

# GENERAL TERMS AND CONDITIONS FOR TESTING & INSPECTION SERVICES

America-USMCA-English-V2022.1



These General Terms and Conditions for Testing & Inspection Services (**T&Cs**) together with the accepted Proposal (hereinafter defined) form the agreement between you (**Client**) and the Peterson or Control Union entity (**Company**) undertaking to provide the Services (hereinafter defined) contemplated thereunder (**Agreement**).

## 1. DEFINITIONS

1.1. In these T&Cs, the following terms shall have the following meaning unless the context requires otherwise:

- (a) **Confidential Information** means any information, in whatever form or manner presented, involving technical, business, marketing, policy, know-how, planning, project management, products, affairs and finances and other information, data and/or solutions, in written, oral, digital, magnetic, photographic and/or other forms, including but not limited to any information which is disclosed pursuant to or in the course of the provision of the Services pursuant to the Agreement, and it is disclosed in writing, electronically, orally, or otherwise, and is marked, stamped or identified by any means as confidential by the discloser at the time of disclosure and/or howsoever disclosed it would be reasonably considered to be confidential by the party receiving such information. Confidential Information shall also include Confidential Information obtained or received by the Company in the performance of the Services;
- (b) **Data Protection Laws** means (i) the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation or **GDPR**), (ii) all other applicable existing or new European Union (EU) laws, European Economic Area laws, the laws of the United Kingdom, and any applicable law in the United States of America relating to or impacting on the processing of information about a living person and/or privacy. The terms, "Controller", "Data Subject", "Member State", "Personal Data", "Personal Data Breach", "Process(ing)", "Processor", and "Supervisory Authority" shall have the meaning given to those terms in the Data Protection Laws;
- (c) **Fees** means the consideration for the Services;
- (d) **Force Majeure Event** means any circumstance beyond a party's reasonable control which renders a party unable to comply with its obligations under the Agreement and which could not have been avoided by the affected party through the exercise of proper diligence and includes, without limitation, acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or action taken by a government, accreditation body or public authority, including without limitation, imposing an export or import restriction, quota or prohibition; collapse of buildings, fire, explosion or accident; any labor or trade dispute, strikes, industrial action or lockouts; and interruption or failure of utility service;
- (e) **IPR** means all intellectual property rights including but not limited to any: patents, copyrights, database rights, design rights, know-how, models, trademarks and trade secrets or IPR rights in Confidential Information, whenever and however arising, in each case whether registered or unregistered, and including any applications, divisions, reissues, re-examinations, continuations, continuations-in-part and renewals thereof;
- (f) **Index:** means the consumer price index published by the U.S. Bureau of Labor Statistics, for all items in U.S. city average, and all urban consumers, seasonally adjusted.
- (g) **Industry Practice:** means, with respect to an undertaking: (i) the practices, methods and acts applied; and (ii) the degree of care and skill which would reasonably and ordinarily be exercised, in each case by reasonable inspection companies engaged in the same type of undertaking and under the same or similar circumstances and conditions;
- (h) **Proposal** means any offer, estimate and/or quotation describing and/or detailing the Services and the Fees provided by the Company;
- (i) **Report** means any memoranda, document, graphs, charts, photographs, laboratory data, calculations, measurements, estimates, notes, certificates and/or other material prepared by the Company in the course of providing the Services to the Client, together with status summaries or any other communication in any

form describing the results of any Services performed (if any);

- (j) **Services** means all activities to be performed by the Company as described in the Agreement and which may comprise or include the provision by the Company of a Report;
- (k) **Representatives** means any party's affiliates and subsidiaries and the directors, officers, employees, agents and advisors of such party as well as its affiliates and subsidiaries (including its professional advisors), and in case of the Company, this shall include any subcontractor the Company engages to perform the Services (or any part thereof) and such subcontractor's directors, officers, employees, agents and advisors;
- (l) **Worksite** means the premises, locations, ports, barges, vessels or any other places where the Services will be performed, however excluding the premises, locations or any other place of business of the Company.

1.2. A reference to a clause is a reference to a clause in these T&Cs.

1.3. A reference to a party in these T&Cs refers to the Client and/or the Company, as the case may be.

## 2. GENERAL

2.1. In the event of any inconsistency between the provisions of these T&Cs and any Proposal which is accepted in accordance with clause 3.1, the provisions of these T&Cs shall prevail. For the avoidance of doubt, these T&Cs shall take precedence over any terms and conditions which the Client has proposed or may propose in the future to the Company, whether in a purchase order or any other document or which are implied by trade, custom, practice or course of dealing.

## 3. PROPOSAL AND ACCEPTANCE

3.1. The Agreement between the Client and the Company shall become effective upon either (a) receipt by the Company of the Client's acceptance of the Proposal in writing or (b) receipt of the Client's instruction to commence with the performance of the Services set forth in the Proposal or the preparation thereof, whichever occurs earlier. Both the Proposal and the acceptance thereof may be transmitted electronically and need not be signed by either party to be enforceable.

3.2. The Company shall not be bound by any terms or provisions proposed by the Client, unless such terms and provisions have been expressly accepted by an authorized representative of the Company in writing.

3.3. Unless provided otherwise in the Proposal, any offer contained in the Proposal is valid for one (1) month from the date of issuance or until two (2) business days prior to the proposed commencement date of the Services, whichever comes first. Notwithstanding the fact that a Proposal may include a specific period for acceptance, the Proposal may be revoked by the Company at any time prior to receipt by the Company of the Client's acceptance of the Proposal or instruction to commence with the performance of the Services.

## 4. PERFORMANCE OF THE SERVICES

4.1. The Company shall perform the Services hereunder in accordance with Industry Practice. The Services performed by the Company shall be only for the Client's use and benefit.

4.2. Except when the Company receives prior written instructions to the contrary from the Client, no third party is entitled to give any instructions in respect of the Agreement or the performance of the Services.

4.3. In the performance of the Services, there may be an obligation upon the Company, either upon express instruction from the Client or its Representatives or in line with Industry Practice, to deliver a Report to a specific third party. In such event(s), it is expressly acknowledged and agreed that the Company shall be irrevocably authorized to deliver such Report to such third party.

4.4. The Client acknowledges and agrees that the Services are performed within the limits of the scope of services set forth in the Proposal and/or pursuant to the Client's specific instructions as confirmed by the Company or, in the absence of such instructions, in accordance with any relevant Industry Practice. The Client further agrees and acknowledges that the Services are not necessarily designed or intended to address all matters of quality, safety, performance or condition of the products, materials, services, systems or processes tested, inspected or certified and the scope of services does not necessarily reflect all standards which may apply to such products, materials, services, systems or process tested, inspected or certified. The Client understands that the reliance on any Report is limited to the facts and representations set out in such Report which represent the Company's review and/or analysis of facts, information, documents, samples and/or other materials in existence at the time of the performance of the Services only.

4.5. The Company does not accept any responsibility or liability for any acts or omissions made by the Client or any third party on the basis of the content of the Report.

- 4.6. Under no circumstances shall the Company or its Representatives be obligated by the Client to sign any indemnity, waiver or other site-specific undertakings or agreements (of any kind) or shall the Client request that any such undertaking or agreement be signed, and if any such instruments are nevertheless signed, such instruments shall be considered null and void ab initio. In the event the Worksite is not the Client's premises or beyond its control and the Company or any of its Representatives are obliged to sign an indemnity, waiver or other premises-specific undertakings or agreements (of any kind), the Client shall bear all liability and exposure thereunder and warrants to indemnify the Company and its Representatives in respect of the same.
- 4.7. The Company shall, where required, reasonably cooperate with third parties appointed by the Client in relation to the Services, provided that the Company shall owe no duty to such third parties under the Agreement.

## 5. THE COMPANY'S WARRANTIES AND OBLIGATIONS

- 5.1. The Company warrants to the Client that it has the power and authority to enter into the Agreement. Furthermore the Company shall:
- (a) comply in all material respects with all laws and regulations applicable to the performance of the Services;
  - (b) take reasonable steps to ensure that whilst on the Worksite its Representatives comply in all material respects with any health and safety rules and regulations and other reasonable security requirements made known to the Company by the Client in accordance with clause 6.2(e) and that its Representatives shall make use of personal protection equipment requisite by Industry Practice;
  - (c) in the performance of the Services, use equipment that is inspected, calibrated and maintained in accordance with applicable laws and/or Industry Practice;
  - (d) ensure that the Representatives it engages in the performance of the Services are suitably qualified, sufficiently experienced (whether by way of education or experience) and trained in all aspects relevant to performance of the Services; and
  - (e) ensure that the Reports will not infringe any legal rights (including IPR) of any third party. This warranty shall not apply if the infringement is directly or indirectly caused by: (i) the Company's reliance on any Materials (as defined in clause 6.1(c) below) provided to the Company by or on

behalf of the Client; or (ii) any additions or changes to the Reports by the Client, its Representatives or a third party; or (iii) the Company's compliance with any instruction from the Client or its Representatives directing a manner of performance not normally applied by the Company.

- 5.2. THE COMPANY MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER, EXCEPT FOR THOSE SET FORTH IN THE AGREEMENT. SUCH REPRESENTATIONS AND WARRANTIES, ARE IN LIEU OF, CANCEL AND SUPERSEDE ANY OTHER REPRESENTATIONS AND WARRANTIES GIVEN ON ANY OCCASION, WHETHER IN WRITING OR OTHERWISE, EXPRESS OR IMPLIED, OR PROVIDED BY LAW, IF ANY.

## 6. CLIENT'S REPRESENTATIONS, WARRANTIES, AND OBLIGATIONS

- 6.1. The Client represents and warrants that:
- (a) it has the power and authority to enter into the Agreement and procures the Services for itself;
  - (b) it is securing the provision of the Services for its own account and not as an agent or broker, or in any other representative capacity, for any third party;
  - (c) any information, samples, documents and related materials (**Materials**) furnished to the Company or its Representatives by or on behalf of the Client will be true and accurate in all material respects, not omit any material fact and not be misleading in any respect. The Client further acknowledges that the Company and its Representatives will, in the performance of the Services, rely on such Materials (without any duty to confirm or verify the accuracy or authenticity thereof);
  - (d) any samples furnished to the Company by or on behalf of the Client will be shipped pre-paid and will be collected or disposed of by the parties hereto, at the Client's cost, within thirty (30) days after testing unless alternative arrangements are made by the Client. In the event that such samples are not collected or disposed by the Client within the thirty (30) days period, the Company reserves the right to destroy the samples, at the Client's cost; and
  - (e) any Materials (including without limitation certificates and reports) furnished to the Company or its Representatives by or on behalf of the Client will not, in any circumstances, infringe any legal rights (including IPR) of any third party.
- 6.2. The Client further agrees:

- (a) to co-operate fully and timely with the Company in all matters relating to the Services and to provide timely instructions and feedback to the Company;
- (b) to provide timely the Company's Representatives with any and all Material necessary for the performance of the Services and to enable the Company to provide the Services in accordance with the Agreement;
- (c) that it is responsible for providing the samples/equipment to be tested together, where appropriate, with any specified additional items, including but not limited to connecting pieces, fuse-links, etc. The Client acknowledges that any samples provided may become damaged or be destroyed in the course of testing as part of the necessary testing process and undertakes to indemnify and hold the Company harmless from any and all responsibility for such alteration, damage or destruction;
- (d) to provide the Company's Representatives with unconditional and unhindered access to the Worksites and to take all necessary actions to eliminate or remedy any circumstances or events beyond the Company's control that hinder or impede the performance of the Services;
- (e) prior to the Company's Representatives attending any Worksite, to inform the Company of all applicable health and safety rules and regulations and other reasonable security requirements that may apply at the relevant Worksite. The Client shall notify the Company promptly of any risk, safety issues or incidents in respect of any item and/or product to be inspected or tested by the Company, or any process or systems used at the Worksite or otherwise necessary to perform the Services. The Client shall ensure the safety of the Company's Representatives at its Worksites;
- (f) to obtain and maintain all necessary licenses and consents in order to comply with relevant law and regulation regarding the Services;
- (g) that it will not use any Report in a misleading manner, it will only distribute such Report in its entirety and in no event will the contents of any Report or any extracts, excerpts or parts of any Report be distributed or published without the prior written consent of the Company in each instance; and
- (h) that no advertising and promotional materials or any statements made by the Client will give a false or misleading impression to any third party concerning the Services performed by the Company.
- 6.3. All obligations set out in this clause 6 will be performed promptly and at the sole risk, costs and expenses of the Client.
- 6.4. The Company shall neither be in Breach or Default nor be liable whatsoever if and to the extent that such Breach or Default is a result of any breach by the Client of the provisions set forth in this clause 6. The Client also acknowledges that such breach may impact the Company's performance under the Agreement.
- 6.5. The Company reserves the right to suspend the performance of the Services, without any liability whatsoever, if the Worksite and/or the circumstance under which the Services are to be performed are, at the sole discretion of the Company, a risk to health, safety or environment.
- ## 7. FEES AND PAYMENT
- 7.1. In consideration of the Company performing the Services, the Client shall punctually pay the Fees. The Fees do not, unless expressly otherwise set forth in the accepted Proposal, include the Company's costs and expenses for travel, accommodation, travel insurance, visa, any additional in-country insurances or travelling man hours (**Expenses**). The Client agrees that it will reimburse the Company for any Expenses and is wholly responsible for any freight or customs clearance fees relating to any testing samples.
- 7.2. If the Company is instructed to perform any work beyond the scope of services as set forth in the Proposal, such work shall be governed by these T&Cs and charged on a time and material basis.
- 7.3. The Fees set out in the Proposal may be adjusted annually by the Company in accordance with the January-to-January increase in the Index. The Index to be referred to for the purposes of the Agreement, shall be that which is most recently published by such competent authority at that time.
- 7.4. Unless otherwise provided in the Agreement, the Fees are exclusive of any applicable taxes, which shall be included in the invoices and payable (if applicable), in addition to such amounts. Client shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by client hereunder; and to the extent the Company is required to pay any such sales, use, excise, or other taxes or other duties or charges, Client shall reimburse the Company in connection with its payment of fees and expenses as set forth in this clause 7. Notwithstanding the previous sentence, in no event shall Client pay or be responsible for any taxes

imposed on, or regarding, the Company's income, revenues, gross receipts, personnel, or real or personal property or other assets.

- 7.5. The Client shall pay the Company's invoices within thirty (30) days of the date of the invoice.
  - 7.6. If the Client fails to make a payment when due under the Agreement by the due date, then, without limiting any of the Company's rights and remedies, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum is made, whether before or after judgment, at an amount equal to five percent (5%) per year. In addition, the Client shall reimburse the Company for all costs incurred in collecting any overdue payments and related interest, including, without limitation, attorneys' fees, legal costs, court costs, and collection agency fees. If a check tendered by the Client is returned for insufficient funds, uncollected funds or stopped payment, the Client shall pay the Company a twenty-five dollar (\$25.00) service fee.
  - 7.7. All amounts due by the Client to the Company shall be paid in full without any set-off, counterclaim, deduction or withholding. All payments to be made under the Agreement shall be made without any deduction of any (local or withholding) taxes, levies, licenses, duties, charges, fees and withholdings of any nature by any governmental authority save as required by law. If the Client is compelled to make any such deduction, it will pay to the Company such additional amounts as are necessary to ensure receipt by the Company of the full amount which the Company would have received but for the deduction.
  - 7.8. If the Client disputes the contents of the invoice, details of the objection denoting substantiated reasons must be raised with the Company within fourteen (14) days of receipt of such invoice, otherwise the invoice will be deemed to have been accepted. Any such objections do not exempt the Client from its obligation to pay within the period referred to in clause 7.5.
  - 7.9. If actions by the Client delay the completion of the Services, the Company has the right to invoice the Client for any costs and the Fees for the Services provided to date, and the Client shall pay such costs and Fees invoiced as set forth in clause 7.5.
  - 7.10. In addition to all other remedies available under the Agreement or at law (which the Company does not waive by the exercise of any rights hereunder), the Company shall be entitled to suspend the provision of any Services if the Client fails to pay any undisputed Fees or Expenses when due hereunder and such failure continues for fourteen (14) days following written notice thereof.
8. **IPR AND DATA PROTECTION**
    - 8.1. All IPR belonging to a party prior to entering into the Agreement shall remain vested in that party. Any developments, modifications, or enhancements of a party's IPR are and will at all times remain vested in said party.
    - 8.2. Any use by the Client (or its affiliates) of the name "CU", "Control Union" or "Peterson" or any of the Company's trademarks, logos or brand names must be prior approved in writing by the Company.
    - 8.3. All IPR in any Report shall belong to the Company. The Client shall have the right to use any such Report subject to the provisions of, and for the purposes set forth in, the Agreement.
    - 8.4. The Client agrees and acknowledges that the Company retains any and all IPR in concepts, ideas and inventions that may arise during the preparation or provision of any Report (including any deliverables provided by the Company to the Client) and the provision of the Services to the Client.
    - 8.5. Both parties shall comply with their respective obligations as independent Controllers under applicable Data Protection Laws in relation to their respective Processing of Personal Data. For the avoidance of doubt, the Company shall never Process Personal Data on behalf of the Client, and therefore never acts as a Processor in the context of the Agreement.
    - 8.6. In addition, the Client shall:
      - 8.6.1. ensure that the Client's Representatives who are individuals and are involved in the provision of the Services or the performance of the Agreement are duly informed about the Processing of their Personal Data by the Company (acting as a Controller vis-à-vis their Personal Data), by providing the relevant Client's Representatives with the General Privacy Policy available at the Company's website <https://petersoncontrolunion.com/> and by clicking 'Privacy Policy'. The Client shall provide to the Company, upon the Company's first request, evidence demonstrating that the Client has duly informed the relevant Client's Representatives of privacy policy referred to in the previous sentence; and
      - 8.6.2. develop and implement appropriate procedures for handling requests by its Representatives who are individuals for the exercise of their rights regarding their Personal Data pursuant to the applicable Data Protection Laws; the Company may

cooperate with the Client in promptly responding to requests from such Client's Representatives.

- 8.7. The Client will indemnify and hold harmless the Company and its Representatives from and against any loss, damage, cost, expense claim, demand, liability, fine (to the extent permitted under applicable law) or other indemnification obligation (including those of other parties involved or Supervisory Authorities) that the Company incurs as a result of a breach by the Client of clauses 8.5 and/or 8.6. If, further to the Processing activities of the Client under the Agreement, (i) a Data Subject lodges a claim for damages against the Company or (ii) a competent Supervisory Authority launches an investigation or infringement procedure against the Company, the Client shall assist and intervene in the Company's defense upon the Company's request.

## 9. CONFIDENTIALITY

- 9.1. Where a party (**Receiving Party**) or its Representatives obtains or receives Confidential Information of the other party (**Disclosing Party**) or its Representatives in connection with the Agreement it shall, subject to clauses 9.2 through 9.4:

- (a) keep such Confidential Information confidential, by applying the standard of care that it uses to protect its own Confidential Information;
- (b) use such Confidential Information only for the purposes of performing its obligations under the Agreement; and
- (c) not disclose such Confidential Information to any third party without the prior written consent of the Disclosing Party.

- 9.2. The Receiving Party may disclose the Disclosing Party's Confidential Information on a "need to know" basis to its Representatives provided that it shall first inform such Representatives of the confidential nature of the Confidential Information and it shall ensure that such Representatives are bound by obligations of confidence in respect of the Confidential Information no less onerous than those set out in this clause 9.

- 9.3. The provisions of clauses 9.1 and 9.2 shall not apply to any Confidential Information which:

- (a) was already in the possession of the Receiving Party or its Representatives on a non-confidential basis before disclosure thereof by the Disclosing Party or its Representatives;
- (b) is or becomes public knowledge other than as a result of a breach of this clause 9;

- (c) was, is or becomes available to the Receiving Party or its Representatives on a non-confidential basis from a person who, to the Receiving Party's knowledge, is not bound by a confidentiality agreement with the Disclosing Party;

- (d) is developed by the Receiving Party or its Representatives independently of the information disclosed by the Disclosing Party or its Representatives; or

- (e) is required to be disclosed by law, by any governmental or other regulatory authority (including, without limitation, any relevant securities exchanges) or by a court or other authority of competent jurisdiction, provided that to the extent it is legally permitted to do so, the Receiving Party gives the Disclosing Party as much notice of such disclosure as possible.

- 9.4. The disclosure of any Confidential Information to the Receiving Party or its Representatives shall not be construed as granting the Receiving Party or its Representatives (i) any property rights, by license or otherwise, to any Confidential Information; or (ii) other IPR that have been issued or that may be issued, based on such Confidential Information, other than the right to use such Confidential Information for the purpose of performing its obligations under the Agreement. The Company reserves the right to retain documents or materials containing, reflecting, incorporating or based on the Client's Confidential Information to the extent required by law, any applicable governmental, regulatory authority or Industry Practice or the Company's quality and assurance processes. The provisions of this clause 9 shall continue to apply to any documents and materials retained by the Company.

## 10. FORCE MAJEURE

- 10.1. Neither the Company nor the Client will be liable for failure or delay to perform obligations under the Agreement which have become practicably impossible because of a Force Majeure Event. Written notice of a party's failure or delay in performance due to a Force Majeure Event must be given to the other party no later than five (5) business days following the Force Majeure Event commencing, which notice shall describe the Force Majeure Event and the actions taken to minimize the impact thereof. All delivery dates in these T&Cs affected by a Force Majeure Event shall be tolled for the duration of such force majeure. When feasible, the Agreement shall not be cancelled but rescheduled and deliverables for mutually agreed dates to be set as soon as practicable after the Force Majeure Event ceases to exist.

10.2. If circumstances causing the Force Majeure Event cannot be permanently removed, or result in a delay extending beyond thirty (30) business days, the Agreement shall be automatically terminated, and the parties shall be relieved from their further contractual obligations, except for their accrued rights, if any, and the final accounting arising from or relating to the Agreement.

## 11. LIABILITY AND INDEMNITY

11.1. In no event shall the Company's cumulative overall liability for any and all claims, demands, causes of action, suits, proceedings, remedies, fines, penalties, taxes, losses, judgments, liens, liabilities, indemnities, costs, awards, damages (including any punitive and/or exemplary damages) or expenses of any kind and character (including reasonable attorney's fees and other legal-related expenses) (**Claims**) arising out of, relating to or in connection with the Agreement exceed (i) an amount equal to ten (10) times the Fees paid by the Client (not inclusive of applicable taxes and Expenses) in respect of the Services that gave rise to such Claims or (ii) a cumulative maximum amount of one hundred thousand euro (EUR 100,000), whichever of (i) and (ii) is less.

11.2. FURTHER, IN NO EVENT SHALL THE COMPANY OR ANY OF ITS SUBCONTRACTORS OR REPRESENTATIVES BE LIABLE UNDER THE AGREEMENT TO THE CLIENT OR ANY THIRD PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, OR LOST PROFITS, REVENUES OR BUSINESS OPPORTUNITIES, DIMINUTION IN VALUE OR DAMAGE TO REPUTATION AND/OR GOODWILL, ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THE AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE; (B) WHETHER OR NOT THE CLIENT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

11.3. The Client shall:

- (a) for Claims that are asserted against, or incurred, sustained or suffered by the Company or any of its Representatives and that allege or are based on:
  - (i) breach or non-fulfillment of any provision of the Agreement by the Client or the Client's Representatives;
  - (ii) any negligent or more culpable act or omission of the Client or any of the Client's Representatives (including any reckless or willful misconduct) in connection with the

performance of its obligations under the Agreement;

(iii) any bodily injury, death of any person, or damage to real or tangible personal property caused by the negligent or more culpable acts or omissions of the Client or any of the Client's Representatives (including any reckless or willful misconduct); or

(iv) any failure by the Client or any of the Client's Representatives to comply with any applicable federal, state or local laws, regulations, or codes in the performance of its obligations under the Agreement,

fully save, indemnify, hold harmless, and, upon the Company's written request, defend the Company and its Representatives from and against any and all such Claims; and

- (b) for Claims that are asserted against, or incurred, sustained or suffered by the Company or any of its Representatives arising out of, relating to, or in connection with the Agreement in any way but that allege or are based on grounds other than those set forth in clause 11.3(a) above, save, indemnify, hold harmless, and, upon the Company's written request, defend the Company and its Representatives to the extent that the aggregate of such Claims exceeds the Company's cumulative overall liability set forth in clause 11.1 above.

11.4. Any Representative of the Company shall have the benefit of the limitations, exclusions and indemnities set forth in this clause 11.

11.5. The Client shall be prohibited from bringing legal action against the Company or its Representatives following the expiry of three (3) months from the day upon which the Client became aware of the Claim. In any event, Claims against the Company and its Representatives shall be time-barred by the expiration of six (6) months after the event giving rise to such Claim.

11.6. The clauses 11.1, 11.2, 11.3, 11.4, 11.5 and 11.8 shall apply irrespective of cause and notwithstanding the Company's negligence or breach of duty (whether statutory or otherwise) and irrespective of, whether such Claims are based or claimed to be based on negligence (including sole, joint, concurrent or otherwise), breach of any warranty, condition or term (statutory or otherwise), breach of agreement, statute, strict liability or otherwise and irrespective of any claim in tort, under contract or otherwise at law.



- 11.7. The clauses 11.1, 11.2, 11.3, 11.4, and 11.5 shall not apply if the Company or any of its directors or senior managers has acted fraudulently or its acts or omissions constitute willful concealment, willful intent, gross negligence or willful recklessness. In addition, nothing in this clause 11 is intended or will limit or exclude the Company's liability to the extent such liability cannot be limited or excluded by applicable mandatory law.
- 11.8. The Fees paid by the Client and the other provisions of the Agreement reflect the allocations of risk between the parties. The provisions of this clause 11 are an essential element of the basis of the Agreement.
- 11.9. Each party shall use all reasonable efforts to mitigate any Claims arising out, relating to or in connection with the Agreement.
- 12. INSURANCE**
- 12.1. The Company is neither an insurer nor a guarantor and excludes all liability in such capacity. Clients seeking a guarantee against loss or damage should obtain appropriate insurance.
- 12.2. Both parties shall take out adequate insurance policies so as to sufficiently cover their respective liabilities under the Agreement, and shall, upon written request of the other party, provide written evidence of the existence of such policies.
- 13. SUBCONTRACTING**
- 13.1. The Company reserves the right to delegate the performance of its obligations hereunder and the provision of the Services to a subcontractor.
- 13.2. The Company is responsible for all work, and acts, omissions and defaults of its subcontractors as if they were the work, acts, omissions or defaults of the Company.
- 14. BREACH AND DEFAULT**
- 14.1. If the Company in any way whatsoever, causes a breach of the Agreement or any of its provisions (**Breach**), other than as a result of the occurrence of a Force Majeure Event, the Client may, upon obtaining knowledge thereof, serve notice to the Company stating the specific Breach.
- 14.2. Any Breach (whether such Breach is capable of being remedied or not, has to be notified to the Company in writing no later than fourteen (14) days after the Breach came to the attention of the Client, or reasonably should have come to the attention of the Client. The Client shall forfeit all rights, powers, and remedies in connection with the Breach if the Client fails to notify the Company accordingly.
- 14.3. The Company reserves the right to dispute a Breach and may require further investigation of such Breach. If the Breach is acknowledged by the Company, it will, to the extent the Breach is capable of being remedied, remedy such Breach, free of charge, within fourteen (14) days of the day such Breach was acknowledged by it. The Company does not owe any damages to the Client if it remedies a Breach in accordance with this clause 14.3.
- 14.4. If the Breach is not remedied within the period set forth in clause 14.3 or if the Breach is not capable of being remedied, the Company shall be in default (**Default**) and in such event the Client may terminate the Agreement in accordance with clause 15.
- 15. TERMINATION**
- 15.1. A party may terminate the Agreement with immediate effect by giving written notice to the other party:
- (a) (in case of the Client) in case of a Default;
  - (b) (in case of the Company) if the Client breaches the Agreement or any of its provisions and such breach has not been remedied within five (5) days, in case of a breach of material or fundamental provision of the Agreement, or within thirty (30) days, in case of a breach of a non-fundamental or non-material provision, after it has been given written notice thereof by the Company;
  - (c) if the other party stops or suspends, or threatens to stop or suspend payment of all or a material part of its debts or is unable to pay its debts as they fall due; or
  - (d) if the other party begins negotiations for, takes any proceedings concerning, proposes or makes any agreement for the deferral, rescheduling or other readjustment, reorganization, compromise, general assignment of or an arrangement or composition with or for the benefit of some or all of its creditors of all or a substantial part of its debts, or for a moratorium in respect of or affecting all or a substantial part of its debts; or
  - (e) if any step is taken with a view to the administration, winding up or bankruptcy of the other party; or
  - (f) any step is taken to enforce security over or a distress, execution or other similar process is levied or served against all or substantially all of the assets or undertaking of the other party including the appointment of a receiver, administrative receiver, trustee in bankruptcy, manager or similar officer.

- 15.2. Termination of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.
- 15.3. Termination of the Agreement shall, to the maximum extent permitted by law, not have retroactive effect.
- 15.4. On termination of the Agreement by the Company in accordance with clause 15.1:
- (a) all amounts payable under the Agreement for the Services performed up to the termination shall be due and payable by the Client forthwith, and the Client will pay such amounts within five (5) business days of the date of termination; and
  - (b) the Client shall pay to the Company all documented costs, expenses, losses or damages (including the cancellation or transfer of supplier contracts) incurred by the Company as a result of termination.
- 15.5. On termination of the Agreement by the Client in accordance with clause 15.1(a):
- (a) the Client shall pay all amounts due and payable to the Company under the Agreement for the Services performed in accordance with the Agreement prior to the date of termination;
  - (b) the Company shall refund all amounts paid by the Client under the Agreement for the Services that have not been performed in accordance with the Agreement; and
  - (c) subject to clause 11 and notwithstanding any other provision of the Agreement, the Company shall pay to the Client all documented direct costs and damages incurred by the Client arising from the Default.
- 15.6. The rights and remedies of the Client pursuant to the provisions of this clause 15 and clause 14, also in light of clause 11, shall be the Client's exclusive rights and remedy with regard to any Breaches and/or Defaults. Under no circumstances and on no ground shall the Company have any further liability or responsibility whatsoever or howsoever arising from or in connection with any Breaches or Defaults.
- 15.7. The rights and obligations of the parties set forth in clauses 8 (*IPR and Data Protection*), 9 (*Confidentiality*), 10 (*Force Majeure*), 15.2 up to and including 15.7 (*Termination*) and 16 (*Miscellaneous*) and any right or obligation of the parties in the Agreement which, by its nature, should survive termination or expiration of the Agreement, will survive any such termination or expiration of the Agreement.
- 16. MISCELLANEOUS**
- 16.1. *Severability.* If any provision in the Agreement is or becomes invalid, illegal or unenforceable, such provision shall be omitted from the Agreement and the remaining provisions shall continue in full force and effect as if the Agreement had been executed without the invalid illegal or unenforceable provision. If the invalidity, illegality or unenforceability is so fundamental that it prevents the accomplishment of the purpose of the Agreement, the Company and the Client shall make every effort to reach an agreement on a new provision which differs as little as possible from the invalid, illegal or unenforceable provision, taking into account the substance and purpose of the Agreement.
- 16.2. *Relationship of the parties.* The relationship between the parties is that of independent contractors. The details of the method and manner for performance of the Services by the Company shall be under its own control, Client being interested only in the results thereof. Nothing in the Agreement and no action taken by the parties under the Agreement shall constitute a partnership, association, joint venture or other co-operative entity between the parties, neither will any party become the partner, agent or legal representative of the other. Neither party shall have authority to contract for or bind the other party in any manner whatsoever.
- 16.3. *Waivers.* Except is expressly otherwise provided in the Agreement, a failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy. No waiver of any right or remedy under the Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing.
- 16.4. *Entire Agreement.* The Agreement contains the entire agreement between the parties relating to the Services and supersedes all previous agreements, arrangements and understandings, both written and oral.
- 16.5. *Further action.* Each party shall, at its own cost, upon the written request of the other party, execute and deliver such instruments and documents and take such other actions necessary or desirable from time to time to give full effect to the Agreement.

- 16.6. *Amendments.* The Agreement may not be amended, supplemented or changed, except by a written instrument making specific reference to the Agreement signed by each of the parties.
- 16.7. *Notices.* All notices, requests, consents, claims, demands, waivers and other communications under the Agreement must be in writing and addressed to the other party at its address set forth in the Proposal.
- 16.8. *Assignments.* Client shall not assign, transfer, delegate or subcontract any of its rights or delegate any of its obligations under the Agreement without the prior written consent of the Company. Any purported assignment or delegation in violation of this clause 16.8 shall be null and void ab initio. No assignment or delegation shall relieve Client of any of its obligations under the Agreement. The Company may assign any of its rights or delegate any of its obligations to any affiliate or to any person acquiring all or substantially all of the Company assets without the Client's consent.
- 16.9. *Successors.* The Agreement is binding on and inures to the benefit of the parties to the Agreement and their respective permitted successors and permitted assigns.

## 17. APPLICABLE LAW & DISPUTE

- 17.1. The Agreement and all related documents, and all matters arising out of or relating to the Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of New York, United States of America.
- 17.2. Any controversy or claim arising out of or relating to the Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules (**Rules**), except that the parties hereby agree that, notwithstanding anything to the contrary in the Rules, the number of arbitrators shall be one (1), the place of arbitration shall be the Borough of Manhattan of the City of New York of the State of New York of the United States, and that the arbitration shall be held, and the award rendered, in English. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The parties also agree that the AAA Optional Rules for Emergency Measures of Protection shall apply to the proceedings.