or proceeding resulting from any violation of Applicable Laws.

**13. ASSIGNMENT:** Any assignment of these T&C or of any rights hereunder of hypothecation thereof in any manner, in whole or in part, by operation of law or otherwise, without the prior written consent of BUYER shall be void. Upon prior written notice to SELLER, BUYER may assign these T&C and all rights hereunder to any member of BUYER GROUP, any third party and/or the CLIENT, whereupon said assignee shall have all of the rights of BUYER under these T&C.

**14. SUSPENSION:** Notwithstanding any other provisions of these T&C, BUYER may suspend, or extend the time for SELLER's performance at any time and from time to time upon ten (10) calendar days' prior written notice of such suspension or extension. Thereafter, SELLER shall resume performance as directed by BUYER. In the event of such suspension or extension, SELLER's sole and exclusive remedy shall be an extension of time for such suspension if such extension is claimed within thirty (30) calendar days after resumption of performance and BUYER shall have no liability to SELLER for any damages, claims, losses or expenses associated with any such suspension.

**15. TERMINATION FOR CONVENIENCE:** SELLER's performance under these T&C may be terminated by BUYER in accordance with this Article in whole, or, from time to time, in part, whenever BUYER shall so elect. Any such termination shall be effected by delivery to SELLER of a notice of termination specifying the extent to which performance under the PO is terminated, and the date upon which such termination becomes effective. Upon receipt of any such notice, SELLER shall, unless the notice requires otherwise: (1) immediately discontinue work on the date and to the extent specified in the notice; (2) place no further orders for materials other than as may be necessarily required for completion of such portion of the work that is not terminated; (3) promptly make every reasonable effort to either obtain cancellation on terms satisfactory to BUYER of all orders to subcontractors and vendors or assign those orders to BUYER; and (4) assist BUYER upon request in the maintenance, protection, and disposition of property acquired by BUYER under these T&C. If notified in writing within thirty (30) calendar days after the notice of termination, BUYER will pay to SELLER an adjustment to include: (a) all amounts due and not previously paid to SELLER for that portion of the GOODS

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completed in accordance with these T&C prior to such notice, and for work thereafter completed as specified in such notice; and (b) verifiable and unavoidable costs of settling and paying claims arising out of the canceled orders. The total sum to be paid to SELLER under this Article shall not exceed the total price of the PO as reduced by the amount of payments otherwise made and as further reduced by the order price of work not terminated, and will not include any consideration for loss of anticipated profits on the terminated work, all claims for which SELLER agrees to waive.

**16. TERMINATION FOR DEFAULT:** BUYER may terminate the whole or any part of SELLER's performance under these T&C in any one of the following circumstances: (1) if SELLER fails to make delivery of the GOODS or to perform within the time specified herein or any agreed upon extension thereof; (2) if SELLER delivers nonconforming Goods; (3) if SELLER fails to provide adequate assurances of its abilities to meet the quality standards or the delivery date of these T&C ; or (4) if SELLER fails to perform any of the other provisions of these T&C in accordance with its terms or so fails to make progress as to endanger performance of these T&C. In the event of any such failure, BUYER will provide SELLER with written notice of the nature of the failure and BUYER's intention to terminate for default. In the event SELLER does not cure such failure within ten (10) calendar days of the date of such notice, BUYER will provide SELLER with a written notice of default. In the event BUYER terminates these T&C in whole or in part as provided in this Article, BUYER may procure, upon such terms and in such manner as BUYER may deem appropriate, supplies or services similar to those so terminated and SELLER shall be liable to BUYER for any excess costs, expense and risk for such similar supplies or services provided in accordance with BUYER's delivery requirements; provided, that SELLER shall continue the performance of these T&C to the extent not terminated under the provisions of this Article. SELLER agrees to assist BUYER if such re-procurement action is necessary as a result of default, by cooperation in the transfer of information, in the disposition of work in progress or residual material, and in the performance of other reasonable requests made by BUYER. If, after notice of termination of these T&C, it is determined for any reason that SELLER was not in default under the provisions of this Article, or that the default was excusable under the provisions of these T&C, the rights and obligations of the PARTIES shall be the same as if the notice of termination had been issued pursuant to Article 15 (Termination for Convenience).

**17. NON-WAIVER:** Failure by BUYER to insist upon strict performance of any of the terms and conditions hereof, or failure to delay to exercise any rights or remedies provided herein or by law, or to properly notify SELLER in the event of breach, or the acceptance of or payment for any GOODS hereunder, or review of design, shall not release SELLER from any of the warranties or obligations of these T&C and shall not be deemed a waiver of any right of BUYER to insist upon strict performance hereof or any of its rights or remedies as to any such GOODS regardless when shipped, received or accepted, or as to any prior or subsequent default hereunder, nor shall any termination of these T&C by BUYER operate as a waiver of any of the terms hereof. Unless the PO clearly indicates otherwise, a requirement that a SELLER furnished document is to be submitted for or subject to "Authorization to Proceed," "Approval," "Acceptance," "Review," "Comment," or any combinations of such words or words of like import shall mean that SELLER shall, before implementing the information in the document, submit the document, obtain resolution of any comments and authorization to proceed. Such review shall not mean that a complete check will be performed. Authorization to proceed shall not constitute acceptance or approval of design details, calculations, analyses, tests, or construction methods or materials developed or selected by SELLER and shall not relieve SELLER from full compliance with requirements of these T&C and any PO issued pursuant hereto.

**18. AUDIT:** BUYER or the CLIENT shall have the right to audit all pertinent records and documentation in relation to all technical aspects of the PO, as well as to all commercial and accounting records relating to the PO and any other obligations under these T&C, including but not limited to the charges incurred by SELLER which are associated with the design, procurement, fabrication, manufacture, testing, loadout and shipment of the Goods and all records pertaining thereto for a period of seven (7) years after delivery of the GOODS to BUYER. Such audit shall not include the make-up of lump sum prices and unit rates. BUYER shall have the right to make and take copies of such records at its expense. Without prejudice to its other rights and remedies, BUYER may require that SELLER promptly refund to BUYER any remuneration found to have been over paid. All accounting records shall be maintained in accordance with generally acceptable accounting practices, accurate documentation and data (including but not limited to written and electronic records, books of account, correspondence, plans, permits, licenses, drawings, payroll records, memoranda, receipts and documentation of related systems and controls)

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pertaining to the performance of this Agreement and any PO, as well as any gift or entertainment expenses incurred by SELLER pertaining to any PO.

At all reasonable times, SELLER shall permit employees and agents of BUYER and its CLIENT to have access to its and their offices and work locations to examine, reproduce and retain copies of such documentation and data and to interview SELLER's personnel in connection therewith, as necessary for BUYER to verify and monitor (i) the accuracy and propriety of the prices of any and all SERVICES and/or reimbursable costs, (ii) the existence and effectiveness of SELLER's business practices, and (iii) SELLER's compliance with the terms of the Agreement and PO. Where SERVICES are billable under fixed rates, BUYER's auditors shall have sufficient access to those rates to satisfy themselves that SERVICES provided thereunder have not also been separately billed on some other basis (e.g., a reimbursable basis). BUYER shall not be liable for SELLER's costs resulting from an audit hereunder.

- 19. INDEMNITIES:** SELLER shall release, protect, defend, indemnify and hold harmless BUYER and its parent, subsidiary and affiliated companies, BUYER's other contractors and subcontractors of all tiers and its and all of their respective officers, directors, members, employees, agents, invitees, assignees, representatives and the subrogees of all said parties (referred to as "BUYER GROUP") and the CLIENT from and against any loss, cost, claim, obligation to indemnify another arising out of these T&C or of any PO issued pursuant hereto, suit, judgment, subrogation action, award or damage (including reasonable attorney's fees) in any case of illness, injury or death to SELLER and its parent, subsidiary and affiliated companies, SELLER's subcontractors and vendors of all tiers and its and all of their respective officers, directors, members, employees, invitees, permitted assignees, representatives and the subrogees of all said parties (referred to as "SELLER GROUP") and in any case of loss or damage to any member of SELLER GROUP's property arising out or relating to the provision of the GOODS and/or SERVICES furnished under these T&C and **REGARDLESS OF WHETHER CAUSED OR BROUGHT ABOUT BY ANY MEMBER OF BUYER GROUP'S OR THE CLIENT'S NEGLIGENCE (INCLUDING ACTIVE, PASSIVE, SOLE, JOINT OR CONCURRENT NEGLIGENCE), THE UNSEAWORTHINESS OF ANY VESSEL, THE UNAIRWORTHINESS OF ANY AIRCRAFT OR ANY OTHER THEORY OF LEGAL LIABILITY, INCLUDING BREACH OF WARRANTY, BREACH OF CONTRACT, STRICT LIABILITY AND INCLUDING PRE-EXISTING CONDITIONS.**

BUYER shall release, protect, defend, indemnify and hold harmless all members of SELLER GROUP from and against any loss, cost, claim, obligation to indemnify another arising out of

these T&C, suit, judgment, subrogation action, award or damage (including reasonable attorney's fees) in any case of illness, injury or death to any member of BUYER GROUP under these T&C and **REGARDLESS OF WHETHER CAUSED OR BROUGHT ABOUT BY ANY MEMBER OF SELLER GROUP'S NEGLIGENCE (INCLUDING ACTIVE, PASSIVE, SOLE, JOINT OR CONCURRENT NEGLIGENCE), THE UNSEAWORTHINESS OF ANY VESSEL, THE UNAIRWORTHINESS OF ANY AIRCRAFT OR ANY OTHER THEORY OF LEGAL LIABILITY, INCLUDING BREACH OF WARRANTY, BREACH OF CONTRACT, STRICT LIABILITY AND INCLUDING PRE-EXISTING CONDITIONS.**

Notwithstanding the foregoing, SELLER shall be liable in any case of loss or damage to property and in any case of injury or death to any person where such loss, damage, injury or death is caused or contributed to by any defect in the GOODS furnished.

### **20. INSURANCES:**

20.1 During the performance of these T&C, SELLER, at its sole expense except as specifically set forth to the contrary below, shall maintain the insurance coverages or their substantial equivalents and endorsements set forth in this Article 20 and with insurance underwriters and upon terms reasonably satisfactory to BUYER. Where applicable, each insurance policy described below shall be endorsed as follows: (a) underwriters shall waive their rights of subrogation against all members of BUYER GROUP and the Client; (b) to provide thirty (30) calendar days' prior written notice of cancellation, material change or reduction of coverage to BUYER; (c) to provide adequate territorial and navigational limits; and (d) except for the Workmen's Compensation policy, BUYER and the Client shall be named as additional assureds under such policies but only to the extent of the indemnification obligations and risks assumed by SELLER under these T&C.

20.2 Notwithstanding the insurances required by law, SELLER shall maintain all necessary insurances as appropriate for the performance of its obligations under this agreement, as follows:

- (i) Workmen's Compensation insurance complying with all statutory benefits required by the Workmen's Compensation and Occupational Disease laws of the jurisdiction in which the Services are being performed.
- (ii) Where applicable, medical/health insurance sufficient to cover all illnesses and medical emergencies to which SELLER's employees may be exposed.

(iii) Comprehensive General Liability insurance providing coverage against any pollution, property damage or destruction or loss or loss of use and/or any death, illness, disease, or personal injury (physical or mental), caused by or arising out of the performance of (or failure to perform in accordance with the requirements of) this Agreement in an amount of not less than One Million United States Dollars (US\$1,000,000) for any claim or series of claims arising out of any one incident.

(iv) Commercial General Liability insurance policy covering all operations of the SELLER. This policy shall include the following: (a) Premises and Operations; (b) Contractual Liability, insuring the indemnity agreements contained in the PO; (c) SELLER's Protective Liability, covering all activities of the SELLER relating to the GOODS; and (d) limits of coverage as required by Excess Liability Insurance or Umbrella Insurance policy as provided hereunder.

(v) Where applicable to the scope of work, motor vehicle liability insurance that complies with applicable laws in relation to all vehicles used in connection with the Services, providing coverage for all owned, hired, and non-owned automobiles with the coverage limits as required by the Excess Liability or Umbrella insurance company. Liability coverage shall be no less than One Million United States Dollars (US\$1,000,000) per occurrence.

(vi) Where applicable to the SoW, cargo insurance with coverage of no less than One Million United States Dollars (US\$1,000,000) per occurrence.

20.3 For SOW classified as High Risk in BUYER's HSSE Policy and disclosed during the vendor vetting process all insurance coverage under Clause 20.2, shall have a minimum coverage Limit- combined single limit Five Million United States Dollars (US\$5,000,000) each accident.

20.4 Certificates of all of the above insurances shall be provided by SELLER to BUYER within five (5) calendar days of the date of these T&C. Acceptance of improperly issued or incomplete insurance policies shall not be construed as waiver of any right of BUYER, nor shall release the SELLER from any obligations herein or under the relevant PO.

**21. SUPPLIER DATA:** SELLER shall provide to BUYER with the number of copies of data as set forth in the Supplier Data Requirement List ("SDRL") for the GOODS being purchased by BUYER including, but not limited to, commissioning and startup data, operating and maintenance manuals, drawings and spare parts data, as well as listings of

recommended spare parts required for a two (2) year period of operations and for start-up. SELLER is hereby advised by BUYER that POs issued pursuant hereto will only be deemed complete once the BUYER has received the acknowledgement copy of the PO and any Change Orders (if applicable) and all drawings and data specified in the order and specifications. BUYER may elect to withhold or retain amounts otherwise payable pending acceptable receipt of all such requirements.

**22. REPRODUCTION OF DRAWINGS AND DATA:** All members of BUYER GROUP and the CLIENT shall have the right to reproduce any data submitted by SELLER for their use despite notice of the contrary appearing on any documents or data submitted by SELLER.

**23. NON-DISCLOSURE:** SELLER agrees not to divulge information to third parties which is obtained from BUYER GROUP, including, but not limited to, publishing or disclosing any information, photographs, data or process, drawings or specifications connected with the business of BUYER GROUP or the CLIENT which shall come or have come into its possession or to its knowledge in or by reason of the performance of the PO, without prior written consent from the BUYER unless said information is found to be in the public domain, SELLER agrees that it shall only use information provided hereunder by BUYER GROUP for the purpose of providing the GOODS.

SELLER shall not disclose or divulge to any third-party details of this Agreement without prior written consent by the BUYER. This includes any disclosure regarding the existence of this and any Agreement with the BUYER and its CLIENT for the provision of GOODS and SERVICES.

SELLER shall not disclose or divulge to any third-party details of this Agreement without prior written consent by the BUYER. This includes any disclosure regarding the existence of this and any Agreement between the BUYER and its CLIENT for the provision of GOODS and SERVICES, any reference to projects, programs, persons, images, or documents relating to the PO, BUYER, BUYER GROUP or CLIENT.

**24. INSPECTION:** SELLER shall allow BUYER and the CLIENT to undertake an inspection of the GOODS being fabricated, assembled, or shipped and the facilities for such. SELLER shall provide to BUYER a minimum of ten (10) calendar days' prior notice of any inspection or test to which the GOODS are being subjected to allow BUYER to attend such inspection or test. At BUYER's option and at no additional cost, BUYER may have up to three (3) inspectors located at SELLER's facility during normal working hours to inspect the GOODS and to review all processes utilized for the

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manufacture of the GOODS. Such inspection shall not relieve SELLER of any obligation and/or liability under these T&C. BUYER may elect to test GOODS for conformance to PO requirements/specifications. All costs, expenses and risk incurred by the BUYER as a result of SELLER's design changes, non-readiness to perform scheduled tests, or failure to achieve satisfactory test results shall be for the SELLER's account.

If the GOODS purchased under these T&C requires CLIENT or third-party inspection, the SELLER, unless otherwise agreed, shall arrange and assume all obligations, responsibilities, costs, and charges associated with such inspection of and all certification requirements for the GOODS. BUYER shall be given access to SELLER's facilities and the facilities of SELLER's subcontractors for inspection and/or expediting purposes.

**25. ARBITRATION:** All claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of these T&C shall be decided by resort of either SELLER or BUYER to arbitration utilizing a single arbitrator in accordance with UNCITRAL arbitration rules, in English language. Except for the exchange of relevant, material, and non-privileged documents between the PARTIES, the arbitrator shall have the right to limit discovery to minimize the costs to the PARTIES of the arbitration and to expedite the resolution of disputes. The arbitration shall be held in Georgetown, Guyana, unless otherwise agreed to by the PARTIES. The arbitrator shall only apply the choice of law as set forth in Article 27 (Choice of Law) and shall disregard and shall not consider any other law for any portion or aspect of the award nor for any of the deliberations associated with the award. Nothing herein will be deemed as preventing the arbitrator from applying injunctive or other equitable relief (or any other provisional remedy) in favor of any PARTY as is necessary to protect any PARTY's name, proprietary information, trade secret, know-how, or any other intellectual property rights. The arbitrator shall have the right to award all reasonable attorney fees and costs to the prevailing PARTY in the proceeding hereunder. The decision of the arbitrator shall be final, binding, and enforceable in any court of competent jurisdiction and SELLER and BUYER agree that there shall be no appeal from the arbitrator's decision. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding. The right to arbitrate shall survive the completion, termination, or expiration of the PO. SELLER shall continue to perform all obligations under these T&C, including, but not limited to, delivery of the

GOODS notwithstanding any dispute and during the pendency of any arbitration proceeding hereunder.

**26. SEVERABILITY:** If, in any legal proceeding, it is determined that any provision of these T&C is unenforceable under applicable law, the unenforceable provision shall automatically be amended to conform to that which is enforceable under applicable law. In any event, the validity or enforceability of any provision shall not affect any other provision of these T&C, and the PO shall be construed and enforced as if such provision had not been included.

**27. CHOICE OF LAW:** The laws of the Guyana shall control the validity, construction and interpretation of these T&C excluding any conflicts of law principles which would direct the substantive law of another jurisdiction to apply. The PARTIES agree to waive any right or redress under any statute, law or regulation that would invalidate, in whole or in part, the dispute resolution forum and/or the choice of law provisions under these T&C. Notwithstanding anything to the contrary, the PARTIES expressly agree the following shall not apply in any respect to the PO or any of the obligations of the PARTIES: the United Nations Convention on Contracts for the International Sale of Goods ("CISG"), and the 1974 Convention on the Limitation Period in the International Sale of Goods, as amended by the 1980 Vienna Protocol (also known as the "Vienna Convention").

**28. INDEPENDENT CONTRACTOR:** In the performance of any PO, SELLER's status shall be that of an independent contractor and the relationship of the BUYER and SELLER shall in no event be construed or interpreted as being that of principal and agent, master and servant, or employer and employee, and the employees of each PARTY shall not be deemed to be employees of the other PARTY for any purpose.

### **29. TAXES AND PERMITS:**

#### **29.1 Tax Responsibilities:**

(a) SELLER shall:

- i) be responsible for and pay (or cause to be paid) when due all TAXES for which SELLER or for TAXES SELLER's agents or employees are liable by reason of the performance of the Agreement.
- ii) make reasonable efforts to minimize TAXES arising with respect to the PO, including, but not limited to, cooperating and reasonably assisting BUYER in supporting claims for exemption, as well as for credits, on purchases of GOODS and SERVICES.

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iii) Promptly notify BUYER of matters pertaining to non-payment or payment under protest of, claim for immunity or exemption from, or claim for refund of or credit against any TAXES. iv) supply to BUYER in the form and within time limits specified by a written notice from BUYER to SELLER the information necessary to enable BUYER to comply with any lawful request for such information from any governmental authority having responsibility for assessment or collection of TAXES; and

v) if required by Law, establish, and register an office in the country or countries (and any applicable political subdivision thereof) where any part of the PO is to be performed and qualify as an organization operating and doing business therein, and register and file such notices and/or

tax returns with the taxing authorities of such country.

vi) take such action as is necessary to ensure payment of all TAXES assessed or levied against or on account of wages, salaries, or other benefits paid to SELLER Group's employees. SELLER Group shall advise SELLER Group's employees carrying out parts of the PO that they and their respective employee shall be liable for TAXES of the Government of the Country of Operation and subject to the Tax Law and regulations of the Country of Operation. vii) Ensure that personal income tax of its employees is remitted to the relevant authorities in the relevant jurisdictions where applicable, when providing manpower SERVICES,

viii) SELLER shall defend, indemnify, and hold BUYER harmless from liability to any competent authority against any and all taxes, duties, governmental charges (including any related penalties and interest) that may be imposed on BUYER in connection with this Agreement. This indemnity shall include reasonable legal fees and costs incurred in connection with any claim or action to enforce this provision.

b) BUYER shall pay all TAXES imposed upon BUYER by Law by reason of the performance of the PO.

**29.2 Contract Price:** SELLER shall reduce contract price due to the improper inclusion in the Contract price of TAXES of any nature, or for SELLER not taking advantage of tax benefits, credits, deductions authorized by law, with the consequent

restitution or compensation to BUYER of any amounts paid to SELLER.

**29.3 Withholding Taxes:** (a) BUYER shall withhold TAXES from payments to SELLER as required by Law, including but not limited to, withholding taxes required under Section 10B of Guyana Corporation Tax Act, and Section 39 Guyana Income Tax Act to companies which do not show evidence of being resident and operational in Guyana, as determined by the BUYER as per process validated by the Guyana Revenue Authority ("GRA").

(b) SELLER is required to submit the following documentation to assist the BUYER is making a 'tax residency determination', which impacts whether the SELLER is subject to 10% withholding on their payment:

(i) Certificate of Incorporation or Business Name Registration Certificate

(ii) Long term contracts (if any)- sensitive information may be redacted, such as pricing;

(iii) Local content certificate (if applicable);

(iv) Certificate of Good Standing from the Commercial Registry;

(v) Tax Compliance certificate from the GRA or proof payment of quarterly advanced CIT.

(c) If SELLER is a foreign entity not registered or resident in Guyana, BUYER shall withhold tax on all payments at the current statutory rate of 20%. Where the payment is made to SELLER who is resident in a country with which Guyana has double taxation Treaty and such agreement provides reduced withholding tax on the payments from the BUYER to the SELLER, the SELLER shall obtain the Commissioner- General authorization for reduced rate of withholding tax.

(d) Upon payment of the amount withheld to the appropriate government entity or agency such amount withheld shall be deemed payment to the respective SELLER and BUYER shall have no further obligation to pay such amount to the respective SELLER. Production of a receipt or other evidence of withholding shall be conclusive proof between the parties of such withholding. Upon written request from SELLER, BUYER shall provide a withholding tax receipt or other evidence of withholding to SELLER.

**29.4 Tax Indemnities:** In addition to the general indemnities, SELLER shall defend, indemnify, and hold BUYER harmless from liability to any competent authority resulting from SELLER's or

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SELLER's employees' or subcontractor's failure to make timely payment of, or timely filings with respect to, any obligations to pay TAXES incurred in respect to the PO. Such indemnities shall include all penalties and interest imposed in addition to the TAXES due as a result of SELLER's, SELLER 's employees' or subcontractor's failure to comply with reporting, filing, payment or procedural requirements. SELLER shall be liable for and shall indemnify BUYER for any incremental withholding Taxes (not including any interest or penalties unless under withholding is caused by reliance on SELLER 's documentation) imposed by an appropriate government entity or agency on payments to SELLER in excess of amounts initially withheld by BUYER per Section 29.3. The prices shown in the PO are deemed to include all taxes which are not expressly imposed on BUYER by law, and SELLER shall release, protect, defend, indemnify, and hold harmless all members of BUYER GROUP and the Client from any liability and expense by reason of SELLER GROUP's failure to pay such taxes

### 29.5 Customs and Importation:

- a) For the purposes of this Agreement, "Fees and Duties" means any license fees, duties, port charges, and other lawful charges associated with customs or import. SELLER will not pay, and will ensure that its agents and subcontractors charges, facilitating payments, expediting fees and the like without first confirming the legality of any such payments. SELLER will also comply with any applicable local customs & importation compliance procedures ("Procedures") provided by BUYER, including taking advantage of applicable duty exemptions granted to the BUYER or its CLIENT.
- b) SELLER will pay Fees and Duties to a Government designated bank account by electronic funds transfer or check. If electronic funds transfer or check is not possible, SELLER will consult with BUYER to develop an alternative method of payment of the Fees and Duties. SELLER will cooperate with BUYER in establishing and implementing written processes to verify when possible that these payments are being made into the Government designated bank account. This includes obtaining verification directly from any banks involved, not from a third party involved in the payment such as the freight forwarder or customs agent of SELLER. In addition to any other audit rights under this Agreement, BUYER may examine SELLER 's payment and other activities related to

Fees and Duties to verify SELLER's compliance with this section. When SELLER pays Fees and Duties, BUYER will comply with applicable requirements in this Agreement as to reimbursing SELLER.

- c) At least once a month or more frequently as requested by BUYER, SELLER will provide to BUYER a detailed and itemized report of payments of Fees and Duties made by Contract SELLER or its agents.
- d) With respect to customs clearance, freight forwarding, or transportation logistics services, SELLER will:
  - i) Coordinate the efforts of all parties involved including BUYER, forwarding agents, vendors, inspectors, and expeditors.
  - ii) Ensure that relevant documents are furnished by vendors promptly, clearly define Fees and Duties, and comply with BUYER'S transportation, documentation, and shipping instructions.
  - iii) Make arrangements with BUYER or its nominated agency for transporting of the GOODS to BUYER'S specified destination as soon as customs clearance is completed; and
  - iv) Identify any refunds or exceptions to payment obligations in Fees and Duties.

**29.6 Priority of Tax Provisions:** The tax provisions herein shall be controlling with respect to all rights and obligations of BUYER and SELLER in connection with PO undertaken pursuant to the terms of this Agreement.

**30. PAYMENT OF CLAIMS/LIENS:** Whenever BUYER requests, SELLER shall furnish proof satisfactory to BUYER that all charges for material and/or labor have been fully paid. SELLER agrees to release, protect, defend, indemnify, and hold harmless BUYER and the CLIENT from and against any and all liens, claims, or encumbrances for labor and/or material arising out of or related to a PO issued pursuant hereto. In the event of any such claim, BUYER reserves the right to pay directly to any claimant the amount of such claim and any payments will be credited against any amount owed by BUYER to SELLER. If no amounts are then due to SELLER, then the amounts so paid shall be deemed a debt of SELLER to BUYER. To the maximum extent permitted by applicable law, SELLER agrees that, in consideration of BUYER awarding a PO to SELLER, SELLER shall waive any and all right to lien or encumber the GOODS, BUYER's and the CLIENT'S property or vessels, and any hydrocarbon product associated therewith. SELLER acknowledges that in entering into this Agreement, SELLER

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shall look solely and exclusively to BUYER for payment and shall not rely on any statutory, common law or other right to lien or encumber any property of BUYER or any hydrocarbons associated therewith.

**31. SUBCONTRACTORS:** SELLER expressly agrees to obtain BUYER's written approval prior to subcontracting any work required to produce the Goods furnished under these T&C.

**32. OFFSHORE REQUIREMENTS:** SELLER shall comply with all applicable training, visa and other requirements prior to SELLER dispatching any SELLER personnel to a BUYER offshore location.

**33. CONSEQUENTIAL DAMAGES:** Notwithstanding anything to the contrary contained elsewhere herein, neither SELLER nor BUYER shall be liable to the other for any consequential, incidental, indirect or punitive damages of any kind or character, including, but not limited to, loss of use, loss of profit, loss of efficiency, loss of productivity, acceleration, or loss of revenue (referred to as "Consequential Damages") whenever arising under these T&C or as a result of, relating to or in connection with the GOODS furnished hereunder, and no claim shall be made by either SELLER or BUYER against the other or any member of their respective GROUPS.

BUYER shall release, protect, defend, indemnify and hold harmless all members of SELLER GROUP from and against any Consequential Damages claimed or asserted by any member of the BUYER GROUP against any member of SELLER GROUP arising out or relating to the provision of the GOODS and/or SERVICES furnished under these T&C or any PO issued pursuant hereto and **REGARDLESS OF WHETHER CAUSED OR BROUGHT ABOUT BY ANY MEMBER OF SELLER GROUP'S NEGLIGENCE (INCLUDING ACTIVE, PASSIVE, SOLE, JOINT OR CONCURRENT NEGLIGENCE), THE UNSEAWORTHINESS OF ANY VESSEL, THE UNAIRWORTHINESS OF ANY AIRCRAFT OR ANY OTHER THEORY OF LEGAL LIABILITY, INCLUDING BREACH OF WARRANTY, BREACH OF CONTRACT, STRICT LIABILITY AND INCLUDING PREEXISTING CONDITIONS.**

SELLER shall release, protect, defend, indemnify and hold harmless all members of BUYER GROUP and the Client from and against any Consequential Damages claimed or asserted by any member of the SELLER GROUP against any member of BUYER GROUP and the Client arising out or relating to the provision of the GOODS and/or SERVICES furnished under these T&C or any PO issued pursuant hereto and **REGARDLESS OF WHETHER CAUSED OR BROUGHT ABOUT BY ANY MEMBER OF BUYER GROUP'S OR THE CLIENT'S NEGLIGENCE**

**(INCLUDING ACTIVE, PASSIVE, SOLE, JOINT OR CONCURRENT NEGLIGENCE), THE UNSEAWORTHINESS OF ANY VESSEL, THE UNAIRWORTHINESS OF ANY AIRCRAFT OR ANY OTHER THEORY OF LEGAL LIABILITY, INCLUDING BREACH OF WARRANTY, BREACH OF CONTRACT, STRICT LIABILITY AND INCLUDING PREEXISTING CONDITIONS.**

**34. SELLER'S OBLIGATIONS:** SELLER shall comply with, and ensure all personnel involved in the performance of work under these T&C comply with, all applicable SELLER health, safety and environmental practices, procedures, and requirements, as well as any and all project, CLIENT'S and BUYER'S health, safety and environmental practices, procedures and requirements that form part of the PO. SELLER shall do everything necessary to ensure that no person, property, right, right-of-way or privilege shall be injured, damaged, or unreasonably infringed by reason of SELLER's activities under the PO and all documents contained herein. Fire hazards shall be eliminated, and the health of all persons employed in connection with the PO shall not be endangered. SELLER shall maintain the adequate medical supervision of all persons employed in connection with the PO and adequate sanitation measures in respect of the performance of the PO.

SELLER shall observe and comply with all fire, safety, and security and other rules and regulations relating to the safe execution of the PO and shall be responsible for the observance thereof by its employees, workmen, agents, and subcontractors. During the execution of the PO, the SELLER shall furnish, free of charge, support and necessary conveniences at the SELLER's and its subcontractor's facilities to BUYER, including but not limited to secretarial service, telephone, facsimile, and office space.

SELLER shall comply with and bear liability for all visa requirements for personnel, where applicable and necessary.

**35. RIGHTS OF TECHNOLOGY:** If the SELLER's performance of any PO issued pursuant hereto includes experimental design, development, or research work, and such work is paid for in whole or in part by BUYER, SELLER shall: (1) promptly disclose and assign to BUYER all technical data and computer software resulting, in whole or in part, from such work, including but not limited to all confidential designs, processes, know-how, trade secrets and inventions, whether or not patentable, resulting from such work (collectively the "Developed Technology"); (2) use the Developed Technology only in the performance of a PO; (3) maintain the Developed Technology in strict confidence using the same care as SELLER uses to protect its own proprietary information; (4) not disclose the

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Developed Technology to any third party; and (5) execute such documents and take such actions as BUYER may consider appropriate to vest in BUYER exclusive title to the Developed Technology.

**36. RIGHTS OF THIRD PARTIES:** Except as specifically provided, neither these T&C nor the PO shall be construed to confer any benefit on any third party not a PARTY to these T&C nor shall it provide any rights to such third party to enforce its provisions.

**37. ANTI-CORRUPTION COMPLIANCE:**

37.1 SELLER warrants that, in connection with the execution of any PO issued pursuant hereto, SELLER shall comply with Applicable Anti-corruption Laws and Policy as provided in the attachment. SELLER represents and warrants that it has not corruptly made, offered, paid, promised or authorized, and will not corruptly make, offer, pay, promise or authorize, the payment or gift of money or anything of value directly or indirectly to any person, including any Public Official, as defined below, for the purpose of: (1) influencing any act or decision of the person or Public Official in his or her official capacity; (2) inducing the person or Public Official to do an act in violation of a lawful duty; or (3) inducing the person or Public Official to influence the act or decision of a government or government instrumentality, in order to assist SELLER or BUYER in obtaining or retaining business or securing any improper advantage, including any license, permit, government authorization or any decision related to BUYER or these T&C.

*37.2 Disclosure Controls and Procedures.*

SELLER agrees and undertakes that in connection with these T&C and in connection with any other business transactions involving BUYER and SELLER and the jurisdiction in which the GOODS and/or SERVICES are supplied, SELLER has applied, and will apply, effective disclosure controls and procedures.

*37.3 Continuing Effect and Survival of Representation, Warranties and Covenants.*

All of the foregoing representations, warranties and covenants shall be continuing in effect and shall survive for a period of five (5) years after completion, expiration, or termination of the PO. SELLER shall be obliged to immediately inform BUYER if any of

the foregoing representations and warranties ceases to be accurate, in whole or in part.

*37.4 Right of Termination Due to Evidence of Violations.*

In the event BUYER has any reasonable basis to believe SELLER may not be in compliance in any material way with the undertakings and/or requirements set forth in this Article 37, BUYER shall advise SELLER in writing of its belief and SELLER shall fully cooperate with any and all inquiries undertaken by or on behalf of the BUYER. Without prejudice to any other rights the BUYER may have hereunder, under the PO or at law (including, as applicable, the right of damages for breach of contract), BUYER shall have the right to terminate this PO with immediate effect if any of the foregoing agreements, representations, warranties, covenants, undertakings, or requirements set forth in this Article 37 have not been complied with or fulfilled by SELLER.

*37.5 Indemnity for Violation or Breach.*

SELLER agrees to be responsible for and assume all liability for and hereby agrees to release, protect, defend, indemnify and hold harmless all members of BUYER GROUP and the CLIENT from and against any loss, cost, claim, liability, suit, judgment, award or damage (including reasonable attorney's fees) of whatever nature resulting from any violation or breach by SELLER of Applicable Anti-Corruption Laws, or any of the representations, warranties or other obligations contained in this Article 37.

*Defined Terms.*

- a) *"Applicable Anti-corruption Laws"* shall mean: (1) Japan Unfair Competition Prevention Law ("UCPL"); (2) the U.S. Foreign Corrupt Practices Act ("FCPA"); (3) the U.K. Bribery Act 2010; (4) any other applicable legislation implementing either the United Nations Convention Against Corruption or the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; (5) anti-corruption laws of any applicable territory; and (6) all applicable laws dealing with bribery, extortion and kickbacks.
- b) *"Public Official"* shall mean: (1) any official, officer, employee or representative of (a) any federal, state, provincial, territory, county or municipal government or any department or agency thereof, (b) any public international organization or any department or agency thereof, or (c) any company or other entity owned or controlled by any government; (2) any political party or party official; and (3) any candidate for political office.

**38. EXPORT CONTROLS:** Unless otherwise directed by BUYER, SELLER shall be responsible for determining all export licensing requirements and obtaining all necessary export licenses and authorizations as required by Applicable Laws. In such circumstances, SELLER shall utilize an export agent or freight forwarder to facilitate the export of the GOODS or any portion thereof, and SELLER shall be solely and exclusively responsible for providing written authorization or power of attorney to its export agent or freight forwarder so that SELLER's export agent or freight forwarder can act on SELLER's behalf. Copies of the written authorization or power of attorney given by SELLER to SELLER's export agent or freight forwarder must be delivered to BUYER as a condition to the transfer of the GOODS or any portion thereof by SELLER to BUYER or SELLER's export agent or freight forwarder. SELLER's export agent or freight forwarder shall be listed on all export documents as the Principal Party in Interest and/or Exporter, and SELLER and SELLER's export agent or freight forwarder shall assume all responsibility for the proper handling, classification, and exporting of the GOODS or any portion thereof sold by SELLER to BUYER. Upon written request from BUYER, SELLER's export agent or freight forwarder, SELLER shall provide all necessary and sufficient technical information to assist BUYER, SELLER's export agent or freight forwarder in determining the export classification status of the GOODS or any portion thereof.

SELLER shall be responsible for filing for and obtaining all such export licenses and authorizations for all GOODS and intellectual property relating to the sale of the GOODS by SELLER to BUYER and SELLER shall release, protect, defend, indemnify and hold harmless all members of BUYER GROUP and the CLIENT from and against any loss, cost, claim, liability, suit, judgment, award or damage (including reasonable attorney's fees) on account of failing to file for and properly obtain all such export licenses and authorizations for all GOODS and intellectual property relating to the sale of the GOODS by SELLER to BUYER.

**39. DANGEROUS GOODS:** Dangerous Goods must be packed, marked, and labelled in accordance with the requirements of Applicable Laws prior to shipment. SELLER must ensure that all GOODS are properly packed so as to prevent any damage or deterioration to the GOODS. In each single package or bundle, a packing note, or list of items contained in the package or bundle must be inserted. All bales, drums, cases, crates, and other packages in which GOODS are transported must be marked in a clear and suitable manner with gross dead weight and with marks and shipping numbers. The shipping document shall specify the PO and shall be clearly visible on the package. GOODS shall be dispatched as

instructed in the PO. SELLER shall be liable for any expense, loss or difference in freight charges arising from failure to follow the dispatch instructions. BUYER reserves the right to arrange transportation for any GOODS. SELLER shall furnish to the BUYER copies of dangerous goods declaration, material safety data sheets, transport documents and other certifications stipulated under Applicable Laws prior to delivery of Dangerous Goods that shall arrive at the supply base (3) days prior to the stipulated delivery date. SELLER shall be liable to BUYER for any cost incurred by BUYER as a result of SELLER's failure to comply with Applicable Laws relating to dangerous or hazardous Goods.

**40. COMPLIANCE WITH INTERNATIONAL HUMAN RIGHTS PRINCIPLES:** SELLER shall adhere to all applicable internationally recognized human rights principles and shall comply with the international human rights standards set forth in MODEC's Human Rights Policy, available on:

**41. COMPLIANCE WITH BUYER POLICIES:** SELLER shall adhere to the BUYER's and CLIENT's Policies: Storage, Alcohol & Drugs, Tuberculosis, Mobil Phone, Workplace Harassment and Background Checks (if applicable).

**42. EQUIPMENT AND MATERIALS:** In some instances, POs may involve the supply of equipment, materials, or both, where the BUYER'S CLIENT will be the ultimate owner of the equipment and materials, as applicable. The BUYER and its CLIENT shall be the recipients of manufacturer's notice related to the equipment and materials, as applicable, to be supplied, including without limitation, any and all health and safety advisory notices.

**43. BUYER'S PREMISES:** SELLER will ensure its personnel adhere to the BUYER's safety and health requirements, including the use of personal protective equipment and work practices to achieve workplace safety. BUYER will promptly remove from the premises or work site any SELLER personnel, BUYER may, in its sole discretion, designate. SELLER hereby releases and forever discharges and holds harmless BUYER from any costs, claims, losses, and damages of any kind whatsoever, based on negligence, defamation, wrongful dismissal or otherwise, which SELLER may suffer, sustain, pay or incur as a result of any removal and will indemnify, defend and hold harmless BUYER against any third-party claims based on removals under this section.

**44. MANAGEMENT OF WASTE:** SELLER will, in performing services, have the responsibility and liability for the proper management of wastes according to all Laws. In particular, SELLER will: (a) implement procedures to minimize the generation of waste including, at a minimum, process substitution, materials recovery, continued product use, and

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when possible, selecting less toxic alternatives to minimize hazardous waste generation; (b) consolidate (with like product) partially full containers of paint, solvent, chemicals, and other products whenever possible, to minimize waste and allow use of the remaining product; (c) not commingle waste they generate with any waste generated by BUYER or others without prior written consent of BUYER; (d) segregate hazardous waste from nonhazardous waste at all times; (e) control waste generation activities, to the extent possible; and, (f) in addition to (a) through (e) above, for Services performed at any Buyer-provided work site, not transfer waste to any offsite facility without Buyer's prior written consent. SELLER will also ensure that all waste is handed in compliance with BUYER management of waste standards.