



**HOMESAFE ALLIANCE LLC
SERVICE PROVIDER GENERAL CONDITIONS**

REV002 MATRIX OF CHANGES

REV002 Dated 15 May 2024		
Section Reference	Section Paragraph Reference	Description of Change
5 – Indemnity	5.2 and 5.2.1	Incorporated Contractor Indemnities. Previous Paragraphs 5.2, 5.3 and 5.4 renumbered to be Paragraphs 5.3, 5.4 and 5.5 respectively.
5 – Indemnification Procedure	5.3.2	Paragraph 5.3.2 deleted in its entirety
5 – Indemnification Procedure	5.3.1 and 5.3.2	Included additional parties to make procedure reciprocal.
9 – Confidentiality	9.1 through 9.10	Included additional parties to make provision reciprocal.
14 - Equipment	14.2 and 14.3	Paragraphs 14.2 and 14.3 deleted in their entirety.
REV 001 Dated 26 July 2023		
Section Reference	Section Paragraph Reference	Description of Change
6 - Insurance	6.1.5	Reduced Umbrella or Excess Liability minimum to \$3,000,000 from \$10,000,000.
13.2 – Drug and Alcohol-Free Workplace	13.2.1; 13.2.2; 13.2.3; 13.2.4	Updated to reflect Drug and Alcohol and requirements for GHC Program. Deleted Rev 000 Section 13.2.2 and 13.2.3 in its entirety.



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1. DEFINITIONS

- 1.1. "Affiliate" of a Party shall mean any other entity controlling, controlled by or under common control with such Party, "control" for this purpose meaning at least 50% equity ownership, or the legal power to control the management policies of the controlled entity.
- 1.2. "Agreement" shall mean the entire integrated set of documents forming the written contractual relationship between the Parties as executed by both Parties, including all attachments, exhibits, and documents as specified and listed in the Agreement or referenced therein, and any subsequent Change Orders, work releases, work orders, renewals, extensions, notices, terminations, amendments, addenda, or other documents agreed upon by the Parties specifically issued under and referencing the Agreement.
- 1.3. "Cargo" means the personal property as to which Service Provider is furnishing Services under the Agreement.
- 1.4. "Change" shall mean any addition or modification to, deletion of, or alteration of, the Services.
- 1.5. "Change Order" shall mean the written document executed by both Parties referencing the Agreement which modifies, amends, or changes the schedule, compensation or Services of the Agreement.
- 1.6. "Claim" shall mean any request for or assertion of rights or other entitlement, or allegation of any Liability against a Party, by either the other Party or a third Party, which arises out of or relates to the Agreement, the Services, or based in Law.
- 1.7. "Contract" means Contract No. HTC711-22-D-R002 between Contractor and the United States Transportation Command.
- 1.8. "Contractor" shall be HomeSafe Alliance LLC, as expressly identified in the Agreement.
- 1.9. "Contractor Equipment" shall mean any equipment, tools, temporary facilities, structures, vessels, storage, and other items provided by Contractor Group to be used in the performance of Services.
- 1.10. "Contractor Group" shall mean Contractor and their Affiliates, and each of their respective directors, officers, Employees, subcontractors, suppliers, agents, carriers, brokers, freight forwarders, representatives, successors, assigns, and insurers of all tiers.
- 1.11. "Confidential Information" specifically includes, without limitation, (i) the operational, technical and financial data of either Party, (ii) details of either party's operations, staffing, and business operating procedures, (iii) any materials prepared by the receiving Party, its employees, agents, advisors and other representatives using the disclosing Party's Confidential Information, (iv) any proprietary or confidential information of any third party disclosed by one Party to the other Party in order to provide the shipment management services, including without limitation, information relating to either Party's respective agents, customers or vendors or either Party's Affiliates' customers, such as identities, business requirements and practices, and associated terms, conditions and pricing, specifically but without limitation, those contained in any contract of carriage, bill of lading or service contract.
- 1.12. "Service Provider Equipment" shall mean any equipment, tools, software, materials, supplies, consumables, temporary facilities, structures, vessels, storage and other items owned, leased, borrowed, utilized, chartered, hired, or provided by Service Provider Group to perform the Services.
- 1.13. "Service Provider Group" shall mean Service Provider and its and their Affiliates and each of their respective directors, officers, Employees, subcontractors, suppliers, agents, carriers, brokers, freight forwarders, representatives, successors, assigns, and insurers of all tiers.
- 1.14. "Service Provider Representative" shall mean the specific Employee of Service Provider identified in the Agreement as the person authorized to coordinate the Services with Contractor.
- 1.15. "Days" shall mean calendar days unless expressly specified otherwise.
- 1.16. "Dispute" shall mean any matter or issue arising out of this Agreement or the Services between the Parties in which the Parties have not reached resolution (including unresolved Claims) after exhausting any procedures set forth in the applicable Article, and for which one Party desires to initiate the dispute resolution process or for which such dispute resolution process is required for final resolution hereunder.
- 1.17. "DP3" shall mean the USTRANSCOM Defense Personal Property Program.
- 1.18. "Employee" shall mean any individual who is employed on the direct payroll of a Party, and works under the direct supervision



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and control of such Party. It shall also include any temporary, contract or agency labor, crewmen, seconded, or other Personnel employed or obtained under contract by a Party who work under the direct supervision and control of the employing Party.

- 1.19. "Environmental Law(s)" shall mean any and all international, national, state and local Laws, regulations, statutes, treaties, conventions, codes, ordinances, orders, directives, actions, decisions, standards, rules, and all other governmental, legislative, executive, agency, judicial and organizational requirements of any nature, whether now existing or hereinafter enacted, in any jurisdiction, pertaining to the air, land and waters (including land and waters above the ground, underground, above the surface of the water, and below the surface of the water, coastal, port, offshore, outer continental shelf or international), and natural resources, and any other related or applicable Laws, which are applicable to the Services performed, , or to any other persons or property affected by the Services. "Environmental Laws" shall include those pertaining to prevention, conservation, pollution, contamination, clean-up, remediation, restoration, indemnity, protection, preservation of endangered species, preservation of archeological, paleontological, antiquities, or historical finds, sustainable development requirements, as well as regulating the use, storage, handling, transportation, packaging, treatment, management, containment, clean-up, remediation, discharge, release, spillage, leakage, or disposal of pollutants, biohazards, chemicals, hazardous and non-hazardous wastes, substances or materials, and providing remedies for any environmental damages. Any reference in the Agreement to "Environmental Law" shall also include any other Laws which are applicable to the context or the situation.
- 1.20. "Force Majeure" shall mean an event or condition preventing performance caused by
- 1.20.1. An "act of God" (catastrophic storms and floods, earthquakes, volcanic action, lightning, or natural fires),
 - 1.20.2. Formally declared war, state of hostilities, or emergency
 - 1.20.3. Governmental action in response to a declared state of war, hostilities, emergency, or "act of God",
 - 1.20.4. Acts of terrorism officially confirmed as such by the government of the location in which such act occurred, or
 - 1.20.5. Civil disturbances or riots requiring the use of military force to control, and such event or condition listed in (1.20.1) through (1.20.5) also being
 - 1.20.6. Beyond the control of the affected Party and not due to its fault or negligence; and
 - 1.20.7. Unforeseeable, not preventable or avoidable by the affected Party with the exercise of reasonable diligence; and
 - 1.20.8. Of such impact which materially and adversely delays, disrupts, or renders impossible the affected Party's performance of its obligations under the Agreement. For the avoidance of ambiguity, events or conditions (1.20.1) through (1.20.5) above are intended to be an exclusive list, and any resulting or consequential changes in the market or the economy, financial hardship, insolvency, changes in applicable Law, transportation delays, supply chain delays, manpower shortages, labor relations disputes or problems, visa or immigration delays, or acts of any third party other than those expressly set forth in this paragraph, shall not, however caused, constitute nor be excused by one of the above-listed events or conditions of Force Majeure.
- 1.21. "Foreign National" shall mean any individual who is not a U.S. citizen, lawful permanent resident (i.e., a holder of a "Green Card"), political asylee, refugee, or another member of a limited class of "protected individuals" as defined in the Immigration and Naturalization Act (8 U.S.C. §1324b(a)(3)). Workers employed in the United States under employment-based visas ("H" visas) generally are considered Foreign Nationals.
- 1.22. "Group" or "Groups" shall mean either Service Provider Group or Contractor Group individually or collectively in accordance with the context of use.
- 1.23. "Intellectual Property" shall mean any and all proprietary information of a Party in any form, whether tangible or intangible, deemed to be unique and original and to have marketplace commercial value by such Party and thus to warrant protection under the Law as a transferable property right of such Party under patent, copyright, trademark, or trade secret laws of the applicable jurisdiction. Examples of proprietary information include; ideas; inventions, developments and improvements (whether patentable or not); designs; chemical, business, or computer processes and methods; know-how; plans; drawings; prints; transparencies; photographs; negatives; samples; specifications; databases; reports; manuscripts; working notes; documentation; manuals; materials; copyrightable works; data; works made for hire; as well as the physical embodiments of intellectual effort such as, for example, models, machines, devices, designs, apparatus, instrumentation, circuits, computer programs and visualizations, biological materials, chemicals, and other products of research and development.
- 1.24. "Intellectual Property Rights" shall mean all copyrights, design rights, patents and patent applications, trademarks, trade secrets, and all other intellectual property rights as defined under any applicable Law, whether in the United States and any



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other jurisdiction, and regardless of whether claimed, established, filed, applied for, or pending.

- 1.25. "Law" or "Laws" shall mean all international, national, state and local laws, regulations, statutes, treaties, conventions, codes, ordinances, orders, directives, court actions, case precedents, common law principles, agency actions, standards, rules, and all other governmental, legislative, judicial, and executive orders of any nature, whether now existing or hereinafter enacted (including any decision, order or action construing, interpreting, enforcing, clarifying, or implementing any such Law), of any duly-authorized and constituted governmental or international body, organization, agency or authority.
- 1.26. "Liability" shall mean the effects, applications, or consequences, under any theory of applicable Law, including statutory, contractual, negligence (whether active, passive, sole, concurrent, or gross), willful misconduct or other fault, or strict liability, of a Party's acts or omissions or the acts or omissions of any person for which a Party (including any member of that Party's Group under the Agreement) is responsible under such Law, and whose Liability is alleged, claimed, asserted, determined, adjudicated, arbitrated, settled, or decided. Liability shall include any alleged or actual Claims, assessment, confiscation, expropriation, grievances, disputes, governmental actions, judgments, losses, costs (including attorney's fees, court and arbitrator costs, and costs of litigation and/or dispute resolution), expenses, fees, fines, penalties, interest, liens, disbursements, encumbrances, damages, lawsuits, cause of action, payments, and any similar consequence under a Law whatsoever.
- 1.27. "Lien" shall mean any and all Claims of any kind provided for under Law against any real or personal property interest related to the Services as security for payment of a debt or a duty under a Law, with the right by a lien holder to take, hold or sell the subject property should such payment or duty not be satisfied.
- 1.28. "Notice" shall mean a written communication from one Party to the other Party required under the Agreement and as provided for in accordance with Article 19 for the purpose of formally informing a Party of some matter arising or specified under the Agreement.
- 1.29. "Party" shall mean, individually, the contracting entities executing the Agreement as identified in the Agreement, and shall not include any person who is not a signatory to the Agreement. All contracting entities may be referred to, collectively, as the "Parties".
- 1.30. "Personnel" shall mean all persons for whom any Party is legally responsible under the terms of the specific provision.
- 1.31. "Services" shall mean all obligations, duties and responsibilities required of Service Provider pursuant to the Agreement, including all Personnel to be provided by Service Provider, labor and work to be performed, Service Provider Equipment to be provided, any corrective Services and other requirements in the Agreement which are performed by or required of Service Provider in executing or preparing to execute its duties and obligations under the Agreement.
- 1.32. "Service Provider" shall mean that specific legal entity expressly identified as "Service Provider" or "Subcontractor" in the Agreement.
- 1.33. "Taxes" shall mean any taxes, fees, charges, levies, assessments, charges, imposts, import or export duties, or other amounts assessed or levied directly or indirectly by any authority claiming jurisdiction over the Agreement, Personnel provided, the Services, or Service Provider Equipment. Taxes shall include:
- 1.33.1. All Taxes on Service Provider's earnings, including income or excess profit,
 - 1.33.2. All Taxes on salaries, wages, bonuses, perquisites, benefits, or other compensation paid by Service Provider to its Personnel;
 - 1.33.3. All Taxes on any property owned, leased, used, or under the care, custody and control of Service Provider;
 - 1.33.4. All Taxes on any rates of compensation received by Service Provider;
 - 1.33.5. Any Taxes assessed by any non-U.S. jurisdiction or authority;
 - 1.33.6. All applicable excise, sales or use Taxes based upon the compensation rates received by Service Provider, and
 - 1.33.7. Taxes assessed upon the Deliverables, the Services, or any component thereof.
- 1.34. "US TRANSCOM" shall mean the United States Transportation Command.



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2. DOCUMENT INTERPRETATION

2.1. INTEGRATION

2.1.1. The Agreement constitutes the sole agreement between Contractor and Service Provider concerning the subject matter, superseding all negotiations, proposals, quotations, communications, documents and representations unless expressly incorporated herein. The Agreement may be amended only by a document in writing executed with equal authority and formality.

2.1.2. In the event of any error, omission, conflict, inconsistency or other discrepancy within the various provisions of the Agreement, including the attachments, schedules, drawings, specifications, applicable codes and standards, or any documents expressly incorporated into the Agreement, Service Provider shall immediately provide Notice to Contractor of such discrepancy and Contractor shall provide Notice to Service Provider of appropriate precedence or other resolution. If such discrepancy materially affects Service Provider's performance of the Services, Service Provider shall not work on the affected Services until the discrepancy has been resolved and Contractor has released Service Provider to proceed, in which case Service Provider shall not be held liable for the non-performance and any resulting consequences until released by the Contractor to proceed. If Service Provider does not bring a discrepancy to Contractor's attention, then the term or condition of the document which requires the highest or most stringent applicable standard of performance shall control, and any additional costs incurred by Service Provider because of Service Provider's failure to timely provide Notice to Contractor or failure to have any discrepancy resolved by Contractor before continuing with the affected portion of the Services shall be for Service Provider's account.

2.2. **NONWAIVER** - Unless otherwise specified herein, no waiver under the Agreement shall be effective unless it is an express waiver granted by Contractor in writing. Contractor's not exercising any right to which it is entitled hereunder shall not constitute a waiver of that right. Waiver by Contractor of any provision of the Agreement, including Contractor's rights in the event of Service Provider default, shall not constitute a waiver concerning any other provision, a waiver of any subsequent default, nor a waiver of the same provision in the future, and shall not affect the right of Contractor to thereafter exercise any right or remedy concerning any other provision or default, whether similar or not. Furthermore, a Contractor right granted under the Agreement shall not bind Contractor to any duty or obligation to perform or invoke the right it reserves hereunder.

2.3. **SEVERABILITY** - If any one or more of the provisions of the Agreement shall for any reason be held invalid, illegal or unenforceable in any respect by any court of competent jurisdiction or any arbitration proceeding hereunder, such invalidity, illegality or unenforceability shall not affect any other provision.

2.4. **HEADINGS** - Titles and captions of Articles in the Agreement are for convenience and reference only, and are not to be used in the interpretation of any provisions, nor do they define, describe, extend, or limit the scope or intent of the Agreement or the intent of any provision contained herein.

2.5. **JOINT EFFORTS** - Notwithstanding the original drafting of documents, preparation of the Agreement has been a joint effort of the Parties and the resulting Agreement and provisions herein shall not be construed more favorably towards one Party than the other for reason of original drafting. Service Provider acknowledges that it was given the opportunity to seek the advice of legal counsel concerning all provisions of the Agreement, including the indemnity obligations of Article 5.

2.6. **CONSTRUCTION** - In the Agreement:

2.6.1. the singular includes the plural and vice versa (except for "Party" or "Parties" and "Group" or "Groups", or otherwise in accordance with the intent, context, and meaning of the provision);

2.6.2. the word "including" or "include" means including or include without limitation;

2.6.3. references to Articles, Sections and Exhibits are, unless the context otherwise requires, references to Articles and Sections of and Exhibits to the Agreement; and

2.6.4. Any reference to any Law shall be construed to refer to such Law as the same may have been, or may from time to time be, amended or re-enacted.

2.7. **SURVIVAL** - Notwithstanding any termination or expiration of the Agreement, the following Articles shall survive for the purposes and to the extent set forth therein: Articles 1 (Definitions), 2 (Document Interpretation), 3 (General Requirements), 5 (Indemnity), 6 (Insurance), 8 (Liens), 9 (Confidentiality), 10 (Intellectual Property Rights), 12 (Import and Export Compliance), 14 (Equipment), 15 (Termination), 16 (Claims by Service Provider), 17 (Laws), 18 (Disputes and Dispute Resolution), 19



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(Notices) and 21 (Contractual Relationship).

3. GENERAL REQUIREMENTS

3.1. PERFORMANCE

- 3.1.1. Service Provider shall perform and provide all labor, Service Provider Equipment, and other items and requirements necessary to execute and complete the Services under the Agreement. Service Provider shall use the latest revision or version of any documentation and specifications pertaining to the Services which have been issued to Service Provider or which is customarily applied or used in performing the specific type of Services in order to achieve the required standards set forth in the Agreement.
- 3.1.2. Service Provider agrees to furnish all supervision, know-how, labor, supplies, tools, Service Provider Equipment, facilities, storage, and all other things, tangible and intangible, necessary or desirable to execute, perform and complete the Services.
- 3.1.3. Service Provider shall be responsible for the correctness of the Services and the Deliverables, notwithstanding any assistance, information or acceptance by any member of Contractor Group. If at any time during the performance of the Services, a material conflict, inconsistency, error or omission is discovered, Service Provider shall immediately give Notice to Contractor's Representative and await instructions before proceeding with any correction, or resumption of the Services.
- 3.1.4. Service Provider shall comply with any reporting requirements of Contractor, at the time intervals specified in advance by Contractor, pertaining to the performance of Services and progress made therewith, including provision of any data, information and documents concerning costs, activities, schedule, Service Provider Equipment, Service Provider Personnel, injuries, safety, and deliveries.
- 3.1.5. Service Provider shall proceed with the Services in accordance with the written decisions, instructions and orders given by the Contractor, subject to and in accordance with the Agreement.

- 3.2. **PERMITS AND LICENSES** - Contractor is an interstate household goods freight forwarder providing international and domestic transportation of used household goods shipments for the U.S. Transportation Command under the Contract. Contractor requires packing, loading, unloading, local and long distance transportation, and/or storage services, and transportation and related services to move shipments arriving from international destinations from warehouses to destination residence, and shipments bound for international destinations from origin residence to warehouses. Service Provider holds all necessary authority, including interstate motor carrier authority issued by the Federal Motor Carrier Safety Administration ("FMCSA") of the U.S. Department of Transportation ("DOT") to transport household goods as a for-hire motor carrier between points within the United States, or is exempt from such requirements. Service Provider further represents and warrants that it does not have an unsatisfactory or unfit safety rating issued by any regulatory authority with jurisdiction over Service Provider's operations, including, but not limited to, the FMCSA. In the event that Service Provider receives an unsatisfactory safety rating, or Service Provider is otherwise prohibited by Applicable Law from performing the Services hereunder, Service Provider shall immediately notify Contractor of such fact and shall not carry any loads or goods tendered to Service Provider by Contractor until such prohibition on operations is removed or such status is changed. Service Provider certifies that it has not been disqualified or revoked from USTRANSCOM's DP3 Program within the three years prior to the date of this Agreement. In accordance with the terms and conditions of this Agreement, Service Provider hereby agrees to furnish Services without delay, in compliance with all federal, state, provincial, territorial, and local laws, statutes, regulations, rules, and ordinances (collectively, "Applicable Law"), and in accordance with this Agreement.

3.3. COMMUNICATION

- 3.3.1. Service Provider shall provide a competent and qualified Service Provider Representative, and any necessary assistants, whose appointment shall be approved by Contractor, at all times during the performance of the Services. The Service Provider Representative shall be responsible for communicating and coordinating matters under the Agreement with Contractor, and shall also be responsible for communicating such, including terms of the Agreement, to all Service Provider Group Personnel.
- 3.3.2. Contractor has the right to review the qualifications of the proposed Service Provider Representative, including any necessary assistants, and to approve or disapprove the assignment. The Service Provider Representative shall not be replaced without the prior consent of Contractor, unless such person ceases to be employed by Service Provider. Service Provider's Representative shall represent Service Provider, and Service Provider acknowledges that Contractor will rely that (A) all directions given to the Service Provider Representative shall be as binding as if given to



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Service Provider, and (B) all decisions made by the Service Provider Representative shall be as binding as if made by Service Provider.

- 3.3.3. Service Provider Representative shall be able to fluently read, write, speak and fully comprehend the English language. The Agreement and all matters under the Agreement, including all Changes, Claims, Disputes, dispute resolution proceedings, meetings, communications and correspondence between Contractor and Service Provider, policies, instructions, directions, rules, procedures, documentation and other requirements, shall be solely conducted in the English language. If any of Service Provider's Personnel assigned to perform the Services are not fluent in English, Service Provider's Representative shall be both fluent in English and in the language spoken by such non-English speaking Personnel, unless otherwise approved by Contractor.

3.4. COORDINATION AND PLANNING

- 3.4.1. The Services are performed pursuant to the Contract, and, Service Provider understands that Contractor will be contractually obligated under the Contract and liable for proper performance of the Services. Accordingly, Contractor may also be charged with the responsibility of coordinating the efforts of other Service Providers, specialty service Subcontractors, suppliers, and other workers, the Employees and other Personnel of Contractor, other members of Contractor Group, and possibly other third parties. Service Provider agrees to perform the Services as part of the team of participants in furnishing the Services in cooperation with all other participants, and subject to all rules, regulations, and directives of Contractor

- 3.4.1.1. for the coordination and integration of the work of all participants,
- 3.4.1.2. for the maintenance of safety, efficiency, security and good order during the performance of the Services,
- 3.4.1.3. for compliance with all applicable Laws and the terms hereof, and
- 3.4.1.4. for the protection of the environment and the rights and well-being of the public.

3.5. QUALITY CONTROL

- 3.5.1. Service Provider shall furnish a quality assurance and quality control plan acceptable to Contractor prior to commencement of the Services or thereafter upon request.
- 3.5.2. Service Provider shall maintain and furnish all quality assurance and quality control documentation for the Services a, including that required in its plan, or as may be reasonably requested by Contractor.

- 3.6. **RECORDS AND ACCOUNTS; AUDIT** - Service Provider shall maintain detailed books and records concerning performance of the Services and compliance with the Agreement, documenting all costs and amounts charged to Contractor, and shall preserve such books and records for a period of three (3) years after termination or expiration of the Agreement. Upon reasonable Notice to Service Provider, Contractor or Client shall have the right to inspect and audit such books and records for purposes of confirming performance of the Services and compliance with all terms of the Agreement.. Copies of such documents and records shall be furnished to Contractor or Client upon request. Any overpayments, cost discrepancies or overcharges which are verified through such audit will be paid to the other Party within thirty (30) days. Contractor's rights under this Article may be exercised by an agent, representative or other designee of Contractor or Client. Service Provider agrees to cooperate with Contractor's audit and quality systems documentation, and shall support any government assurance or audit activities regarding any process undertaken by Service Provider in performing the Services, including participation in working groups and initiatives.

4. FORCE MAJEURE

- 4.1. In the event Service Provider's (or any member of Service Provider Group's) performance of any obligation under the Agreement is materially and adversely affected by an event of Force Majeure, Service Provider shall immediately upon discovery give Notice to Contractor. Such Notice shall specify (A) the nature of the event or condition of Force Majeure, (B) a description of how performance is affected, (C) the estimated period of delay and the commercial impact, and (D) the measures undertaken to mitigate the adverse effects. If Service Provider claims an adjustment in the time or cost of performance, Service Provider shall Notify Contractor in writing within forty-eight (48) hours after the commencement of a delay, interruption, or interference in its performance caused by Force Majeure or the right to such adjustment shall be waived. No delay or failure in performance by Service Provider caused by an event or condition of Force Majeure shall constitute a default under the Agreement provided the terms and conditions in this Article are satisfied.
- 4.2. Upon satisfactory evidence that Service Provider's performance has been materially and adversely affected by an event or



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condition of Force Majeure, Service Provider may be granted additional time for performance equal to the number of days performance is delayed by the effects of Force Majeure.

- 4.3. Service Provider shall not be entitled to any increase or adjustment in its compensation for additional damages, costs, stand-by time, losses or other expenses incurred as a result of Force Majeure, except to the extent approved by the Client; and then Service Provider shall recover only to the extent of any amounts that Contractor, on behalf of Service Provider, actually recovers from the Client for such Force Majeure delay. If compensation is paid by Contractor, Service Provider shall only be paid the direct costs incurred in any delay, and shall not be paid any profit, loss, revenue, overhead, or other indirect amounts.
- 4.4. Service Provider shall exercise due diligence to ensure that all members of Service Provider Group do all things reasonably possible to mitigate or remove any effects of Force Majeure, and resume performance at the earliest possible time. Service Provider's failure to mitigate or remove the effects of Force Majeure and resume performance, if such mitigation, removal, and resumption of performance is reasonably possible, constitutes a material default under the Agreement, and Contractor shall have the right to immediately terminate the Agreement for default under Article 15.2.

5. INDEMNITY

- 5.1. **SERVICE PROVIDER INDEMNITIES. SERVICE PROVIDER SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CONTRACTOR GROUP FROM AND AGAINST ANY AND ALL LIABILITY IN ANY WAY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, RELATED TO, OR OCCURRING IN CONNECTION WITH, THE PERFORMANCE OF THE SERVICES, THE AGREEMENT, OR FROM ANY ACT OR OMISSION OF ANY MEMBER OF SERVICE PROVIDER GROUP (OR ANY PERSON DIRECTLY OR INDIRECTLY EMPLOYED BY ANY SUCH MEMBER OF SERVICE PROVIDER GROUP, OR ANYONE FOR WHOSE ACTS SUCH MEMBER OF SERVICE PROVIDER GROUP MAY BE LIABLE) INCLUDING FOR ANY OF THE FOLLOWING:**
 - 5.1.1. **INJURY TO OR ILLNESS OR DEATH OF EMPLOYEES, OFFICERS, AND DIRECTORS OF ANY MEMBER OF SERVICE PROVIDER GROUP (INCLUDING ANY LIABILITY ARISING FROM OR RELATED TO THE PROVISION OF ANY MEDICAL, SECURITY, TRANSPORTATION, EVACUATION, OR OTHER FACILITIES, SERVICES OR EQUIPMENT TO SERVICE PROVIDER GROUP PERSONNEL), OR ANY LOSS OF, DAMAGE TO, OR DESTRUCTION OF, ANY PROPERTY OF ANY MEMBER OF SERVICE PROVIDER GROUP, REGARDLESS OF THE CAUSE OF SUCH INJURY, ILLNESS OR DEATH OR PROPERTY LOSS OR DAMAGE.;**
 - 5.1.2. **LOSS OF, DAMAGE TO, OR DESTRUCTION OF PROPERTY (INCLUDING THE EXISTING FACILITIES) OWNED BY CONTRACTOR GROUP (EXCEPT AS PROVIDED BELOW FOR CONTRACTOR EQUIPMENT), NOTWITHSTANDING THE FOREGOING, SHOULD ANY MEMBER OF SERVICE PROVIDER GROUP USE ANY CONTRACTOR EQUIPMENT, SERVICE PROVIDER SHALL RELEASE, DEFEND, PROTECT, INDEMNIFY AND HOLD HARMLESS CONTRACTOR GROUP AGAINST ANY LIABILITY WHATSOEVER RESULTING OR ARISING FROM SUCH POSSESSION, OPERATION, TRANSPORTATION, STORAGE, OR USE.;**
 - 5.1.3. **IN ADDITION TO ITS INDEMNITY IN ARTICLE 5.1.1, ANY PERSONAL INJURY TO OR ILLNESS OR DEATH OF ANY PERSON AND LOSS OF, DAMAGE TO, OR DESTRUCTION OF PROPERTY OF ANY PERSON.**
 - 5.1.4. **ANY VIOLATION OF OR FAILURE TO COMPLY WITH ANY APPLICABLE LAW BY ANY MEMBER OF SERVICE PROVIDER GROUP, INCLUDING (A) ANY HEALTH AND SAFETY LAW; (B) ANY PERMITTING AND LICENSING OBLIGATION UNDER ARTICLE 3.2; (C) ANY EMPLOYMENT OR LABOR LAW OR PROVISION OF ARTICLE 13; (D) ANY VIOLATION OF ARTICLES 12 OR 17 INCLUDING ANY OBLIGATION RELATING TO THE EXPORT AND IMPORT OF ITS PERSONNEL, EQUIPMENT, DATA, INFORMATION, AND ANY PORTION OF THE SERVICES, AND THIS INDEMNITY SHALL BE IN ADDITION TO, AND NOT INSTEAD OF, ANY OTHER INDEMNITIES OR ANY OTHER OBLIGATIONS HEREUNDER PERTAINING TO COMPLIANCE WITH APPLICABLE LAWS, AND SHALL NOT BE INTERPRETED TO LIMITED IN ANY WAY SERVICE PROVIDER'S RESPONSIBILITY;**
 - 5.1.5. **ANY VIOLATION OF OR FAILURE TO COMPLY WITH ANY ARTICLE 11.2 OF THE AGREEMENT OR ANY ENVIRONMENTAL LAW BY ANY MEMBER OF SERVICE PROVIDER GROUP, INCLUDING ANY ACTUAL OR ALLEGED POLLUTION, CONTAMINATION, DAMAGE OR ADVERSE EFFECT TO THE ENVIRONMENT, TO PROPERTY, OR TO NATURAL RESOURCES, ALLEGED TO BE CAUSED BY ANY ACTS OR OMISSIONS OF ANY MEMBER OF SERVICE PROVIDER GROUP, INCLUDING ANY LIABILITY ARISING FROM POSSESSION AND CONTROL BY ANY MEMBER OF SERVICE PROVIDER GROUP OF HAZARDOUS SUBSTANCES, MATERIALS AND WASTES (INCLUDING ANY FUELS, LUBRICANTS, OR MOTOR OILS, AND;**
 - 5.1.6. **ANY MISAPPROPRIATION, UNAUTHORIZED DISCLOSURE, IMPROPER USE OF, ACTUAL OR ALLEGED**



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INFRINGEMENT, MISAPPROPRIATION OR VIOLATION OF ANY DOMESTIC OR FOREIGN PATENTS, COPYRIGHTS OR TRADEMARKS OR OTHER INTELLECTUAL PROPERTY, OR TRADE SECRET(S) OR CONFIDENTIAL INFORMATION OR OTHER PROPRIETARY RIGHTS, OR ANY OTHER VIOLATION OF OR FAILURE TO COMPLY WITH ARTICLES 9 (CONFIDENTIALITY) OR 10 (INTELLECTUAL PROPERTY RIGHTS), BY ANY MEMBER OF SERVICE PROVIDER GROUP;

- 5.1.7. ANY VIOLATION OF OR FAILURE TO COMPLY WITH ARTICLE 6 (INSURANCE) BY ANY MEMBER OF SERVICE PROVIDER GROUP;
- 5.1.8. ANY VIOLATION OF OR FAILURE TO COMPLY WITH (A) ARTICLE 20 (CODE OF BUSINESS CONDUCT) BY ANY MEMBER OF SERVICE PROVIDER GROUP; (B) ANY SIMILAR CODE OF CONDUCT OR ETHICAL REQUIREMENTS OF CLIENT; (C) ANY SIMILAR CODE OF CONDUCT OR ETHICAL REQUIREMENTS OF SERVICE PROVIDER; (D) ANY PROFESSIONAL OR INDUSTRY-STANDARD CODES OF CONDUCT AND ETHICS APPLICABLE TO THE PERFORMANCE OF THE SERVICES, OR (E) ANY LAW APPLICABLE TO (A) THROUGH (D), INCLUDING THE U.S. FOREIGN CORRUPT PRACTICES ACT;
- 5.1.9. ANY FAILURE BY ANY MEMBER OF SERVICE PROVIDER GROUP TO (A) FILE TAXES; (B) MAKE TIMELY REPORTING OR REMITTANCE OF ANY APPLICABLE TAXES; (C) COMPLY WITH ANY APPLICABLE LAW RELATED TO TAXES;
- 5.1.10. ANY VIOLATION OF OR FAILURE TO COMPLY WITH ARTICLES 7 (FINANCIAL GUARANTEES) OR 8 (LIENS) BY ANY MEMBER OF SERVICE PROVIDER GROUP, INCLUDING (A) FAILURE OF SERVICE PROVIDER GROUP TO MAKE PAYMENTS RELATING TO THE SERVICES AS REQUIRED BY THE AGREEMENT, OR (B) ANY LIABILITY FROM CLAIMS RESULTING FROM THE FILING OR IMPOSITION OF ANY LIEN BY ANY MEMBER OF SERVICE PROVIDER GROUP OR ANY OTHER PERSON; AND
- 5.1.11. ANY VIOLATION OF OR FAILURE TO COMPLY WITH ANY OTHER PROVISION OF THE AGREEMENT BY ANY MEMBER OF SERVICE PROVIDER GROUP.

5.2. CONTRACTOR INDEMNITIES. CONTRACTOR SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS SERVICE PROVIDER GROUP FROM AND AGAINST ANY AND ALL LIABILITY IN ANY WAY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, RELATED TO, OR OCCURRING IN CONNECTION WITH, THE CONTRACTOR GROUP'S PERFORMANCE UNDER THE CONTRACT, CONTRACTOR GROUP'S PERFORMANCE UNDER THIS AGREEMENT, ANY VIOLATION OF LAW BY CONTRACTOR GROUP EXCEPT TO THE EXTENT SUCH LIABILITY OCCURS AS A RESULT OF SERVICE PROVIDER GROUP'S NEGLIGENCE (WHETHER SOLE, CONCURRENT, ACTIVE, PASSIVE OR GROSS) OF SERVICE PROVIDER GROUP AS MAY BE FINALLY DETERMINED;

5.2.1. ANY MISAPPROPRIATION, UNAUTHORIZED DISCLOSURE, IMPROPER USE OF, ACTUAL OR ALLEGED INFRINGEMENT, OR VIOLATION OF ANY DOMESTIC OR FOREIGN PATENTS, COPYRIGHTS OR TRADEMARKS OR OTHER INTELLECTUAL PROPERTY, OR TRADE SECRET(S) OR CONFIDENTIAL INFORMATION OR OTHER PROPRIETARY RIGHTS, OR ANY OTHER VIOLATION OF OR FAILURE TO COMPLY WITH ARTICLES 9 (CONFIDENTIALITY) OR 10 (INTELLECTUAL PROPERTY RIGHTS), BY ANY MEMBER OF CONTRACTOR GROUP.

5.2-5.3. INDEMNIFICATION PROCEDURE

5.2-1-5.3.1. A Party exercising its indemnification rights under this Paragraph shall promptly give the other Party written Notice of any alleged, actual, or potential Liability against the noticing Party or any member of the noticing Party's Group arising from the Services or the Agreement.

~~5.2.2. Contractor shall promptly give Service Provider written Notice of any alleged, actual or potential Liability against Contractor or any member of Contractor Group arising from the Services or the Agreement ;and for which indemnification is sought.~~

5.2-3-5.3.2. Upon receipt of Notice, ~~Service Provider~~the notified Party agrees to immediately assume the defense of any matter for which ~~Service Provider~~the notified Party is obligated hereunder to indemnify ~~Contractor Group or for which Contractor claims an indemnity obligation. Contractor.~~ The indemnified Party shall have the right at its discretion to be represented by its own legal counsel and to participate in any defense, as well as the right to consent to resolution or disposition in any action, in which ~~Contractor~~the indemnified Party is named as defendant in any matter for which ~~Service Provider owes Contractor indemnification~~an indemnity obligation exists hereunder, but Indemnified Party agrees to assume the cost of its defense if Indemnified Party elects to pursue appeals or continued litigation after being



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presented with the opportunity to settle the matter without admission of liability, guilt or fault.

5.2.4-5.3.3. Notwithstanding the provisions of Article 18, should the notified party fail to assume defense upon Notice, for any reason, the Parties agree that any issue or dispute concerning its or their obligation to assume defense under this Article 5 shall be immediately submitted to binding arbitration to the American Arbitration Association office in Houston, Texas, to be heard on an expedited basis in accordance with its rules, in the English language, and by an arbitrator agreed upon by both parties. Notwithstanding such arbitration, a Party entitled to indemnify hereunder has the right to take any action necessary to defend itself or any member of its Group during the period such arbitration is pending, including incurring any reasonable costs of defense, attorney and consulting fees, and other expenses, conduct any discovery, join any person, and file any motion or other document to preserve the indemnified Party's rights in the matter. The prevailing Party in such arbitration shall be reimbursed by the non-prevailing Party for any reasonable costs and expenses of defense incurred as may be awarded by the arbitrator. Where Contractor is the indemnified Party hereunder, Contractor shall be relieved of its obligation to make payment for the portion of the Services affected by any alleged Liability for which indemnification is claimed, pending final resolution, but upon resolution that withheld payments were found to be wrongly withheld, Contractor's payment obligation is immediately reinstated including interest dating from the date the unpaid services were first completed by the Service Provider Group.

5.3-5.4. **INTENT AND APPLICATION OF INDEMNIFICATION PROVISIONS** - The indemnification herein shall only be effective to the maximum extent permitted by applicable Law.

5.4-5.5. **SERVICE PROVIDER'S RESPONSIBILITY FOR ITS GROUP** - Service Provider acknowledges that it is solely responsible to Contractor under the Agreement for any Liability, acts (whether negligent, intentional or otherwise) and omissions of all members of Service Provider Group, including their Personnel, and accordingly to ensure the compliance of Service Provider Group, including, if applicable, to flow down requirements as detailed by Contractor in this Agreement into any contracts or other commercial documents entered into for performance of the Services. The fact that any Liability was alleged to have been caused by or arisen from a member of Service Provider Group and not Service Provider itself shall not constitute a defense for Service Provider concerning responsibility or Liability for its obligations to Contractor under the Agreement, specifically, this Article 5.

6. INSURANCE

- 6.1. Service Provider shall provide insurance required by applicable Law and to the extent necessary and normal in the industry to provide coverage for the Services performed under the Agreement. Without in any way limiting Service Provider's liability hereunder, Service Provider shall maintain at a minimum the following insurance in form and with underwriters satisfactory to Contractor:
 - 6.1.1. Worker's Compensation as prescribed by applicable Law. Service Provider shall ensure in its contracts that all of its Service Providers of all tiers have worker's compensation in place, to the extent required by applicable Law, for all Employees performing any portion of the Services.
 - 6.1.2. Employer's Liability Insurance (including if applicable Maritime Employer's Liability Insurance, insurance covering liability under the Longshore and Harbor Workers' Compensation Act, the Jones Act, and the Outer Continental Shelf Lands Act). The limits of liability of such insurance shall be not less than \$1,000,000 per occurrence.
 - 6.1.3. Comprehensive or Commercial General Liability Insurance, covering Bodily Injury, Property Damage (Including Broad Form Property Damage), Products and Completed Operations Liability and Contractual Liability to cover liability assumed under the Agreement. The limit of liability of such insurance shall be not less than \$1,000,000 per occurrence.
 - 6.1.4. Automobile Bodily Injury and Property Damage Liability Insurance. Such insurance shall extend to owned, non-owned and hired vehicles used in the performance of the Services. The limits of liability of such insurance shall be not less than \$1,000,000 per occurrence.
 - 6.1.5. Umbrella or Excess Liability Insurance. Such insurance shall be excess and follow-form to the insurances required under 6.1.2, 6.1.3 and 6.1.4. The limits of liability of such insurance shall not be less than \$3,000,000 per occurrence.
 - 6.1.6. Without in any way affecting Service Provider's obligations herein, if marine offshore Services are to be performed hereunder, Protection and Indemnity Insurance or equivalent insurance coverage, including coverage for injuries to or death of masters, mates and crews of vessels used in the performance of such Service. The limits of liability of such insurance shall be not less than \$10,000,000 per occurrence.
 - 6.1.7. Without in any way affecting Service Provider's obligations herein, if aircraft are used in the performance of the Services,



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Aircraft Liability Insurance. The limits of such insurance shall be not less than \$10,000,000 per occurrence.

- 6.1.8. Professional Liability (if applicable to or available for the Services, or required by Contractor) insurance with an amount not less than \$1,000,000 each claim and in the aggregate on a claims made basis.
- 6.1.9. Without in any way affecting Service Provider's obligations herein, if Service Provider is providing transport of Customer's property, whether by land, sea or air conveyance, All Risk Cargo Legal Liability Insurance for the property at all times when Service Provider has custody of the property, with coverage limits equal to the Service Provider's maximum liability of \$75,000 per shipment.
- 6.1.10. Without in any way affecting Service Provider's obligations herein, if Service Provider is providing Storage-In-Transit (SIT) of Customers' property, Warehouse Legal Liability Insurance, with coverage limits equal to the Service Provider's maximum liability of \$75,000 per shipment.
- 6.1.11. All Risk Property Insurance (if applicable to the Services) covering all risk of loss (including loss of use) or damage to Service Provider's equipment used in the performance of the Services, with limits equal to or greater than the fair market value of such equipment.
- 6.1.12. The above insurances, except 6.1.8 shall be on an occurrence basis. All insurance limits required may be satisfied with a combination of primary, excess, and/or umbrella insurance, subject to such insurance satisfying all coverage requirements. All insurances 6.1.1 through 6.1.11 shall:
 - 6.1.12.1. Except for 6.1.1., 6.1.2., 6.1.6., 6.1.8., and 6.1.11., Name Contractor Group as additional insured or include an indemnity to principal provision if additional insured is not commercially available; and
 - 6.1.12.2. Only with respect to 6.1.1 and 6.1.2., include an Alternate Employer, Borrowed Servant, or indemnity to principal provision in favor of Contractor Group; and
 - 6.1.12.3. Except for 6.1.1., 6.1.2, 6.1.8., and 6.1.11., be primary coverage for all insured, including any deductibles or self-insured retentions, which coverage shall not be considered contributory insurance with any insurance policies of any other insured; and
 - 6.1.12.4. Include a requirement that the insurer provide Contractor with thirty (30) days' written Notice prior to the effective date of any cancellation or material change of the insurance; and
 - 6.1.12.5. Contain waivers of subrogation in favor of Contractor Group; and
 - 6.1.12.6. Contain an assignment of statutory lien to Contractor Group, if applicable.
- 6.1.13. Service Provider shall, before commencing the Services, provide Contractor with a certificate of insurance evidencing all required coverage, and such certificate shall contain the express endorsements contained on the policies for the benefit of Contractor Group as required in 6.1.12. above. Service Provider shall be responsible for any deductibles and/or self-insured retentions applicable to the above insurances.

7. FINANCIAL GUARANTEES - Service Provider will provide Notice to Contractor of any changes in Service Provider's internal management organization of the unit, department, or division performing the Services, material adverse changes in its financial condition (including ratings), and any changes in the Service Provider Party's legal structure or composition (including any changes in incorporation, restructuring, or ownership). At any time, whether prior to or during the performance of the Services, Contractor reserves the right to request that Service Provider provide adequate financial assurance or a guarantee, in a form reasonably satisfactory to Contractor, that Service Provider will be able to continue and complete performance of the Services and pay all amounts due to any members of its Group pertaining to the Services.

8. LIENS

- 8.1. Service Provider agrees to pay when due all money owed for labor, Service Provider Equipment, storage, and Services incurred in the performance of the Agreement, the Services or connected with the Services. Service Provider shall not withhold any Cargo or other goods or shipments under this Agreement on account of any dispute as to rates or alleged failure of Contractor to pay for charges incurred under this Agreement. Service Provider hereby waives and releases any and all liens which it may have to any Cargo or other goods or shipments for which Services are furnished under this Agreement that are in the possession or control of Service Provider. Service Provider agrees to contractually bind all members of its Group to substantially similar provisions as set forth in this Article 8.1 for the benefit of Contractor.
- 8.2. If any Lien is asserted or maintained by any member of Service Provider Group or arising from the Services in violation of this



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Article, Service Provider shall promptly proceed to have it removed. If Service Provider fails to remove any such Lien, then Contractor may, but without obligation to do so, do everything necessary to have the Lien removed, and Service Provider shall pay any and all costs, including attorneys' fees, incurred by Contractor in connection therewith.

9. CONFIDENTIALITY

- 9.1. During the term of the Agreement and performance of the Services, Service Provider may be provided access to Contractor's Confidential Information—~~and Contractor may be provided access to Service Providers Group's Confidential Information.~~
- 9.2. ~~Service Provider~~The receiving Party shall not disclose Confidential Information to any third party without the prior written consent of ~~Contractor~~Service Provider~~the disclosing Party~~. Each Party agrees to protect the disclosed Confidential Information by using the highest degree of care that is commercially reasonable to prevent the unauthorized disclosure, use, dissemination or publication of the Confidential Information.
- 9.3. Confidential Information of a disclosing Party shall be used by ~~Service Provider~~the receiving Party solely for the purpose of performing the Services under the Agreement and for no other purpose, and only by ~~Service Provider's~~receiving Party's Employees and other Personnel with a "need to know" for purposes of fulfilling the obligations and performing Services under the Agreement and who have undertaken obligations of confidentiality and limited use consistent with those set forth herein. ~~Service Provider~~The receiving Party will ensure that those of its Employees and other Personnel provided access to Confidential Information will be made aware of the Agreement and of the obligations hereunder. ~~Service Provider~~Both Parties shall be fully responsible for the compliance of its Employees with the provisions of this Article 9, and shall be liable for any breach. Confidential Information may be disclosed to a ~~member~~third-party of ~~Service Provider Group~~the receiving Party if required for performance under this agreement and only if such entity is under an obligation of confidentiality to ~~Service Provider~~the receiving Party protecting the receipt thereof. Contractor reserves the right to request, and Service Provider agrees to ensure, that each Employee of Service Provider and each member of Service Provider Group, and all their Personnel, provided access to Confidential Information for purposes of fulfilling Service Provider's obligations or performing Services under the Agreement shall execute an individual confidentiality agreement (with terms acceptable to Contractor) to the benefit of Contractor at any time.
- 9.4. Service Provider understands and agrees that Confidential Information will be disclosed to Service Provider "as is" and Contractor makes no warranties or representations concerning the accuracy, timeliness or sufficiency of Confidential Information. Unless otherwise expressly stated by Contractor, Service Provider will rely upon such Confidential Information at its own risk.
- 9.5. Unless otherwise set forth in the Agreement, Contractor has no obligation to protect any information of Service Provider as confidential.
- 9.6. The obligation of confidentiality set forth in this Article 9 shall not apply to any Confidential Information which ~~Service Provider~~the receiving Party can demonstrate through reasonable tangible evidence: (A) to have been in the possession of ~~Service Provider~~the receiving Party before disclosure by or receipt from ~~Contractor~~the disclosing Party; (B) to have been in or to have become publicly known without breach of the Agreement by ~~Service Provider~~the receiving Party or any of its employees; (C) has been rightfully received by the ~~Service Provider~~receiving Party from a third party without any obligation of confidentiality; (D) is independently developed for ~~Service Provider~~the receiving Party prior to and without access or recourse to Confidential Information. Any document or item which contains any Confidential Information but which otherwise falls under one of the above exceptions shall be protected in its entirety as Confidential Information. Should ~~Service Provider~~the receiving Party consider any Confidential Information to fall within any of the exceptions, if possible ~~Service Provider~~the receiving Party shall confirm such with ~~Contractor~~the disclosing Party prior to disclosure.
- 9.7. In the event ~~Service Provider~~the receiving Party becomes legally compelled (by deposition, interrogatory, official request for documents, subpoena, agency, civil investigative demand or similar process) to disclose any of the Confidential Information, ~~Service Provider~~the receiving Party shall provide ~~Contractor~~the disclosing Party with prompt prior written Notice of such requirement so that ~~Contractor~~the disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of the Agreement. In the event that such protective order or other remedy is not obtained, or that ~~Contractor~~the disclosing Party waives compliance with the terms hereof, ~~Service Provider~~the receiving Party agrees to furnish only that portion of the Confidential Information which ~~Service Provider~~the receiving Party is advised by its legal counsel ~~(as approved by legal counsel for Contractor)~~ is legally required. ~~Service Provider~~The receiving Party will exercise reasonable efforts to obtain assurance that confidential treatment will be afforded such Confidential Information.
- 9.8. ~~Service Provider~~Neither Party shall ~~not~~ use the name, publications, marks, or logo of any member of ~~Contractor~~the other Party including its Group, ~~link to any Contractor Group~~Party's, including its Group's website, or make any reference to any member



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of ~~Contractor~~the other Party , including members of its Group, the Services, or the Agreement, in any media or marketing materials or publications, use any ~~Contractor~~Party's, including members of its Group, name as a reference or in a list of customers, or publicize, publish, or photograph any property or Personnel of ~~Contractor~~the Party, including its Group, except with the prior written consent of ~~Contractor~~the other Party -which shall not be unreasonably withheld.

- 9.9. Upon request of ~~Contractor~~the disclosing Party at any time, all Confidential Information in the possession of ~~Service Provider Group~~the receiving Party or any of ~~Service Provider Group~~the receiving Party Group's Personnel shall be promptly returned to ~~Contractor~~the disclosing Party or otherwise handled in accordance with ~~Contractor~~the disclosing Party's instructions. ~~Service Provider~~The receiving Party may retain one copy of any Confidential Information for its records subject to a continuing obligation of confidentiality. ~~Service Provider for as long as such copy remains in existence.~~ The receiving Party understands and agrees that in the event of any threatened, alleged or actual breach of this Article 9 by any member of ~~Service Provider~~the receiving Party's Group, ~~Contractor~~the disclosing Party may pursue any and all remedies available to it under the Agreement, in Law or in equity, including injunctive relief, in any forum or venue, such remedies under this Article 9 being exempt from the dispute resolution process under Article 18.
- 9.10. To the extent personal data provided from Contractor to Service Provider falls under California Privacy Rights Act or California Consumer Privacy Act restrictions, the Parties will comply with their obligations under those laws. In particular:
- 9.10.1. Service Provider will not sell or disclose such personal data except for limited and specified purposes related to the performance of this agreement;
 - 9.10.2. Service Provider will comply with California data privacy laws and their required privacy protections;
 - 9.10.3. Service Provider will notify Contractor if Service Provider can no longer meet such obligations;
 - 9.10.4. Service Provider will not prevent Customer from taking reasonable and appropriate steps required by such laws.

10. INTELLECTUAL PROPERTY RIGHTS

10.1. **CONTRACTOR'S INTELLECTUAL PROPERTY AND INTELLECTUAL PROPERTY RIGHTS** - The Confidential Information and Intellectual Property of any member of Contractor Group disclosed to Service Provider Group in any form and the Intellectual Property Rights therein (collectively "Contractor Proprietary Information) are and remains the property of the disclosing Contractor Group member, including ownership of all United States and foreign Intellectual Property Rights. Contractor warrants and represents that it owns, has duly licensed, or has been expressly granted the right to use all Intellectual Property and Intellectual Property Rights therein that it requires Subcontractor to use or access in performing the Services, and that such access and/or usage will not violate the Intellectual Property Rights of any third parties. Upon Contractor's request, termination or expiration of the Agreement for any reason, or with respect to any particular data on such earlier date that the same shall no longer be required by the recipient member of Service Provider Group in order to render the Services hereunder, such Contractor Proprietary Information shall be promptly returned to Contractor by Service Provider Group in a form and format acceptable to Contractor or, if Contractor so elects, shall be destroyed. Service Provider shall not use the Contractor Proprietary Information for any purpose other than that of performing the Services under the Agreement or fulfilling its obligations under the Agreement, and Service Provider shall not disclose, lend, sell, assign, lease, disseminate, or otherwise dispose of Contractor Proprietary Information or any part thereof to any other person, nor shall Service Provider commercially exploit any part of Contractor Proprietary Information. Service Provider shall not possess, or assert any property interest in, or assert any Lien, Claim, or other right against Contractor Proprietary Information.

11. HEALTH, SAFETY, AND ENVIRONMENT (HS&E) - Service Provider agrees to comply in all respects with Contractor's and its Client's' commitment to protecting the health, safety, and security of its Personnel and all other persons who are affected by its business activities, and protecting the environment. Service Provider agrees it will exert its best efforts in the performance of the Services to (A) take all actions necessary to minimize the environmental impact of operations under its control, (B) not take any action which might compromise the health, safety, and security of any person or the environmental condition of any Site (or any property adjacent to such Site), (C) give the highest priority to achieving the goal of an incident-free work environment, (D) comply with all applicable Laws; and (E) ensure that its Employees, its Personnel, other Subcontractors, and all other members of Service Provider Group adhere to these obligations.

11.1. SAFETY AND SECURITY

- 11.1.1. Service Provider shall perform the Services with the highest priority given to achieving a safe, incident-free workplace, and protecting the health, safety, and security of all persons impacted by the performance of Services. In accordance with, but without limiting, this overall obligation, Service Provider shall strictly comply with all applicable Laws, industry



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standards and rules and regulations relating to safety and security.

- 11.1.2. In the event of an incident or near-incident either directly or indirectly involving the Services, Service Provider shall promptly furnish Contractor with full written reports, including all documents filed with or received by any Service Provider Group insurer and any government agency. Service Provider will cooperate and assist Contractor Group in any investigation, provide any supporting documentation reasonably requested, and arrange for Service Provider Group Personnel to provide interviews and information to Contractor or its designee.

11.2. ENVIRONMENTAL OBLIGATIONS

- 11.2.1. Throughout performance of its Services, Service Provider shall conduct its operations in a manner which minimizes any adverse environmental impact of activities and operations under its control, preserves and conserves natural resources, and minimizes the risk of pollution or contamination. Service Provider shall conduct, and cause all members of Service Provider Group to conduct, all activities and operations under the Agreement, in strict compliance with applicable Environmental Laws.

12. IMPORT AND EXPORT COMPLIANCE

- 12.1. To the extent applicable to the Services under the Agreement, Service Provider agrees that it is responsible for requiring each member of Service Provider Group's strict compliance with the import and export Laws of the United States of America, and the import and export Laws of any other applicable jurisdiction or country (only to the extent such do not conflict with the Laws of the United States of America). Nothing herein shall require, compel or obligate Service Provider to violate any applicable Law.
- 12.2. Service Provider understands and acknowledges that the technology, know-how, Intellectual Property, designs, data, information, software, Service Provider Equipment or other Services provided under the Agreement by any member of its Group, may be subject to Laws restricting their export, re-export, transfer or release to certain governments, legal entities, or individuals and/or to certain destinations, including those Laws administered by the U.S. Department of Commerce (Bureau of Industry and Security) and the U.S. Department of the Treasury (Office of Foreign Assets Control).
- 12.3. Service Provider expressly understands that any transmission of any technical data, designs, drawings, or information of any nature under the Agreement to any point outside the United States or the release of the same to a Foreign National inside the United States may constitute and be deemed an "export" as defined under United States Laws, and therefore it is Service Provider's duty to verify in advance if such transmission is permitted under U.S. Laws.
- 12.4. To the extent applicable to its Services, Service Provider agrees to comply with all applicable U.S. Laws including, without limitation, export and re-export controls set forth in the U.S. Export Administration Regulations, prohibitions by the Office of Foreign Assets Control on transactions with or transfers to the governments of, parties located in or operating from, or nationals of countries subject to U.S. economic sanctions which is revised from time to time (as of this revision date Cuba, Iran, North Korea, Syria, Myanmar, and the Sudan), and prohibitions on transactions with or transfers to entities or individuals identified on the U.S. Government's List of Specially Designated Nationals and Blocked Persons (U.S. Treasury Department) and the Denied Persons List and Entity List (U.S. Department of Commerce). Service Provider is responsible for obtaining and complying with the most recent information and Laws. Service Provider further represents and warrants that it will require screening of all members of Service Provider Group working on this Agreement in order to comply with the above and, if necessary for licensing purposes, will provide resumes, names, country of birth, citizenship and residency of members of Service Provider Group to Contractor's International Trade Compliance Office, to the extent necessary to ensure compliance with this Article 12.
- 12.5. If any import or export control or compliance form is attached to the Agreement or otherwise requested by Contractor to be completed by Service Provider or any member of Service Provider Group relating to the Services, including Contractor's "Request for Export Control Information", Service Provider will fully and accurately complete such form and return it within ten (10) days to Contractor.
- 12.6. Service Provider understands and acknowledges that (A) all members of Contractor Group will rely upon the information provided by Service Provider, including determining whether any U.S. or foreign export or import license is required for the export or re-export of the supplied items or data to the country of destination; (B) Service Provider is responsible for compliance with local import (including port and customs) and export control Laws of any jurisdiction, (C) Service Provider is responsible for compliance with applicable U.S. re-export Laws; and (D) Service Provider is fully responsible for the accuracy and completeness of import and export documentation prepared or executed by all members of Service Provider Group, including any documentation required for the import, export or re-export of any part of the Services, or Service Provider Equipment, and



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any documents prepared or used by any member of Service Provider Group.

- 12.7. Acknowledgements and requirements substantially the same as contained herein shall be included in any applicable contract involving import or export activities which Service Provider executes with any other member of its Group in conjunction with the Services. Service Providers represents and warrants that it will immediately provide written Notice to Contractor's International Trade Compliance Office of any alleged, prospective, possible or actual breach of this Article 12 or any violations of any import or export Law arising from its performance of Services or related to the Agreement.
- 12.8. Service Provider acknowledges that not complying with this Article 12 would be a material breach of the Agreement and would cause irreparable injury to the Contractor. It is essential to the protection of the Contractor's goodwill and to the maintenance of the Contractor's competitive position as well as to prevent any breach in any prime contract with a client entered into by Contractor that this Article 12 is strictly complied with by Service Provider. In the event any required approval(s), clearance(s), and/or export/import license(s) is not obtained and/or is withdrawn, or not extended once issued, Contractor may terminate this Contract, in whole or in part. Alternatively, Contractor may elect to engage only in those activities with Service Provider that completely conform to all applicable approvals, clearances, regulations and export/import licenses.

13. PERSONNEL MATTERS

13.1. EMPLOYMENT AND EMPLOYMENT PRACTICES

- 13.1.1. Service Provider shall provide competent and adequately trained Personnel, and upon Notice from Contractor, shall remove from the Site or from the Services any Personnel deemed by Contractor in its sole judgment to be unsatisfactory due to incompetence, lack of cooperation, unwillingness to comply with established policies and procedures, improper conduct or other behavior deemed detrimental to the workplace. Service Provider shall provide badges, color codes, or other symbols of identification for Service Provider Personnel and Service Provider Equipment in accordance with the system specified or approved by Contractor, and Service Provider will ensure that all members of its Group will abide by and enforce security measures, including those pertaining to the prevention of theft, pilferage, vandalism, and waste. Service Provider shall be responsible for the work and activities of each of its Personnel, and shall cause each to comply with the terms of this Agreement. Service Provider shall be responsible for all payments due to its Personnel.
- 13.1.2. Service Provider shall ensure a background check is conducted (at Service Provider expense), in accordance with industry standards, for all persons performing under the Contract whose role involves interacting with a customer and/or handling or transporting shipments. Service Provider shall provide employment records to Contractor upon request, to the extent allowed by law. Service Provider acknowledges that USTRANSCOM has the right to prevent certain employees from performing under the Contract contact due to an unfavorable background check. In addition, Service Provider shall ensure all persons interacting with customers under this contract on and off base meet the specific requirements for local installation access as listed in DoD Manual 5200.08 (as accessible through <https://www.esd.whs.mil>).
- 13.1.3. Service Provider shall ensure all workers remain trained and qualified in their assigned duties. Smoking is prohibited in the customer's residence or within 50 feet of personal property during all phases of shipment and storage. Service Provider shall ensure all employees and lower tier Service Providers are free from possession of and/or not under the influence of drugs or alcohol while in a customer's residence and/or handling a customer's personal property. Service Provider shall ensure all drivers who perform under this contract are qualified and licensed in accordance with local, state, federal, and foreign country or international laws. At least one crewmember, and/or warehouse employee, where applicable, shall be fluent in English for the purposes of customer interaction, and all personnel shall be clean and neat and be easily identifiable as company personnel. Service Provider shall replace any individuals exhibiting unprofessional behavior, when requested by the customer and/or a USTRANSCOM representative.
- 13.1.4. Service Provider shall comply with all applicable U.S. state and federal labor and employment Laws, including (A) Title VII of the Civil Rights Act, (B) the Age Discrimination in Employment Act, (C) the Americans with Disabilities Act, (D) the Family Medical Leave Act, (E) non-discrimination in any respect against any Employee or applicant for employment because of race, color, national origin, religion, sex, age, or for any reason prohibited by Law, and (F) the Fair Labor Standards Act (including the requirement to pay a statutory minimum wage to Employees).
- 13.1.5. Pursuant to the 1986 Immigration Reform and Control Act, Service Provider shall require that all Service Provider Group Personnel performing any Services in the United States are authorized to work in the United States, and shall require signed original I-9 (Employment Eligibility Verification) forms or other acceptable proof of identity and authorization to work documents from each individual. Such original I-9 forms and copies of the other documents will be maintained by Service Provider to provide evidence as required by Law and will be available for inspection by the Contractor or its



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designee upon the Contractor's written request.

- 13.1.6. Service Provider agrees to participate and cooperate in the implementation of any Affirmative Action Plan for equal employment opportunity adopted under the Contract as a whole. To the extent applicable to the Services, Service Provider shall comply with Executive Order 11246, or any amendment, replacement or counterpart thereof.
- 13.1.7. If the Services are performed outside the United States of America, Service Provider shall ensure that it also complies with all applicable labor and employment Laws for such Site, including requiring compliance by all members of Service Provider Group with all applicable foreign visa and immigration requirements of any jurisdiction outside the United States.
- 13.1.8. Service Provider shall contractually bind all members of Service Provider Group to the express requirements of this Article.

13.2. DRUG- AND ALCOHOL-FREE WORKFORCE

- 13.2.1. Service Provider shall ensure all employees and lower-tier subcontractors are free from possession of and not under the influence of drugs or alcohol while in a customer's residence or handling a customer's personal property. If a member of Service Provider Group is removed from or denied access to any job site due to actual or under a reasonable suspicion of drugs or alcohol, Service Provider is responsible and assumes all Liability for immediately and safely removing the impaired person and the person's vehicle from such Site.
- 13.2.2. Service Provider shall comply with all applicable Laws in the adoption, implementation and enforcement of its own substance abuse policy.

13.3. LABOR RELATIONS

- 13.3.1. Service Provider shall comply with the National Labor Relations Act, any applicable "Right to Work" Law, and any other applicable Law related to labor relations.
- 13.3.2. Service Provider shall give Contractor Notice and full information regarding any threatened or existing labor relations problem or dispute affecting the Services. Service Provider shall cooperate in any effort by Contractor to mediate or otherwise attempt to resolve labor relations problems and disputes, including threatened or existing work stoppages, slowdowns, boycotts, disturbances, strikes, or picketing, affecting any Services. Service Provider is solely responsible for any labor relations issues involving any member of its Group and to take reasonable measures to ensure that such do not affect performance of the Services or this Agreement.
- 13.3.3. Service Provider's obligation to diligently perform the Services will not be excused due to any labor relations problems, dispute or activity related thereto, including refusal to cross picket lines, unless, in the opinion of Contractor there is a clear and substantial danger of substantial bodily harm or property damage to Service Provider Group Personnel by performing the Services.
- 13.3.4. If Service Provider has pre-hiring collective bargaining agreements, Service Provider represents that these agreements contain provisions prohibiting any strike, slow down, picketing, secondary boycotts or work stoppage during performance of the Services, and that Service Provider's entering into the Agreement does not violate such agreement.

14. EQUIPMENT

- 14.1. Service Provider Equipment shall be verified by Service Provider to be in at least good and proper operating condition, complies with applicable Laws, and fit for the intended purpose as suitable for proper, safe and efficient performance of the Services. Contractor shall have the right to inspect Service Provider Equipment. Any Service Provider Equipment which does not meet the foregoing standard shall be removed and replaced with acceptable equipment without cost to Contractor or delays to the schedule.

~~14.2. Service Provider assumes the full risk of loss (including loss of use) or damage to all Service Provider Equipment, including loss or damage arising as a result of the negligence (whether active, passive, sole, concurrent, or gross) of Contractor Group.~~

~~14.3. Service Provider shall provide insurance, in accordance with Article 6, for the benefit of Contractor Group covering all risk of loss (including loss of use) or damage to Service Provider Equipment used in the performance of the Services, with limits equal~~



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~~to or greater than the fair market value of Service Provider Equipment.~~

15. TERMINATION

15.1. TERMINATION FOR CONVENIENCE

- 15.1.1. Contractor reserves the right to terminate this Agreement, or any part hereof, for its sole convenience. In the event of such termination, the Service Provider shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this Agreement, the Service Provider shall be paid a percentage of the Subcontract price reflecting the percentage of work performed prior to the notice of termination, plus reasonable charges the Service Provider can demonstrate to the satisfaction of Contractor using its standard record keeping system, have resulted from the termination. The Service Provider shall not be required to comply with the cost accounting standards or contract cost principals for this purpose. This paragraph does not give Contractor any right to audit the Service Provider's records. The Service Provider shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

15.2. TERMINATION FOR CAUSE

- 15.2.1. Contractor may terminate this Agreement, or any part thereof, for cause in the event of any default by the Service Provider, or if the Service Provider fails to comply with any contract terms and conditions, or fails to provide the Contractor, upon request, with adequate assurances of future performance. In the event of termination for cause, the Contractor shall not be liable to the Service Provider for any amount for supplies or services not accepted, and the Service Provider shall be liable Contractor for any and all rights and remedies provided by law.
- 15.2.2. Contractor may terminate this Agreement immediately if Service Provider loses its operating authority or otherwise becomes disqualified to perform its obligations under this Agreement, or becomes insolvent or becomes unable to pay its debts in a timely manner, or makes a general assignment for the benefit of creditors, or a petition in bankruptcy is filed against Service Provider.

16. CLAIMS BY SERVICE PROVIDER

- 16.1. All Notices of any Service Provider Claim shall describe in reasonable detail the basis for Service Provider's Claim, including reasonable documentary evidence of the factual basis for Service Provider's Claim, circumstances of discovery, and the efforts by Service Provider to manage and mitigate such Claim prior to submission to Contractor. To the extent possible at the time, Service Provider shall submit with its Notice of Claim all complete documentary evidence it wishes to rely upon to substantiate its position. Each item of the Claim shall be itemized and detailed, the documentary evidence collated, and unless for good cause such evidence shall not be later added to or detracted from the initial Claim.
- 16.2. Service Provider shall make all reasonable commercial efforts to mitigate any adverse effects of such Claim. If the Services are still on-going, it is Service Provider's responsibility to make all reasonable commercial efforts to continue to perform its obligations under the Agreement and mitigate any adverse effects of the Claim, and if Service Provider fails to take reasonable and timely measures to mitigate, such Claim may be denied by Contractor.
- 16.3. Service Provider and Contractor will negotiate in good faith to resolve Service Provider's Claim. To the extent practicable, the Parties will exert reasonable commercial efforts to resolve all Service Provider Claims before completion of the Services. Service Provider shall continue to diligently perform the Services and otherwise meet all contractual obligations pending resolution of Service Provider's Claim. In the event the Parties cannot reach a resolution to Service Provider's Claim under the procedures of this Article 16, Service Provider agrees that the Claim will be exclusively resolved in accordance with the provisions of Article 18 hereunder.
- 16.4. For any Claim, Service Provider agrees to fully comply with this Article 16 before invoking any provision of Article 18.
- 16.5. Service Provider understands and agrees that its failure to comply with the procedures of this Article 16 shall constitute a waiver and release of any of Service Provider's contractual, legal or equitable rights with respect to the subject matter of Service Provider's Claim.
- 16.6. In the event Service Provider's Claim is not resolved under the procedures in this Article 16 within sixty (60) days of the date of the Notice of Service Provider Claim, the negotiations under this Article 16 will terminate, unless the Parties agree in writing to extend negotiations to a fixed date. Upon termination of the negotiations under this Article 16, the Parties must then proceed to resolve the matter as a Dispute in accordance with the procedures in Article 18. If Service Provider fails to properly initiate the procedures of Article 18 within 10 (ten) days of the termination of the negotiations under this Article 16, unless this deadline is extended in writing to a fixed date by agreement of the Parties, then such failure shall constitute a waiver and release of any of



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Service Provider's contractual, legal or equitable rights with respect to the subject matter of Service Provider's Claim.

17. LAWS

- 17.1. The Agreement and any issues, Claims, Disputes, or any other matter, issue, or question of interpretation arising hereunder between Contractor and Service Provider will be governed by the substantive Laws of the State of Texas, and the United States of America, notwithstanding any conflicts of Laws principles which may be applied or invoked directing the application of the Laws of another jurisdiction.
- 17.2. Except for any equitable relief sought or enforcement action of any court or arbitral award, the Parties agree that the exclusive venue for any court or dispute resolution proceeding arising hereunder for any Claim or Dispute shall be Houston, Harris County, Texas, notwithstanding any conflicts of Laws principles which may direct the jurisdiction of any other court, venue or forum, including the jurisdiction of Service Provider's home country.
- 17.3. The United States Arbitration Act shall govern the interpretation, enforcement, and proceedings for all Disputes. In the absence of any express provision in such Act, the governing Law of the Agreement as set forth above shall apply.
- 17.4. Service Provider shall be aware of and comply with all applicable Laws of any professional or governmental entity or international organization having jurisdiction or authority over any aspect of the Agreement, Service Provider's performance, or the location of performance of any of the Services.
- 17.5. Nothing in any other applicable Law or in the Agreement shall require any member of Service Provider group to violate, or excuse any member of Service Provider Group's compliance with, any Law of the United States of America.
- 17.6. Service Provider shall ensure that all members of Service Provider Group comply with the provisions of this Article 17.

18. DISPUTES AND DISPUTE RESOLUTION

- 18.1. Contractor and Service Provider expressly agree to resolve any Dispute arising out of or relating to the Agreement, the Services, or the relationship between the Parties, amicably, promptly, and without resorting to litigation. Therefore, the Parties agree that compliance with the terms, conditions, and procedures outlined in this Article 18 within the prescribed time limits shall be an exclusive substitute for filing any litigation against the other Party, except for interim measures identified in this Article, and any action to enforce a court or arbitral award.
- 18.2. If any Dispute arises between the Parties, and if a Party desires that such Dispute be subject to the provisions of this Article 18, it shall provide a Notice of Dispute Resolution to the other Party. Such Notice shall describe in reasonable detail the basis for such alleged Dispute, including reasonable documentary evidence of the factual basis for the Dispute, and include all relevant supporting documentation as required by Article 18.6. Any agreement or settlement of a Dispute shall be placed in writing and executed by both Parties.
- 18.3. All negotiations and proceedings under this Article 18 are confidential and shall be treated as compromise and settlement negotiations under the United States Federal Rules of Evidence.
- 18.4. Unless extended in writing by agreement of the Parties, the Notice of Dispute by Service Provider shall be presented to Contractor's Representative within the time frames set out in Article 16.6 (if Article 16 applies), or if Article 16 does not apply, within ten (10) days after Service Provider obtains knowledge of the facts upon which the Dispute is based. In any event, Notice of Dispute by Service Provider shall be provided no later than thirty (30) days after final payment for all unpaid amounts (other than those which may be in Dispute) has been sent by Contractor. Failure to provide Notice within the time provided for herein shall be deemed a waiver by Service Provider of any rights giving rise to such Dispute. Service Provider shall continue to diligently perform the Services and otherwise meet all contractual obligations pending resolution of the Dispute.
- 18.5. Notices of Dispute shall be submitted to Contractor's Representative, with all details concerning the basis for the Dispute, including reasonable documentary evidence of the facts, circumstances of discovery, and all efforts by Service Provider to manage, mitigate and resolve the situation giving rise to the Dispute prior to submission to Contractor. If possible or applicable to the nature of the Dispute, if the Services are still on-going, it is Service Provider's responsibility to continue to perform its obligations under the Agreement and make all reasonable commercial efforts to mitigate any adverse effects of the Dispute.
- 18.6. To the extent possible at the time, Service Provider shall submit with its Notice of Dispute all complete documentary evidence it wishes to rely on to substantiate its position on each issue in Dispute. Each issue in Dispute shall be itemized and detailed, the documentary evidence put forward collated, and unless for good cause such evidence shall not be later added to or detracted from at any later stage of proceedings.
- 18.7. Any Claim that remains unresolved after exhausting the provisions of Article 16 may, after the requirements of 18.2, 18.4, 18.5,



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and 18.6 are met, is deemed to have met the negotiation requirement of 18.7 herein, and such unresolved Claim (now a Dispute) may proceed directly to resolution under the mediation and arbitration sections of Article 18.8 et seq.

18.8. The Parties agree that they shall first exert all reasonable and necessary efforts, amicably, promptly, diligently, and in good faith, to resolve any Dispute by direct negotiation between Service Provider and Contractor's Project Subcontracts Department. If a resolution is not reached within sixty (60) calendar days of their first meeting on the matter, the Dispute shall be resolved in the second instance by Service Provider and Contractor's project management. If Contractor requires further information from Service Provider, the 60-day time limit for resolution will be extended by the time Contractor has given Service Provider to provide such information. If a resolution is not reached within sixty (60) calendar days of the first meeting by project management on the matter, the Dispute shall be resolved in the third instance by Service Provider and Contractor's designated home office representative.

18.9. Mediation.

18.9.1. If the Dispute has not been resolved by negotiations within 120 (one hundred and twenty) days after the date of the Notice of Dispute as required by Article 18.7, or if a Party fails or refuses to meet within such time period, the Parties agree to submit the Dispute to non-binding mediation, or the Parties may mutually agree to proceed directly to binding arbitration under this Article 18. Either Party may initiate mediation by sending a Notice of Demand to Mediate to the other Party and to the American Arbitration Association. Such Notice shall comply with the Notice requirements of the Agreement and the requirements under the American Arbitration Association's Commercial Mediation Rules.

18.9.2. The site of the mediation will be Houston, Harris County, Texas, and the mediation will be conducted pursuant to the Commercial Mediation Rules of the American Arbitration Association.

18.9.3. Contractor and Service Provider will mutually agree upon an independent mediator who has professional expertise in the subject matter of the Dispute, and experience in mediating such subject matter. The mediator will not have the authority to impose a settlement upon the Parties, but will attempt to facilitate the Parties reaching a satisfactory resolution of their Dispute. Failing agreement between the Parties, upon selection, the mediator shall promptly schedule the date, time and place of the first mediation session which shall be conducted in the manner prescribed by the applicable rules. The mediation shall be terminated: (A) by the execution of a settlement agreement by the Parties; or (B) by a written declaration of the mediator to the effect that the Parties are hopelessly deadlocked and further efforts of mediation are no longer viable; and (C) by a written declaration signed by both Parties that the mediation proceedings are terminated by mutual agreement; or (D) 60 (sixty) days after Notice of Demand to Mediate, unless extended in writing by the Parties to a fixed date. The fees and expenses of the mediation process, including the mediator and the organization, shall be borne equally by the Parties.

18.10. Arbitration.

18.10.1. Should mediation efforts not resolve the Dispute by the date the mediation terminates, the Parties agree to then submit the Dispute to final and binding arbitration. It is the intent of the Parties that this is a broad form arbitration agreement designed to encompass all possible Disputes among the Parties relating to the Agreement. This right to arbitrate any Disputes, Claims, or controversies under the Agreement shall survive the termination of the Agreement.

18.10.2. Either Party may initiate arbitration by a sending a Notice of demand to arbitrate to the other Party and to the appropriate administering organization specified below. Such Notice shall comply with the Notice requirements of the Agreement and the requirements under the applicable arbitration rules and procedures.

18.10.3. The site of the arbitration will be Houston, Harris County, Texas. The arbitration shall be conducted in accordance with the applicable Arbitration Rules and Procedures of the American Arbitration Association, the United States Arbitration Act, and the governing Law of the Agreement. For domestic arbitrations under the Agreement, the arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date of commencement of the arbitration proceeding. For international arbitrations under the Agreement, the arbitration shall be conducted in accordance with the International Arbitration Rules of the American Arbitration Association (also known as the International Centre for Dispute Resolution) in effect on the date of commencement of the arbitration proceeding. An international arbitration is one that is not entirely between citizens of the United States, involves property located outside the United States, or involves performance or enforcement outside the United States, or has some other reasonable relation with one or more foreign states. All other arbitrations under the Agreement shall



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be considered domestic.

18.10.4. Method of Selecting Arbitrators and Multi-Party Arbitration

- 18.10.4.1. If the amount in Dispute involves less than US \$5 million, exclusive of interest and costs, then the arbitration shall be conducted and finally settled by a sole arbitrator. If the amount in Dispute, exclusive of interest and costs, is US \$5 million or more, if the amount in dispute is unknown, or if relief other than damages is sought, then the arbitration shall be conducted and finally settled by a tribunal of three (3) arbitrators.
- 18.10.4.2. If the arbitration is to be conducted by a sole arbitrator, then the arbitrator will be jointly selected by the Parties. If the Parties fail to agree on the arbitrator within 30 days after the initiation of the arbitration, then the American Arbitration Association shall appoint the arbitrator.
- 18.10.4.3. If the arbitration is to be conducted by a tribunal of three (3) arbitrators and there are only two Parties to a Dispute (or if the parties can be conveniently grouped together into two groups based upon a common interest and common position in the Dispute), then each party or group shall appoint one (1) arbitrator, within 30 days of receipt of notice of the commencement of the arbitration, or within 30 days of the receipt of the notice from the AAA of its grouping of the parties, and the two arbitrators so appointed shall select the presiding arbitrator within 30 days after the later of the two arbitrators is appointed by the parties. If the two party-appointed arbitrators fail to agree on the third arbitrator within 30 days after the appointment of the later of the two, then the third arbitrator shall be appointed by the AAA. If there are three or more parties who cannot be grouped together based on a common interest and common position in the Dispute, or if there are three or more groups of parties, then the AAA shall appoint all three (3) arbitrators.
- 18.10.4.4. Each arbitrator shall be and remain at all times wholly impartial and shall provide the Parties with a statement that he or she can and shall decide the case impartially. No arbitrator shall have any financial interest (directly or indirectly) in the Dispute or any financial dependence (directly or indirectly) upon any of the parties. All arbitrators shall be knowledgeable of the subject matter of the Agreement and the Dispute, and the Law applicable thereto. The American Bar Association/American Arbitration Association Code of Ethics for Arbitrators in Commercial Disputes, in effect on the date of commencement of the arbitration proceedings, shall be applicable in domestic arbitrations, and the International Bar Association's Rules of Ethics for International Arbitrators shall be applicable to international arbitrations.
- 18.10.4.5. Each of the Parties shall (a) bear all of its own legal and other costs and expenses in the dispute resolution process, including attorney fees, and (b) pay its proportionately equal share of the costs and expenses of the administration of any Dispute hereunder, unless otherwise awarded by an arbitrator or court, or otherwise agreed upon in writing by the Parties in any settlement. The prevailing Party in such arbitration shall be reimbursed by the non-prevailing Party for any reasonable costs and expenses incurred as may be awarded by a sole arbitrator or tribunal.
- 18.10.4.6. Interim Measures. The sole arbitrator or the tribunal of three arbitrators, or in an emergency the presiding arbitrator of a three-person tribunal acting alone in the event one or more of the other arbitrators are unable to be involved in a timely fashion, may grant interim measures including injunctions, attachments and conservation orders in appropriate circumstances, which measures the Parties agree may be immediately enforced by the sole arbitrator, the tribunal or by court order. Hearings on request for interim measures may be held in person, by telephone or by video conference, and requests for relief, responses, briefs or memorials may be sent to, and orders or awards received from, the tribunal by facsimile or other similar means which include a confirmation of delivery. Notwithstanding any other provision in Article 18, any Party may apply to a court for interim measures, and the Parties agree that seeking and obtaining such measures shall not waive the right to arbitration nor waive any Party's obligation to otherwise comply with this Article 18.
- 18.10.4.7. The arbitrator or tribunal may grant any remedy or relief that it deems just and equitable, except that the Parties expressly stipulate that any award of damages shall be limited to actual and direct damages and that the award shall not include any special, indirect, exemplary, incidental, punitive, and other consequential damages. The Parties agree to promptly implement the arbitrator's or tribunal's decision, pay any amounts which may be owed thereby, and agree that judgment upon any award which may be rendered by the arbitrator or tribunal may be entered into and enforced by any court of competent jurisdiction. The Parties further agree the decision of the arbitrator or the tribunal shall be final and binding, and that there shall be no appeal of the decision or initiation of any further action on the arbitrated issues of the Dispute in any court, proceeding or jurisdiction. Except as expressly provided for above for interim measures, no Party shall be entitled to commence or maintain any action



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in any court of law concerning any matter under the Agreement except only for the enforcement of the amount found due on such arbitration determined by the arbitrator or tribunal or to enforce an order of the court in equity. Any award in arbitration shall bear interest at the prime rate as set forth by the Chase Manhattan Bank, New York City, New York from the date of the Notice of Demand for Arbitration to the time of receipt of payment of the award.

- 18.11. If the Parties to the Agreement or others who are bound to this or another similar arbitration agreement initiate multiple arbitration proceedings, the subject matter of which are related by common questions of Law or fact and which could result in conflicting awards or obligations, then the Parties hereby agree that all such proceedings may be consolidated into a single arbitral proceeding if the consolidated proceeding can be conducted in a manner consistent with the terms of the Agreement. The Parties do not intend or agree by this provision to authorize a class action or a mass action.
- 18.12. Unless otherwise directed by the Contractor, Service Provider shall continue to perform its Services pending resolution of any Dispute under this Article 18. Service Provider agrees to place the text of this Article 18 in any contract it executes with any Service Provider or supplier of any tier for any Services to be performed under the Agreement.
- 18.13. Except as may be required by Law or with the prior written consent of both Parties, this dispute resolution process is deemed to be "Confidential Information" under the Agreement, and Service Provider may not disclose the existence, content, or results of any dispute resolution proceeding hereunder to any third party (except to its legal and financial advisors provided such are under a confidentiality obligation to Service Provider covering such disclosures), except with the prior written permission of Contractor.
- 18.14. All Notices, Change Order, Claims, and dispute resolution proceedings, as well as documents submitted and communications under the Agreement, shall be exclusively prepared, submitted, and conducted in the English language.
- 18.15. Pending the resolution of any Dispute under this dispute resolution process, each Party shall, except in the event of termination or expiration of the Agreement, continue to fully perform all its obligations under the Agreement and such performance does not constitute a waiver of any other rights or obligations hereunder.
- 18.16. If any provision of this Article is deemed void or unenforceable for any reason, it shall be severed from the rest of the Article, and the remainder of the Article shall be enforced.
- 18.17. Should any matter in Dispute under this Agreement be included within, or the subject of, any litigation, claim, dispute, arbitration, or settlement between Contractor and any other member of Contractor Group, Contractor's rights under this Article may be exercised by an agent, representative or other designee of Contractor, Service Provider agrees to be bound by the terms of the outcome of such proceeding, including any award or settlement, to the extent that such pertains to the matter in Dispute hereunder.

19. NOTICES

- 19.1. Notices shall be in writing signed by the Party giving such Notice and shall be hand delivered or sent by overnight courier, messenger, facsimile or certified mail, return receipt requested, to the other Party at the address set forth in the Agreement. Notices shall comply with the specific requirements of the Article. Any Notice concerning a Change, Claim, or Dispute shall describe in reasonable detail the basis for the Change, Claim or Dispute, including reasonable documentary evidence of the factual basis, circumstances of discovery, and mitigation efforts. Notices, demands, offers or other written instruments shall be deemed to have been duly given on the date actually received by the intended recipient.
- 19.2. If either Party changes the address, individual or contact information specified in the Agreement at any time during the term of the Agreement, such Party shall immediately provide Notice to the other Party of such change.

20. CODE OF BUSINESS CONDUCT AND ETHICS

- 20.1. Service Provider shall strictly comply with this Article and any specific codes of conduct and ethical requirements contained in the Agreement, including if applicable Contractor's Code of Business Conduct (including the provisions pertaining to International Business Relationships) and with any code or ethical requirements of Client. Service Provider shall also comply with any professional or industry-standard codes of conduct and ethics applicable to the performance of the Services, and any applicable Law (including the U.S. Foreign Corrupt Practices Act). Service Provider warrants that it will establish and maintain appropriate internal business standards, policies, procedures and controls to ensure its compliance with this Article, including those necessary to avoid any real or apparent impropriety or adverse impact on the interests of Contractor Group. Contractor and Client shall have the right, but not the obligation, to periodically review at reasonable frequency during performance of the Services and for a period of three (3) years after completion of the Services, such business standards, policies, procedures and controls including those related to the activities of all Personnel of Service Provider Group in their relations with Contractor or



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Client employees, agents and representatives, vendors, Service Providers and other third Parties, and those relating to the placement and administration of purchase orders, subcontracts, or any commercial agreements. Such review(s) or participation by Contractor or Client shall not relieve Service Provider of its obligations under the Agreement, nor shall it constitute a waiver by Contractor of any rights under the Agreement or an agreement by Contractor to undertake any obligation pursuant to such review or participation.

- 20.2. Service Provider shall not make, either directly or indirectly, any improper payments of money or unlawfully give anything of value to any member of Contractor Group, nor to any government official, political Party or official thereof, or any candidate for political office, or to any officer, director, employee or any agent or representative of any instrumentality of any government in connection with the Agreement.
- 20.3. All payments by Contractor to Service Provider will be received by Service Provider for its own account and Service Provider is not authorized to offer, give, or promise any part of such payments, directly or indirectly, to any government official, political Party or official thereof, or any candidate for political office, or to any officer, director, employee, agent or representative of any instrumentality of any government.
- 20.4. Service Provider shall exercise all reasonable care and diligence to prevent any actions or conditions to avoid any real or apparent impropriety or which could result in a conflict with or adverse impact on Contractor's or Client's best interests. This obligation shall apply to the activities of all Personnel of Service Provider Group in their relations with the employees and families of Contractor Group (including Client, vendors, agents, and subcontractors) and third Parties. Service Provider's compliance with this requirement shall include establishing precautions to prevent its Personnel, or those of its vendors or subcontractors, from making, receiving, providing, or offering any substantial gifts, extravagant entertainment, payments, loans or other considerations. Service Provider warrants that it has not and will not pay any fee, commission, or compensation and that it will not grant any gift, gratuity or rebate of any kind to any officer, agent, servant, Employee, or other Personnel of any member of Contractor Group, including either as an inducement to obtain the Agreement or as acknowledgment of any other agreement.
- 20.5. Service Provider shall ensure that all documents, including invoices, vouchers, financial settlements, billings and reports, submitted by Service Provider to Contractor shall accurately and with specificity reflect the facts about the activities and transactions to which they pertain, and Service Provider represents that in any further recording or reporting made to Contractor for whatever purpose, Contractor may rely upon all such documents and the data therein as being complete and accurate. If Service Provider discovers or is advised of any errors or exceptions related to its invoicing of the Services, Service Provider and Contractor will together review the nature of the errors or exceptions, and Service Provider will, if appropriate, promptly take corrective action as directed by Contractor, to adjust the relevant invoice, apply any credits due, refund overpayments, or otherwise.
- 20.6. Service Provider shall place similar requirements in its contracts with any member of Service Provider Group (specifically, Service Providers and vendors) involved in furnishing Deliverables or performing any Services, including the obligation to notify Contractor upon discovery of any instance of non-compliance as stipulated below.
- 20.7. Service Provider agrees to provide Notice to Contractor promptly upon discovery of any instance in which the Service Provider or any member of Service Provider Group has violated or fails to comply with this Article 20 or any relevant Law.

21. CONTRACTUAL RELATIONSHIP

- 21.1. **INDEPENDENT SERVICE PROVIDER** - Service Provider shall perform the Services as an independent Service Provider with exclusive control of the manner and means of performing the Services in accordance with the requirements of the Agreement. Service Provider has no authority to act or make any agreements or representation on behalf of Contractor or Client, and no agency, partnership, or other contractual relationship exists between Service Provider and any member of Contractor Group, nor between Contractor and any member of Service Provider Group. No Employee or agent engaged by Service Provider shall be, or shall be deemed to be, an employee or agent of any member of Contractor Group. In the event Contractor should, at the request of Service Provider, furnish Employees to Service Provider for any purpose to perform Services as borrowed servants under the direction and supervision of Service Provider, such Employees of Contractor shall be deemed to be the Employees of Service Provider, and Service Provider shall be responsible for their actions for all purposes under the Agreement while so engaged. Except as expressly provided herein, there are no third party beneficiaries of the Agreement, and the Agreement does not create or confer any legal right, claim or cause of action in favor of any person who is not a signatory to this Agreement. The obligations and legal duties imposed on any Party by this Agreement are owed exclusively to the other Party and are not owed to any person not acting as a signatory hereunder.
- 21.2. **SUBCONTRACTING AND ASSIGNMENT** - Service Provider shall not subcontract any portion of the Services without the prior



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written approval of Contractor. More specifically, Service Provider agrees that it will arrange for transportation of all freight tendered to it by Contractor only on equipment operated under the motor carrier operating authority of Service Provider, and that Service Provider shall not in any manner subcontract, broker, co-broker, freight forward or in any other form arrange for the freight to be transported by or under the operating authority of a third party without the prior written consent of Contractor for each shipment to be so transported Contractor shall approve the specific lower tier Service Provider and the form and terms and conditions of the lower-tier subcontract. Service Provider shall not assign the Agreement or any funds due hereunder, in whole or in part, without the prior written consent of Contractor, and any attempted assignment in violation hereof shall be of no effect and shall constitute a default hereunder. No assignment or subcontracting, even with Contractor's approval, shall relieve Service Provider of any obligation hereunder, or create any contractual relationship between such lower-tier Service Provider and Contractor or Client. Contractor reserves the right to assign the Agreement without Service Provider's consent, in whole or in part, to any person, and will give Notice to Service Provider if such occurs. Notwithstanding the foregoing, Service Provider may without Contractor's approval use independent contractor owner operators or agents operating under Service Provider's motor carrier authority.

21.3. ELECTRONIC ACCESS, TRANSFERS AND TRANSACTIONS

- 21.3.1. With respect to any business conducted by the Parties through electronic means, including by e-mail, Internet-based systems, or facsimile transmission, or otherwise, each Party acknowledges and agrees that: (A) Contractor and Service Provider may correspond or convey documentation via electronic means unless Contractor expressly requests otherwise, (B) Service Provider will comply with any written instructions by Contractor concerning electronic communications; (C) Service Provider will not electronically forward or use for any other purpose any matters pertaining to the Agreement and the Services, including any transmissions received from Contractor or Client, without the prior written permission of Contractor, except to members of Service Provider Group for the purpose of performing the Services, and subject to their express contractual agreement as to the protection of the confidentiality of such information; (D) neither Party has complete control over the performance, reliability, availability, or security of Internet transmissions, however, each Party agrees to use commercially reasonable and up-to-date security measures to optimize the effectiveness, security and privacy of transmission; and (E) neither Party shall be liable to the other Party for any loss, damage, expense, harm or inconvenience resulting from the loss, delay, interception, corruption, or alteration of any internet transmissions by an unauthorized third party due to any reason beyond the Party's reasonable control.
- 21.3.2. Payments from one Party to the other Party may be transmitted by wire transfer in accordance with the wiring instructions provided by the receiving Party. It is the receiving Party's responsibility to verify proper receipt of funds, and to immediately notify the sending Party in writing should such funds not be properly received.
- 21.3.3. Neither Party is responsible for, and shall have any Liability hereunder arising out of or relating to, the performance, reliability, availability, or security of the Internet, except if such Liability arises out of any negligence or fault of either party in providing appropriately secure and properly operating software and hardware.
- 21.3.4. Electronic commerce transactions between Contractor and Service Provider will be solely governed by the terms and conditions contained in the Agreement. Contractor will not be bound by any legal terms and conditions contained on Service Provider's website, including on any of Service Provider's other electronically transmitted forms and documents. Specifically, any terms and conditions on Service Provider's internet site to which agreement by Contractor is required in any manner during performance of the Agreement, whether through an electronic agreement mechanism on any website, deemed implied by site access or use, or otherwise, will be null and void and have no legal effect on Contractor.
- 21.3.5. If any member of Service Provider Group performs any Services electronically and is granted access to any Contractor Group network, system, or computer equipment, project or collaborative portal, or password-protected internet or intranet site, Service Provider agrees to comply with all applicable Contractor Group policies regarding access, security and use, will not use such systems for any purpose other than for the performance of the Services, and agrees to exercise reasonable care to take appropriate security measures to protect Confidential Information from unauthorized disclosure to a third party. Service Provider agrees not to access, download, forward, print, or otherwise use any Contractor Group Proprietary Information under Article 10 in any manner other than to the extent which is necessary and required to perform the Services.

21.4. CONTRACTUAL RELATIONSHIP - This Agreement does not create or establish privity of contract between any member of Service Provider Group and Contractor's Client. This Agreement does not grant to Service Provider any right to assert a direct claim or direct cause of action against the Contractor's Client. All communication relating to this Agreement or the Services



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(oral or written) shall be addressed to Contractor.

- 21.4.1. Service Provider is responsible for ensuring that all members of Service Provider Group comply with the requirements of this Article 21.