

**PREFERRED TESTING LABS, INC.
GENERAL TERMS AND CONDITIONS
("Terms and Conditions")**

1) CONTRACT FORMATION AND ACCEPTANCE:

(a) The "Seller" in this contract for the purchase and sale of goods and services, is Element Materials Technology Anaheim, aka Preferred Testing Labs, Inc. The "Buyer" is named on the Seller's offer to sell (hereinafter, the "Quotation") or the buyer's purchase order (hereinafter, the "PO"). Buyer and Seller are collectively herein the "Parties" or separately the "Party". Buyer's acceptance of the Quotation or creates a "Contract" and is evidenced by (1) a signed PO referencing the Seller's Quotation number and these Terms and Conditions, (2) a return to Seller of a copy of the Quotation signed by Buyer, (3) Seller's acknowledgement of the Buyer's PO, or (4) payment, and the Seller's acknowledgment of the goods and/or services described in the PO, hereafter collectively forming an "Order". Notwithstanding the foregoing, the Buyer and Seller may have executed certain separate Non-disclosure Agreements that also form a part of the contract. Any ambiguity or inconsistency in these documents shall be resolved in the following order of precedence: (1) these Terms and Conditions, (2) the Quotation, (3) the Seller accepted Order, (4) any separate Non-disclosure Agreement. All other prior agreements are hereby made null and void.

(b) Additional or differing terms or conditions proposed by Buyer or included in Buyer's PO or attachments thereto are hereby objected to by Seller and shall have no effect unless expressly accepted in writing by Seller. No acceptance or acknowledgement, even if in writing and signed by the Seller, or modification or waiver of these terms and conditions or the Order shall bind Seller or Buyer unless written, signed, and accepted by Authorized Representatives of both Seller and Buyer. Seller will not commence services, deliver goods, or be bound by contract until the Order has been accepted by the Seller. BUYER'S SUBMISSION OF ITEMS FOR TEST SHALL CONSTITUTE BUYER'S UNQUALIFIED WITHDRAWAL OF ALL PRIOR AND CURRENT OBJECTIONS TO AND ACCEPTANCE, WITHOUT ADDITIONS OR CHANGES, OF THE PRICES, TERMS AND CONDITIONS CONTAINED IN SELLER'S QUOTATION, UNLESS SELLER HAS EXPLICITLY AGREED TO OTHER PRICES, TERMS OR CONDITIONS IN SIGNED WRITING. NO OTHER DIFFERENT OR ADDITIONAL TERMS AND CONDITIONS SHALL APPLY.

(c) Seller Quotations are offered for acceptance within sixty (60) calendar days from the date printed on the face of the Quotation unless a longer time period is specified in the Quotation. The Quotation is withdrawn if not formally accepted by one of the means indicated above within the designated period. Seller's acceptance of any Order is contingent upon Seller's continuing approval of Buyer's credit. Seller is under no obligation to enter an Order acknowledgement and may rescind the Quotation at any time prior to Buyer's unqualified acceptance.

(d) The delivery to the Seller by the Buyer of any item for testing or calibration by the Seller (a "Sample") or the delivery of any request by the Buyer to the Seller for the provision of any similar services shall, upon acceptance of that Sample or request by the Seller, constitute an Order as set forth in subsection 1(a) above. If the Seller begins such testing, calibration or similar services on that Sample, the Order shall be deemed to have been accepted by the Seller and a Contract shall be formed. These Terms and Conditions shall apply to that Contract.

2) PRICES:

The prices contained in the Quotation or Price List are predicated upon the use of these Terms and Conditions. The use of different or additional terms and conditions may result in higher prices. When a Quotation involves multiple items, the Quotation is non-severable. If the Quotation is made prior to receipt and review by Seller of all applicable specifications and proposed contract documents, prices quoted are subject to revision once missing documents are received. Prices quoted are "Market Prices" (defined in the Federal Acquisition Regulations (FAR) § 2.101(a) "Commercial Items" (6)ii), and are: (i) for goods or services offered to the general public and sold in substantial quantities in the commercial marketplace; (ii) valid only for the purpose of the Quotation. All pricing details are budgetary in nature and may not be utilized as a basis for pricing similar, repeat, or subsequent orders. The prices for the Services include the provision of Report(s), as defined herein below, and include one (1) revision; additional revisions will be separately priced. Freight related charges are not included in the pricing, unless otherwise specified in the Quotation. All prices quoted are exclusive of taxes, unless otherwise specified in the Quotation. Buyer agrees that all taxes, interest and penalties thereon, if any, relating to the services performed or the goods produced or sold hereunder, excluding taxes based upon the Seller's income and *ad valorem* property taxes of Seller, are to be paid when due by the Buyer. The Seller reserves the right to review and amend any Quotation prices where documentation, specification or other materials relating to the Contract have materially changed since the original Quotation was given or where additional services not envisaged by the Quotation are requested, for example, producing written descriptions of detailed procedures undertaken as part of the Services. For the avoidance of doubt, approval of such additional requests shall remain at the Seller's discretion.

3) SELLER'S OBLIGATIONS AND RIGHTS:

(a) The Seller agrees to perform the services quoted in compliance with procedures and specifications furnished by Buyer and specifically incorporated into the accepted Order, including all deviations noted in the Quotation. In any event or instance not covered by the Buyer's specifications, or a failure of Buyer to timely respond to inquiries by Seller, the Seller reserves the right to perform services in accordance with its standard practices. Seller shall not be responsible for errors or omissions, or consequential effects of such errors or omissions, due to the Buyer's supplied or approved procedures, specifications, or other supplied information. Seller shall not be responsible for incompatibility of the Buyer's supplied or approved materials, specifications or test specimens.

(b) The Seller will use its commercially reasonable efforts to complete Services and provide written information, results, technical

reports, certificates, test or inspection records, drawings, recommendations, advice or the like in respect of the Services (the "Report") or certificate thereon to the Buyer by any date reasonably requested in writing by the Buyer, but the Seller shall not be liable to the Buyer for: (i) any delay in the performance of any obligation under the Contract; or (ii) damages suffered by the Buyer by reason of such delay.

(c) Buyer agrees that Seller's sole obligation is to perform services in a professional and workman-like manner, exercising a reasonable degree of care consistent with engineering and testing services industry standard practices, and report the results in the Reports accordance with applicable specifications and instructions received from Buyer's authorized representatives. Seller does not render opinions as to the suitability of any item tested or provided for any particular intended purposes.

(c) The Seller's obligation to complete Services under the Contract shall be subject to any obligation it may have to comply with any law or other regulation binding on it which may be in force from time to time. Nothing herein shall limit the Seller's other rights as set forth elsewhere herein, or at law or in equity.

4) BUYER'S OBLIGATIONS AND RIGHTS:

(a) Unless otherwise specified therein, the prices in the Quotation or Price List are based upon the timely receipt of all "Buyer's Property", as defined herein, in correct and operating condition, and all related technical information, prior to the date such items are required to support the Seller's offered schedule. Any Buyer supplied technical support labor must be available on the same date. All test articles and equipment must be received by Seller in one (1) lot, unless specific exemptions to this requirement are specified in the Quotation. Buyer is responsible for all freight charges, freight insurance, duties, customs brokerage fees, transit taxes and export/import filings for transfer of freight inbound or outbound, unless specific exemptions to this requirement are specified in the Quotation. Freight outbound from Seller to Buyer shall be INCOTERMS 2010, EXW-Location named by Seller (FOB Seller's Dock). Freight inbound from Buyer to Seller shall be INCOTERMS 2010, DDP-Location named by Seller (FOB Seller's Dock, duty paid) at Buyer's additional expense. If Buyer requires assistance from Seller in securing Customs clearance and delivery of test items to Seller's facility, then Buyer will be charged for duties, fees, taxes, US transportation and administrative costs incurred by Seller in assisting with delivery. Buyer shall provide to Seller a listing of all property, and its "unit replacement value" (in accordance with DFARS 211.274-3) of each item proposed to be furnished by Buyer where the total value of the shipment exceeds fifty-thousand US dollars (US\$50,000). If not so separately declared, Buyer agrees that the total value of shipment is less than fifty-thousand US dollars (US\$50,000).

(b) Seller may dispose of any Buyer-supplied articles, supplies, specifications, fixtures, special tooling, drawings, or related items provided by the Buyer, and which are unclaimed within thirty (30) calendar days after Seller gives written notice to Buyer to remove such items from Seller's facility. Buyer-supplied equipment at Seller's facilities shall be subject to additional charges for disposal, storage, transportation, and other charges, to the extent applicable, where Buyer does not remove the property from Seller's facility or provide timely disposition instructions following written notice to remove such items.

(c) Seller's premises ("Premises") are a designated security area. Seller does not permit the audit of proprietary financial data by commercial entities. Government assist audits, such as those performed by DCAA, and Government audits are permitted. Buyer may inspect Seller's Premises and review Seller's quality controls from time to time upon reasonable notice in accordance with the following conditions: (i) the Seller reserves the right to refuse admission to the Premises; (ii) unless otherwise agreed in advance by the Seller, one visitor per Buyer may be admitted on request to witness the Services carried out for that Buyer; and (iii) visitors to the Premises shall conform to the Seller's regulations and procedures. Where any aspect of the Service is undertaken on premises not occupied by the Seller or under its direct control, the Buyer must ensure that all necessary safety measures are in place to comply with all applicable health and safety regulations, and save as otherwise agreed in writing between the parties or where identification of asbestos is part of the scope of the Services to be provided by the Seller to the Buyer, the Buyer must ensure all asbestos has been removed and/or is safely contained in every area to be visited by the Seller's personnel during the visit to said premises. In addition to any specific Buyer obligations set out in the Quotation and the provisions of this subsection 4(c), where Services are provided at the premises of the Buyer, the Buyer shall: (i) provide the Seller with necessary access to any Buyer premises; (ii) ensure that any premises provided by the Buyer for the provision of any part of the Service is suitable for that purpose; (iii) provide all usual auxiliary and operating materials (including gas, water, electricity, lighting etc.) relevant to any Buyer supplied premises; and (iv) provide the Seller with any permits required for the performance of the Service.

(d) Any Reports or data provided as deliverable items shall be reproduced, distributed or sold only in their entirety, and with all markings intact. Any misuse or fraudulent misrepresentation of the Reports or data, or the information contained therein, including but not limited to the use of a Report, or any portion thereof, in any manner that might reflect unfavorably upon the Seller or its group, or which might be, or might include statements, interpretations or comments that could be, misleading or false is the exclusive liability of the Buyer, their successors and assigns.

(e) The Buyer shall supply as much information as possible, including a unique purchase order number, reference or authorization, about each Sample and/or Service requirement in order to assist in achieving an efficient service. If a Buyer provides the Seller with detailed instructions in writing as to the treatment and handling of particular items of its property, the Seller will use its commercially reasonable efforts to comply with such instructions.

(f) Seller may at times, and from time-to-time, notify Buyer, in writing, that unusual or excessive hazards exist in the Buyer's supplied procedures or specifications, or of dangers to excessively high value items. In such instances, the notification shall be deemed to be a formal notification of the hazard, and Buyer agrees to provide a full waiver of all liability for any damage to Buyer's Property, if so requested by Seller.

(g) Nothing stated herein shall limit the Buyer's other rights as set forth elsewhere herein, or at law or in equity.

5) TOOLING AND SETUPS:

Where applicable, tooling and setups quoted by Seller reflect costs and special designs to adapt or modify Seller's proprietary test equipment or fixtures or Buyer's Property, and neither the Seller's tooling nor the Seller's setups will be released from the Seller's facility. All right, title and interest to Seller's fixtures, special tooling drawings, design and related data is, and shall remain, the property of the Seller, except where the fixtures, tooling, drawings, design and related data are specifically identified as deliverable items in the accepted Order. Seller may incorporate proprietary information, intellectual property or trade secrets of the Seller in such deliverable items or data. Where such information is incorporated into deliverable items, Buyer shall protect such items or data in accordance with the confidentiality provisions of these terms and conditions rendering the same degree of care as Buyer uses to protect its own confidential information, but no less than a reasonable degree of care.

6) SERVICES:

(a) Reports are issued on the basis of information known to the Seller at the time that the Services are carried out. Although the Seller will use all commercially reasonable efforts to ensure accuracy, the Services depend, inter alia, on the effective co-operation of the Buyer, including its staff, and on the information submitted to the Seller. All Reports are prepared on the basis that:

- (i) there is no responsibility to any person or body other than the Buyer;
- (ii) they are not produced for any particular purpose and no statement is to be deemed, in any circumstances to be or give rise to a representation, undertaking, warranty or contractual condition unless specifically stated;
- (iii) the Report is determined solely by the professional analysis undertaken by the Seller's staff in accordance with each individual Contract and any forecasts by the Seller of the results is an estimate only;
- (iv) the Seller is entitled to be paid the Consideration irrespective of the results or conclusions reached in the Report;
- (v) the results of the Services shall address the items and information submitted only and are not to be regarded as representative of any larger population from which the Sample was taken; and
- (vi) the results are final and approved by the Seller. The Seller shall be under no liability where the Buyer has acted on preliminary, unapproved results or advice.

(b) Seller shall not be liable for a breach of the warranty set forth in Section 6 above or otherwise for a breach of its obligations under this Section 6 unless the Buyer gives written notice of the claimed defect in Services, reasonably described to the Seller within two (2) months of the Buyer becoming aware thereof and within one year after the completion of the Services to which the claim relates. Subject to the foregoing, unless the Seller disputes the validity of any such claim of defect, the Seller shall, in its sole discretion, either: (i) repair or re-perform such Services (or the defective part); or (ii) credit or refund the price of such Services at the pro rata Contract rate. THE REMEDIES SET FORTH IN THIS SECTION 6 SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND THE SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH HEREIN OR BREACH OF ANY OTHER OBLIGATION UNDER THIS SECTION 6.

(c) Where applicable, tooling and setups quoted by Seller reflect costs and special designs to adapt or modify Seller's proprietary test equipment or fixtures or Buyer's Property, and neither the Seller's tooling nor the Seller's setups will be released from the Seller's facility. All right, title and interest to Seller's fixtures, special tooling drawings, design and related data is, and shall remain, the property of the Seller, except where the fixtures, tooling, drawings, design and related data are specifically identified as deliverable items in the accepted Order.

(d) Seller may incorporate proprietary information, intellectual property or trade secrets of the Seller in such deliverable items or data. Where such information is incorporated into deliverable items, Buyer shall protect such items or data in accordance with the confidentiality provisions of these terms and conditions rendering the same degree of care as Buyer uses to protect its own confidential information, but no less than a reasonable degree of care.

7) SCHEDULES:

The estimated schedule and pricing in the Quotation are based upon the Seller's current commitments at the time the Quotation is issued, Seller's standard business hours eight (8) hours per day, Monday through Friday) and the Seller's acceptance of the Buyer's supplied documents and materials. Firm schedules will be acknowledged by the Seller from time to time. Due to the uncertain nature of testing services, ALL WORK SCHEDULE DATES AND TEST DURATIONS ARE APPROXIMATE and are stated in calendar days. All orders are subject to reschedule due to the possibility of Government priority orders superseding a normal schedule. Performance of services is subject to delays caused by acts of God, labor difficulties, shutdowns, the availability of utilities or materials, equipment breakdown, unforeseen engineering problems, Government regulations, priorities, preemption, severe weather or other causes beyond the Seller's control. Seller shall not be liable for any damages arising from delay in the performance of services, if such delay is due to any cause beyond the reasonable control of the Seller. Any event beyond the Seller's reasonable control shall not constitute a cause for termination of the Order, but shall extend the Seller's time to perform on a business-day for business-day basis for a period equal to the duration of the delay.

8) COURT AND OTHER PROCEEDINGS:

(a) In the event that the Buyer requires the Seller to present the results or findings of Services carried out by the Seller in witness statements, court hearings or other legal proceedings, the Buyer shall pay to the Seller such costs and fees for such presentations and the preparation thereof as the Seller may charge to customers generally from time to time for such services and the Buyer shall be liable for such costs in addition to the Consideration.

(b) In the event that the Seller is required by a Party other than the Buyer to present the results or findings of Services carried out by the Seller for the Buyer in any legal proceedings relating to the Buyer, the Buyer shall pay all costs and fees arising from any services which the Seller is required to do as a result, including the preparation of any witness statement and the preparation for and appearance at any court hearing and reasonable travel and out-of-pocket expenses. The Buyer shall pay all such costs, whether or not the Buyer has paid all outstanding Consideration under the Contract and whether or not the Seller has closed the Buyer's file in respect of the matter.

(c) If any aspect or element of the Services (including any Sample) is, or is likely to be, the subject of or relevant to legal proceedings, this fact must be notified to the Seller in writing before the Services are carried out. If that fact is not disclosed to the Seller at that stage, the Seller may not, in its absolute discretion, be prepared to provide testimony and/or documentation, or serve as the expert witness on behalf of the Buyer.

(c) This Section 8 shall survive termination of the Contract.

9) CHANGE ORDERS, INTERRUPTIONS, CANCELLATIONS AND TERMINATIONS:

(a) Change Orders. Seller is not obligated to perform any additional services not specified in the accepted Order, including, but not limited to repeat testing. If Seller agrees to perform additional services requested by Buyer's change to the accepted Order (hereinafter, a "Change Order"), the Seller's price and schedule shall be equitably adjusted for the additional work commensurate with the changed requirements, the status of Seller's work in process at the time of the Seller's receipt of the Buyer's Change Order, and the Seller's written acceptance of the changed or added work. Buyer required revisions of documents/drawings in excess of one revision, or a failure of Buyer to definitively review and approve/disapprove documents and drawings within ten (10) business days may be construed as Change Orders, and the appropriate charges may be added accordingly. In accordance with Seller's Quality Management System and FAR 52.243-1 Alt III, Seller cannot proceed with disputed work or work not authorized by written Change Order and Associated Purchase Order Change.

(b) Interruptions, Delays and Standby Charges. If for any reason beyond Seller's control, the original test program is interrupted at Buyer's direction, or is interrupted or delayed due to: (i) a failure or malfunction of items under test; (ii) a failure or malfunction of Buyer's support equipment; (iii) additional services (e.g., repeat tests) necessitated by specimen failure, then standby charges will be assessed beginning four (4) business hours after Seller's notification (by telephone, e-mail and/or in-person) to Buyer of the interruption or delay. Buyer will be charged a minimum of fifty percent (50%) of the total amount of the quoted line item(s) delayed. Seller will use best efforts to mitigate such stand-by charges. Re-setup charges may apply at the resumption of testing. If Buyer places a hold on the work for more than one hundred and eighty (180) days for any reason beyond Seller's control, Seller reserves the right to re-quote the services prior to performing any additional work. Any portion of the original test program delayed by Buyer within five (5) business days of that scheduled test date will be charged a minimum of fifty percent (50%) of the total quoted amount of that test. If for any reason beyond Seller's control Buyer delays any portion of the original test program within twenty-four (24) hours of that scheduled test date, then Buyer will be charged one hundred percent (100%) of the total quoted price for that test. Rescheduling shall be at the discretion of the Seller.

(c) Terminations. Unless otherwise explicitly set forth in the Quotation and only with a minimum of ninety (90) days written notice provided by Buyer to Seller, Buyer may not terminate all or part of this contract for its sole convenience. Either Party may terminate the Contract if the other Party commits a breach of any terms of the Contract which: (i) is incapable of remedy; or (ii) if capable of remedy, has not been remedied by the breaching Party in accordance with a written notice from the terminating Party requiring remedy within the period specified in the said notice; or (iii) in the case of Seller, if Seller does not initiate a cure of the failure or provide Buyer with a written detailed plan adequate to cure the failure; or (iv) in the case of Buyer, immediately if Buyer fails to make payment of the Consideration within the specified time in the notice. In the event of any termination, Seller shall immediately cease all terminated work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease any terminated work. Both parties may terminate this Contract for cause in the event of the other Party's bankruptcy, suspension of business, insolvency, appointment of a receiver for the other Party's property or business, or any assignment, reorganization, or arrangement by the non-breaching Party for the benefit of its creditors. In case of termination by Buyer of all or any part of this contract, Buyer shall immediately pay to Seller all indebtedness to the Seller with applicable interest. Termination charges may include, but are not limited to, fees owing for goods or services provided prior to the effective date of such termination plus equitable termination charges based upon the status of work completed or in process, commitments made, and facilities allocated. Termination charges shall not include lost profits or unabsorbed overhead and shall not exceed the remaining Contract price. Seller will use best efforts to mitigate such termination charges. Seller shall continue Services not terminated or disputed, unless prohibited by law or court order. Any portion of the original test program terminated by Buyer within five (5) business days of that scheduled test date will be charged a minimum of fifty percent (50%) of the total quoted amount of that test. If for any reason beyond Seller's control Buyer terminates any portion of the original test program within twenty-four (24) hours of that scheduled test date, then Buyer will be charged one hundred percent (100%) of the total quoted price for that test. Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations, and liabilities that have accrued as at termination. Conditions which expressly or by implication survive termination of the Contract shall continue in full force and effect.

10) LIMITATIONS OF LIABILITY AND INDEMNITIES:

(a) **General:** IN NO EVENT SHALL EITHER PARTY HERETO BE LIABLE IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE FOR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF EQUIPMENT, COST OF CAPITAL, COST OF TEMPORARY EQUIPMENT, OVERTIME, BUSINESS INTERRUPTION, SPOILAGE OF GOODS, CLAIMS OF CUSTOMERS OR OTHER ECONOMIC HARM, HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY SHALL BEAR ALL LIABILITY AND RESPONSIBILITY FOR THE ACTS, ERRORS OR OMISSIONS OF ITS OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, SUBCONTRACTORS, ASSIGNS, SUCCESSORS, REPRESENTATIVES OR AGENTS COMMITTED WITHIN THE SCOPE OF THEIR EMPLOYMENT OR FIDUCIARY DUTY. EACH PARTY SHALL MAINTAIN INSURANCE IN REASONABLE AND RESPONSIBLE AMOUNTS FOR SUCH LIABILITIES, NEITHER PARTY SHALL BE LIABLE FOR THE ACTS, ERRORS OR OMISSIONS OF THE OTHER PARTY'S OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, SUBCONTRACTORS, ASSIGNS, SUCCESSORS, REPRESENTATIVES OR AGENTS WHETHER OR NOT CARRIED OUT WITHIN THE SCOPE OF THEIR EMPLOYMENT OR FIDUCIARY DUTY. Nothing in this Agreement shall exclude or limit either Party's liability for death or personal injury caused by said Party's negligence or for fraudulent misrepresentation or for any liability that cannot legally be excluded or limited. Seller is neither an insurer nor a guarantor and disclaims all liability in such capacity. Buyer is not a co-insured under Seller's insurance, unless specifically so stated in the accepted Order. THIS SUBSECTION 9(a) SHALL APPLY REGARDLESS OF WHETHER SUCH LOSSES OR DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) **Bodily Injury:** Each Party hereby agrees to indemnify and hold harmless the counter Party from any form of action, lawsuit, claims, losses, costs (including attorney's fees), expenses or damages arising from the injury, illness or death of Buyer's customers, employees, agents or invitees directly or indirectly related to the goods or services supplied by Seller under this Agreement, except to the extent such injury, illness or death is proven to have been caused by, resulted from, or contributed to the negligence of the Party seeking to be indemnified. For claims under Workers' Compensation Insurance related to this contract, each Party hereby waives subrogation in favor of the other Party. Each Party agrees that its customers, employees, agents or invitees visiting the counter Party's facilities shall adhere to all of the counter Party's work rules, safety standards and security requirements that are reasonably provided to visiting personnel.

(c) **Property Damage:** "Buyer's Property" as defined herein, includes but is not limited to: Buyer's owned, leased, borrowed or hired property; Buyer furnished Government Property; Buyer furnished Contractor Acquired Property and all similar property of Buyer's subcontractors furnished to Seller, or by Seller, for the Order. Transfer of Buyer's Property to Seller's premises shall not constitute a bailment or transfer of title to Seller, and such property shall remain at all times under the stewardship, care, and primary insurance coverage of the Buyer and Buyer's property management system. Seller's liability for maintenance, loss, damage, destruction or theft of Buyer's Property, for all public and private contracts under this Agreement, shall conform to FAR 52.245-1(h). BUYER ACKNOWLEDGES AND UNDERSTANDS THAT THERE ARE UNKNOWN HAZARDS ASSOCIATED WITH THE GOODS AND SERVICES PROVIDED UNDER THESE TERMS AND CONDITIONS WHICH THE SELLER CANNOT SAFEGUARD AGAINST. Regardless of claim, form or theory of law applied, Seller shall not be liable for loss, damage or destruction of Buyer's Property, caused by the administration of the tests to the Buyer's Property or associated activities, except for, and only in proportion to the extent such loss is caused by or results from the negligence or willful misconduct of the Seller, nor shall Seller be liable for any loss, damage or destruction due to the accidental malfunction of the Seller's equipment. Seller shall not be liable for maintenance, loss, damage or destruction of Buyer's Property while on Seller's premises, including during storage, preparation for shipment, mounting and demounting, except where Seller acted with negligence or willful misconduct or where covered by Seller's Commercial Property Insurance for loss, damage, destruction or theft. Seller's liability for any claims relating to loss, damage, destruction or theft of Buyer's Property, regardless of claim, form or theory of law applied, shall be strictly limited to the lesser of the (i) the value of Buyer's property; (ii) the cost of the Services performed on the damaged or destroyed property pursuant to the Contract; (iii) the amount of reimbursement from Seller's insurance; or (iv) the stated unit replacement value as defined in DFARS 211.274-3.. The Buyer acknowledges and expressly agrees that, subject to this subsection, where the Contract specifies that the Services include non-destructive testing of the Sample, the performance of the Services may damage or destroy any and all Samples and any other materials or property delivered by Buyer to the Seller in relation to the Contract. Furthermore, under no circumstances will the Seller be responsible for any additional costs or damages, including consequential, special, indirect, or incidental damages and indirect costs or losses, resulting from destruction or loss of the Buyer's property.

(d) **Service Warranty:** Seller warrants that the "Services" provided hereunder shall conform to the specifications and express warranties set forth in these terms and conditions and the accepted Order, and that at the time of delivery: (i) Seller shall have the right to perform such Services; (ii) the Services and any resulting Report or other deliverable shall be delivered upon due payment, free of encumbrances. Services performed by Seller will be performed in a professional and workman-like manner exercising a reasonable degree of care consistent with testing services industry standard practice. Seller will modify or correct any such Services that have not been so performed if written notice of any such failure is given to Seller within one-hundred eighty (180) calendar days of the date of delivery of any final deliverable for such Services (the "Warranty Period"). No claim of any kind with respect to the conformance of the Services to the foregoing specifications (including any exceptions or waivers), whether or not based on negligence, warranty, strict liability or any other theory of law, will be greater than the Seller's price of the nonconforming Services in respect to which such claim is made. Seller shall be provided ample opportunity to re-perform the Services at its expense in the event of a warranty claim. If the Seller is unable to re-perform the services, Buyer and Seller shall mutually agree upon an equitable adjustment in price, which shall not exceed the Seller's price of the nonconforming Services. Notwithstanding the provisions of this Service Warranty regarding non-conforming services, if Buyer should disagree, for any reason, with the results or conclusions of the service hereunder, and require additional work for verification, Seller shall be entitled to the cost of the additional work required to verify the results, where the results are subsequently so verified. SELLER'S LIABILITY OF EVERY FORM AND TYPE, EXCEPTING THOSE LIABILITIES COVERED BY THE SELLER'S PRODUCTS AND COMPLETED OPERATIONS INSURANCE, OR ANY PENDING OR UNRESOLVED WARRANTY CLAIMS ARISING DURING THE WARRANTY PERIOD, SHALL ABSOLUTELY AND COMPLETELY TERMINATE AT THE CONCLUSION OF THE ONE-HUNDRED EIGHTY (180) DAY WARRANTY PERIOD. The foregoing constitutes the Buyer's exclusive remedies and Seller's sole obligation with respect to any such claim. THERE ARE NO EXPRESS WARRANTIES BY SELLER OTHER THAN THOSE SPECIFIED IN THIS PARAGRAPH. NO WARRANTIES BY SELLER WILL BE

IMPLIED OR OTHERWISE CREATED UNDER THE UNIFORM COMMERCIAL CODE OR ANY OTHER THEORY OF LAW, INCLUDING WITHOUT LIMITATION, WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(e) Seller's Liability. THE SELLER'S TOTAL LIABILITY TO THE BUYER IN CONTRACT, TORT (INCLUDING CLAIMS FOR NEGLIGENCE OR BREACH OF STATUTORY DUTY) MISREPRESENTATION, RESTITUTION OR OTHERWISE ARISING IN CONNECTION WITH THE PERFORMANCE OR CONTEMPLATED PERFORMANCE OF THE CONTRACT SHALL IN ALL CIRCUMSTANCES BE LIMITED TO THE GREATER OF (i) US\$5,000 OR (ii) THE CONSIDERATION FOR THE SERVICES PAYABLE EACH CALENDAR YEAR UNDER THE CONTRACT THAT ARE SUBJECT TO THE CLAIM. UNDER NO CIRCUMSTANCE SHALL SELLER'S LIABILITY EVER EXCEED ITS PROPORTIONATE SHARE WHERE MORE THAN ONE PARTY HAS LIABILITY. Save in the case of fraud or fraudulent concealment by the Seller, the Seller shall be under no liability in respect of any claim under the Contract and any such claim shall be wholly barred and unenforceable unless: (i) the Buyer notifies the Seller in detail and in writing of the alleged basis for the claim within two (2) months of the Buyer becoming aware thereof and within one year after the completion of the Services to which the claim relates; and (ii) the Seller is permitted to inspect any and all property with respect to which the Services are claimed to have been defective or to which Buyer's claim otherwise relates. The Buyer acknowledges that the above provisions of this Section 10 are reasonable and reflected in the price which would be higher without those provisions and the Buyer will accept such risk and/or insure accordingly. Nothing in these Terms and Conditions limits or excludes the liability of the Seller for: (x) death or personal injury to the extent resulting from the Seller's negligence; or (y) liability incurred by the Buyer to the extent resulting from fraud or fraudulent misrepresentation by the Seller; or (z) any other matter which may not be limited or excluded by law to the extent arising out of the errors or omissions of Seller.

(f) Buyer's Liability. The Buyer agrees to indemnify, keep indemnified and hold harmless the Seller from and against all losses which the Seller may suffer or incur arising out of or as a result of: (i) breach of any law by the Buyer in connection with the performance of the Services; (ii) any claim threatened or made against the Seller by any third Party arising out of the Services or out of any delay in performing or failure to perform the Services (even if such claim is solely or partly attributable to the fault or negligence of the Seller) to the extent such claim is in excess of the Consideration paid for the Services under the Contract that are subject to the claim; or (iii) any claims arising as a result of any misuse or unauthorized use of any Reports issued by the Seller or any Intellectual Property Rights belonging to the Seller (including trade marks) pursuant to this Contract. Notwithstanding any other provision of these Terms and Conditions, the Buyer's liability under this indemnity shall be unlimited.

(g) This Section 10 shall survive termination of the Contract.

11) TERMS OF PAYMENT:

(a) The Buyer shall pay the Seller the charges set out in the Quotation, if applicable, or as otherwise contemplated for the provision of the Services (the "Consideration") and shall pay the Seller on demand for any expenses incurred in the provision of the Services (the "Costs"), unless expressly agreed otherwise in writing. The Seller may issue invoices in respect of Services upon completion of the Services or upon completion to the Seller's reasonable satisfaction of separate parts of the Services, in which case, the Seller will invoice for that proportion of the total consideration for the Services performed under the Contract; or in a manner otherwise specified in the Quotation, including individual lines on the Quotation, or order confirmation. Where credit terms are extended by Seller to Buyer, all invoices issued by Seller for any public or private contract or subcontract under this Agreement shall be net thirty (30) calendar days, from date of receipt of an undisputed invoice. The applicable interest rate for late payments shall be the lesser of twelve percent (12.0%) per annum or the maximum allowed by law. Any Order requiring more than ten (10) calendar days to complete will be billed on a line item or milestone basis, and only for those milestones or line items completed within that billing period, which may be weekly or monthly as set forth in the Quotation. Buyer must separately list the billable line items or milestones in its Order. Seller reserves the right to invoice for all test program preparations, all set-up, fixturing, materials, rentals and all upfront Costs upon acceptance of Purchase Order.

(b) Unless otherwise required by law, if a petition is brought by or against Buyer under any present or future bankruptcy or insolvency laws seeking any reorganization, arrangement, readjustment, liquidation, dissolution or similar relief with respect to Buyer, or if Buyer shall make any assignment for the benefit of creditors, or if a receiver is appointed for Buyer, or if Buyer shall fail to make payments in accordance with these terms and conditions, or if in Seller's opinion Buyer's credit has been impaired, Seller may, at its option, terminate Buyer's credit terms by written notice to Buyer or impose such new payment terms, including cash on delivery, auto pay or a security agreement as it deems adequate to protect its interest. Buyer agrees to pay costs associated with the collection of any overdue amount, including reasonable attorney's fees.

(c) The Buyer shall pay the Consideration and Costs to the Seller by electronic bank transfer in cleared funds in the currency specified in the Seller's Quotation, proposal or order confirmation. All payments due to the Seller shall be payable within the specified time irrespective of whether or not the Buyer has recovered payment from a third Party and, for the avoidance of doubt, but without prejudice to the generality of the foregoing, including fees due to the Seller when acting as or engaged to serve as experts or as expert witnesses in an adjudicatory proceeding. Failure to make such payments when due shall entitle Seller to discontinue Services without further notice and such failure may result in additional requirements or deposit requirements being imposed before the Services are resumed.

12) NOTICES:

All notices to be served by one Party on the other must be in writing and shall be deemed duly delivered or served at the time of service if delivered personally and seventy-two hours after posting if posted by certified or registered mail (return receipt requested, postage prepaid) in each case to the registered address, if applicable, or if not applicable the last known address of the other Party. Notice shall be deemed effective when received or refused and must be sent prepaid to the other Party at the address provided on the face of the Quotation or Price List.

13) CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY RIGHTS:

- (a) For the purposes of this Section 13, "Intellectual Property Rights" shall mean all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights (now existing or hereafter created), in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
- (b) The respective proprietary knowledge of Buyer and Seller, as well as all other confidential commercial and operational information of Buyer and Seller, including the contents of contracts, (hereinafter called "Information"), which are conspicuously marked or identified in writing as confidential or proprietary information, shall be treated as confidential information by both Parties. Both Parties shall take all necessary measures to protect the Information from unauthorized access, unauthorized release, copying, transmission or unauthorized use of the Information of the other Party using the same care as they would for their own confidential information, but not less than a reasonable degree of care. Information that is already publicly available prior to or following its transmission to either Party shall not be subject to these provisions.
- (c) Both Parties shall use reasonable care to ensure that employees and third parties receiving access to the Information are subject to the same requirements of confidentiality as identified above
- (d) The Parties shall immediately notify each other in the event that either Party receives any court, government or other official and binding demand for the release of Information, where such notice is not prohibited by the court or the government agency.
- (e) Buyer indemnifies Seller against any liability caused by Buyer's infringement of any letters patent, trade secrets, copyrights, confidential information or proprietary information in the specifications, information or goods provided by Buyer to Seller. Seller indemnifies Buyer against any liability caused by Seller's infringement of any letters patent, trade secrets, copyrights, confidential information or proprietary information in the specifications, information or goods provided by Seller to Buyer.
- (f) This article of this contract shall continue in effect for a period of three (3) years after the termination of this contract, but may be superseded by any separate Non-disclosure Agreement or Proprietary Information Agreement executed by mutual consent of the Parties. Buyer acknowledges Seller must archive all project information for a minimum of seven (7) years to comply with the Seller's Quality Management System.
- (g) All Intellectual Property Rights (including copyright in records, scientific documentary, primary data or electronic means of handling data) produced during any Service shall belong to and remain the property of the Seller unless otherwise expressly agreed as part of the Contract.
- (h) Ownership and copyright in the Report shall remain with the Seller. Upon the Buyer discharging all its obligations under the Contract, including payment of the Consideration, the Buyer will obtain an irrevocable, royalty-free, non-exclusive license to use the Report (including the right to sub-license), subject to the terms of Section 13.
- (i) All Intellectual Property Rights in all service mark(s), trademark(s), certification mark(s) and other names and logos owned by the Seller shall remain the property of the Seller and cannot be sold or licensed by the Buyer.
- (j) When certification is granted, the Seller shall award, upon Buyer's written request, a license to the Buyer to use the Seller's certification mark(s) and logos for the certification validity period, subject to the applicable terms of use (as amended from time to time) which are issued with every certification and are available on request.
- (k) The Buyer shall indemnify the Seller against all losses to which the Seller may become liable as a result of a claim that the use of any data, equipment or other materials supplied by the Buyer for the performance of the Services involves the infringement of any Intellectual Property Rights of any third Party.
- (l) Except for the Buyer's limited rights to use the Reports set forth in Section 13, this Contract does not grant and shall not be construed as granting, any rights to either Party to any name or mark of the other Party. Neither Party is granted any right to the other Party's name in connection with any publication and may not give any press release or make any other public announcement regarding this Contract, the Services, or any transaction between the parties without the express prior written consent of the other Party.

14) DATA PROTECTION:

- (a) For the purposes of this Section 14, "Data Protection Laws" shall mean (a) up to and including 24 May 2018 the Directive 95/46/EC as transposed into domestic legislation of each Member State of the European Economic Area and in each case as amended, replaced or superseded from time to time, and (b) on and from 25 May 2018 the EU General Data Protection Regulation 2016/679 of the European Parliament and of the Council ("GDPR") and/or (c) any federal, state, local, international or other applicable laws, rules or regulations governing the use and protection of data.
- (b) Within this Section 14, "Process/Processing/Processed", "Data Controller", "Data Processor", "Data Subject", "Personal Data" and "Personal Data Breach" shall have the same meaning as in the Data Protection Laws; provided that the US Data Protection Laws shall be controlling should there be a conflict between any Data Protection Laws and thereafter the GDPR shall have priority.
- (c) The Buyer agrees not to provide or otherwise make available Personal Data to the Seller, other than business contact information (for example, business, telephone number, job title, and email address), unless otherwise required for the provision of the Services, in

which case such additional Personal Data shall be specifically identified in advance by Buyer and agreed to in writing by the Seller.

(d) Where Personal Data is Processed by a Party under or in connection with the Contract that Party, as Data Processor, shall:

(d)1 not Process, transfer, modify, amend or alter the Personal Data or disclose or permit the disclosure of the Personal Data to any third Party other than as required to meet the other Party's (as Data Controller) lawful, documented and reasonable instructions (which shall unless otherwise agreed be to process Personal Data as necessary to provide the Services pursuant to the terms of this Contract), unless required by a law to which the Data Processor is subject, provided that in such a case, the Data Processor shall inform the Data Controller of that legal requirement before Processing, unless that law prohibits such information on important grounds of public interest. In particular, the Data Controller instructs the Data Processor to transfer data outside the EEA subject to the Data Processor complying with the requirements of Articles 45 to 49 of the GDPR;

(d)2 upon becoming aware of a Personal Data Breach:

- (a) notify the Data Controller without undue delay; and
- (b) provide reasonable co-operation (at the cost of the Data Controller) to the Data Controller in connection with the Personal Data Breach;

(d)3 upon receiving any request, complaint or communication relating to the Data Controller's obligations under the Data Protection Laws:

- (a) notify the Data Controller as soon as reasonably practicable;
- (b) assist the Data Controller by implementing appropriate technical and organizational measures to enable the Data Controller to comply with any exercise of rights by a Data Subject under any Data Protection Laws in respect of Personal Data processed by the Data Processor under this Contract or comply with any assessment, enquiry, notice, or investigation under any Data Protection Laws, provided in each case that the Data Controller shall reimburse the Data Processor in full for all costs reasonably incurred by the Data Processor performing its obligations under this subsection) 14(d).3;

(d)4 ensure that at all times it has in place appropriate technical and organizational measures as required by Article 32 of the GDPR and any other applicable Data Protection Laws;

(d)5 ensure that its employees who may have access to the Personal Data are subject to appropriate confidentiality obligations;

(d)6 implement appropriate organization and technical measures to assist the Data Controller in meeting its obligations in relation to Articles 33 to 36 of the GDPR and any other applicable Data Protection Laws taking into account the nature of processing and the information available to the Data Processor;

(d)7 not authorize any sub-contractor to process the Personal Data ("sub-processor") other than with the prior written consent of the Data Controller, it being acknowledged that the Data Controller consents to the appointment of sub-processors who may from time to time be engaged by the Data Processor who in each case are subject to terms between the Data Processor and the sub-processor which are no less protective than those set out in this Section 14, provided that the Data Processor notifies the Data Controller of the identity of such sub-processors and any change to them; and

(d)8 cease Processing the Personal Data within ninety (90) days upon the termination or expiry of this Contract or, if sooner, the Service to which it relates and as soon as possible thereafter (at the Data Controller's option), either return, or securely wipe from its systems, the Personal Data and any copies of it or of the information it contains, other than to the extent that the Data Processor is required to retain the Personal Data due to a legal or regulatory requirement, or by a requirement of an accreditation body.

(e) The Data Processor shall make available to the Data Controller such further information and (as applicable) allow for and contribute to any audit or review exercise, conducted by the Data Controller or an auditor mandated by the Data Controller to provide assurance that the Data Processor is in compliance with the obligations set out in this Section 14, provided always that this requirement shall not oblige the Data Processor to provide or permit access to information concerning: (i) the Data Processor's internal pricing information; (ii) information relating to other clients of the Data Processor; (iii) any Data Processor non-public external reports; or (iv) any internal reports prepared by the Data Processor's internal audit or compliance functions. The Data Processor must immediately inform the Data Controller if, in its opinion, an instruction provided by the Data Controller pursuant to this Contract infringes the GDPR or any other applicable Data Protection Laws.

15) APPLICABLE LAW AND REGULATIONS:

(a) The contract between Buyer and Seller and shall be governed under the laws of the State where the Services are provided without regard to conflict of law provisions, or under Federal Procurement Law, as applicable.

(b) Seller warrants that all goods and services supplied pursuant to any accepted Order will have been produced and supplied in compliance with all applicable federal, state and local laws, orders, rules and regulations including, but not limited to those addressing: Equal Employment Opportunity and Affirmative Action; EEO-1 Representations; VETS-100 Reporting; Forced, Indentured and/or Convict Labor and Non-segregated Facilities. Seller representations and certifications of compliance with these and other regulations can be found at The System for Award Management website at www.sam.gov, under DUNS Number 063818587.

(c) If a government contract number appears on the face of the accepted Order, Seller agrees to comply with all applicable flowed-down terms and conditions of such contract, which shall be appended to Buyer's Order and made a part hereof, and with any other pertinent laws, regulations or Presidential Executive Orders to the extent that they apply to the subject matter of such Order. Where the Federal Acquisition Regulations (FAR) are referenced in these terms and conditions, the version in effect on the revision date shown above shall be used. In all FAR clauses listed herein, the terms "Government" and "Contractor" shall be revised to properly identify the contracting parties under this contract, generally by replacing "Government" with "Buyer" and "Contractor" with "Seller" but governed by the context of the usage.

(d) Export Control License. For the purposes of this subsection 15 (d) , "Export Control License" shall mean any public or governmental license, approval, permit or similar (whether temporary or permanent), issued directly or indirectly, by any United States or foreign authority which, from time to time, it is necessary to obtain in order to be entitled to market, import, export, or re-export products and/or provision of services, and/or transfer of technology and/or Intellectual Property Rights including without limitation, the U.S. Export Administration Regulations, and the U.S. International Traffic in Arms Regulations.

(d)1 The Seller's performance of its obligations under this Contract may, wholly or partly, be subject to Export Control Licenses. If any such Export Control License requires signed end user certificates or any other United States or foreign governmental or court approvals or consents, the parties agree to assist each other in completing the relevant end user certificates or other such approvals or consents and the Buyer undertakes to conform to and apply the terms of such, end user certificates, Export Control Licenses or restrictions.

(d)2 The Buyer represents and warrants that it shall inform the Seller in writing, prior to the Seller carrying out any Service, of any applicable import or export restrictions that may apply to the Services to be provided, including any instances where any products, information or technology may be exported/imported to or from a country that is banned from such transaction.

(d)3 Buyer shall identify items, materials or information which are subject to control by any export regulations, and shall identify any items or materials where export sensitive information can be obtained by casual inspection of the items or material (i.e., no disassembly or touch). Buyer agrees to cooperate with Seller by providing any information required under the Arms Control Export Act, the Export Administration Act, the International Traffic in Arms Regulations (ITAR), the Export Administration Regulations, or other export control laws and regulations.

(d)4 The Seller shall make reasonable efforts to obtain the necessary Export Control Licenses, but the parties acknowledge that the issuance of Export Control Licenses is at the sole discretion of the relevant authorities. If any necessary Export Control License is delayed, denied or revoked, the Seller shall notify the Buyer thereof in writing as soon as reasonably practicable, and the Seller shall be entitled to a corresponding extension of the time for provision of the Services, and, in case any necessary Export Control License denied or revoked, terminate the Contract, wholly or partly, without liability in relation to the Buyer.

(d)5 Should the Services or any product of the Seller be subject to any Export Control Licenses or any other United States or foreign governmental or court restrictions, the Buyer undertakes to conform to and apply the from time-to-time valid terms of such Export Control Licenses or restrictions.

(e) Anti-Corruption Laws. The Buyer undertakes to comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Foreign Corrupt Practices Act of 1977 and the U.K. Bribery Act 2010 ("Anti-Corruption Laws") and that it shall not do, nor omit to do, any act that will lead to the Seller being in breach of any of the Anti-Corruption Laws. The Buyer shall:

(e)1 comply with the Seller's Anti-corruption policies as may be notified by the Seller to the Buyer and updated from time to time ("Relevant Policies");

(e)2 promptly report to the Seller any request or demand for any undue financial or other advantage of any kind received by the Buyer in connection with the performance of the Contract;

(e)3 promptly notify the Seller (in writing) if a foreign public official becomes an officer or employee of the Buyer or acquires a direct or indirect interest in the Buyer (and the Buyer warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of this Contract); If a government contract number appears on the face of the accepted Order, Seller agrees to comply with all applicable flowed-down terms and conditions of such contract, which shall be appended to Buyer's Order and made a part hereof, and with any other pertinent laws, regulations or Presidential Executive Orders to the extent that they apply to the subject matter of such Order. Where the Federal Acquisition Regulations (FAR) are referenced in these terms and conditions, the version in effect on the revision date shown above shall be used. In all FAR clauses listed herein, the terms "Government" and "Contractor" shall be revised to properly identify the contracting parties under this contract, generally by replacing "Government" with "Buyer" and "Contractor" with "Seller" but governed by the context of the usage.

16) DISPUTES:

(a) Any dispute between the Parties relating to the contract between Buyer and Seller that cannot be resolved with reasonable promptness shall be referred to each Party's senior manager in an effort to obtain prompt resolution. Neither Party shall commence any action against the other until the expiration of fifteen (15) business days from the date of referral to such senior managers, provided, however, this shall not preclude a Party from instituting an action seeking injunctive relief to prevent irreparable damage to such Party. Seller will not proceed with any work in dispute in accordance with Seller's Quality Management System and FAR 52.243-1 Alt III.

(b) The Contract shall be deemed executed and to be performed in the state where the Services are performed ("Jurisdictional State"). Each Party irrevocably agrees that any legal suit, action or proceeding arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims) shall be instituted in the state or federal courts located in the Jurisdictional State, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or proceeding in such courts of the Jurisdictional State and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

(c) All disputes under this contract (including any question regarding its existence, validity and termination) which are not disposed of by mutual agreement following good faith negotiations within a period of thirty (30) days from the notification of a dispute shall be finally resolved at Seller's sole discretion either by submitting the claim to (i) the district court of the Jurisdictional State, or (ii) binding arbitration before a mutually acceptable arbitrator in the Jurisdictional State, in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

(d) If any legal proceeding is instituted to enforce or interpret the provisions of the Contract, the prevailing Party(s) shall be entitled to recover its, his, her or their costs, including reasonable attorney fees and expert witness fees, from the non-prevailing Party(s) in the proceeding. For purposes of this subsection 16(d), reasonable legal fees include the reasonable fees, charges, expenses of counsel, whether in house or outside counsel, whether incurred at the trial court level, appeal or in bankruptcy, administrative or probate proceedings or otherwise and court costs.

(e) Buyer acknowledges that it has read these terms and conditions and has had the opportunity to clarify these terms and conditions with Seller and is satisfied that it reflects the intent of the Parties. Accordingly, the rule of contra proferentem shall not apply to the contract formed between Buyer and Seller, and Buyer agrees and acknowledges that any ambiguity, inconsistency, or conflict that remains in the contract between Buyer and Seller after its execution by both Parties shall not be construed for or against either Party.

17) NON-SOLICITATION:

(a) The Buyer undertakes that during the provision of the Services and for 6 months following completion thereof, the Buyer shall not solicit or entice away (or assist anyone else in soliciting or enticing away) any member of the Seller's staff with whom the Buyer has had dealings in connection with the Contract and/or the provision of the Services during the 12 months immediately prior to the earlier of the date of the Buyer's purchase order or the date of the Quotation; or employ (directly or through a third Party) any person as referred to herein or engage a person in any way to provide services to the Buyer. This provision shall not apply in respect of any member of the Seller's staff who without having been previously approached directly or indirectly by the Buyer responds to an advertisement placed by the Buyer or on the Buyer's behalf.

(b) In the event of a breach of this Section 17 which leads to the departure of any person as referred to herein, the Buyer will pay to the Seller, on demand, as liquidated damages and not as a penalty (the parties acknowledging that actual damages would be impracticable or extremely difficult to calculate with reasonable certainty), a sum equivalent to 50% of the total annual remuneration package paid by the Seller to the individual prior to his or her departure. The Buyer acknowledges that this provision is a fair and reasonable term intended to be a genuine assessment of the likely loss to the Seller.

18) ENTIRE AGREEMENT:

This Contract constitutes agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter.

Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in the Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

19) NO PARTNERSHIP OR AGENCY:

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, make any Party the agent of another Party, or authorize any Party to make or enter into any commitments for or on behalf of any other Party. Each Party confirms it is acting on its own behalf and not for the benefit of any other person or entity.

20) THIRD PARTIES:

A person who is not a Party to the Contract shall not have any rights under the Contract to enforce any term of the Contract. The Contract is for the sole benefit of the parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of the Contract.

21) SUBCONTRACTING:

Unless otherwise restricted by the terms of the Contract and/or obligations under any accreditation or governing approval, the Seller shall be entitled, in its absolute discretion, to sub-contract the whole of or any part of the Services. The Seller may assign, delegate, license or hold on trust, all or any part of its rights or obligations under the Contract. The Contract is personal to the Buyer which may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under the Contract without the Seller's prior written consent.

22) SEVERABILITY:

If any provisions of these terms and conditions are held invalid by any law and/or regulation, all other provisions hereof shall continue in full force and effect. A waiver of any provision of these terms and conditions shall not constitute a waiver of any other provision. Any failure of Seller or Buyer to enforce a provision of these terms and conditions shall not constitute a waiver of any other provision of these terms and conditions and all other provisions shall remain in full force and effect.

23) HEADINGS:

The headings contained herein are for the convenience of the reader and they are not intended to be all-inclusive nor shall they be considered for any other purpose in construing these terms and conditions.

24) ELECTRONIC SIGNATURE VALID:

The parties agree that the contract between the Buyer and Seller may be executed: (i) pursuant to the process set forth in the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001, et. seq.), or (ii) in as many counterparts as may be required to reflect all Parties' assent; all counterparts shall collectively constitute a single agreement. A legible facsimile or certified digital signature that can be authenticated will constitute an original and binding signature of a Party.