3 GOODS

3.1 The Goods are described in the Goods Specification.

3.2 To the extent that the Supplier agrees to do anything under the Contract on the Customer's instructions, then the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses, including attorney's fees) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's rights including Intellectual Property Rights arising out of or in connection with the Supplier's following those instructions. This Clause 3.2 shall survive termination of the Contract.

3.3 If either party becomes aware of any circumstance which could lead to a claim under Clause 3.2 that party agrees to inform the other in writing as soon as possible thereafter. The Supplier may in its discretion elect to cancel the Contract and it is to decide to do so.

3.3.1 the Supplier shall give the Customer written notice; and

3.3.2 the provisions of Clause 14.1 shall apply.

3.4 The Supplier reserves the right to amend the Goods Specification:

3.4.1 if required by any applicable statutory or regulatory requirement; or

3.4.2 at its discretion so long as any such amendment or alteration does not reduce or degrade the performance or specification of the Goods.

4 DELIVERY OF GOODS

4.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows all relevant Customer and Supplier reference numbers, the type and quantity of the Goods, and the code number of the Goods, where applicable, special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

4.2 The Supplier shall deliver the Goods ex works (EXW) Supplier's location in St. Rose, Louisiana (Incorporated 2010) ("Delivery Location").

4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.6 If the Customer fails to accept or take delivery of the Goods or fails to clear the Goods through customs respectively within 5 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

4.6.1 delivery of the Goods shall be deemed to have been completed at 9:00 am on the 5th Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and

4.6.2 the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurers).

4.7 If 14 days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted or taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods.

4.8 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5 QUALITY OF GOODS

5.1 The Supplier warrants that on delivery, and unless a different period is agreed between the parties in writing from the date of delivery for the "Warranty Period," the Goods shall:

5.1.1 conform in all material respects with the Goods Specification; and

5.1.2 be free from material defects in design, material and workmanship.

5.2 Subject to Clause 5.3, it:

5.2.1 the Customer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in Clause 5.1; and

5.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and

5.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's expense, and the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full. If a repair is undertaken the Goods will be returned to the Customer at the Supplier's expense.

5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in Clause 5.1 if:

5.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with Clause 5.2; or
5.3.2 the defect arises because the Contractor failed to follow the Supplier’s oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods (if it there are none) good trade practice;

5.3.3 the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Supplier;

5.3.4 the Contractor alters or repairs such Goods without the written consent of the Supplier;

5.3.5 the defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal use or working conditions;

5.3.6 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.4 Except as provided in this Clause 5, the Supplier shall have no liability to the Customer in respect of the Goods failure to comply with the warranty set out in Clause 5.1.

5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under Clause 5.2.

5.6 In the case of Goods, repaired or replaced by the Supplier during the Warranty Period, that original Warranty Period will continue to apply for the repaired or replaced Goods (and for the avoidance of doubt, no extension of such period to cover the period of repair or replacement will apply).

5.7 In the case of Goods, repaired or replaced by the Supplier outside the Warranty Period, the warranty period for the repaired or replaced Goods will be six months from the date such repair or replacement is finalised and the repaired or replaced Goods are returned to the Customer.

5.8 In the case of Goods being repaired outside the Warranty Period the Supplier’s standard rates shall apply and the shipping of repaired Goods to the Customer will be invoiced at cost plus 10%. Other warranty options are available on request and subject to further conditions.

6 TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:

6.2.1 the Goods; and

6.2.2 any other goods that the Supplier has supplied to the Customer.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

6.3.1 hold the Goods on a fiduciary basis as the Supplier’s bailee;

6.3.2 store the Goods separately from any other goods held by the Customer so that they remain readily identifiable as the Supplier’s property;

6.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier’s behalf from the date of delivery;

6.3.5 notify the Supplier immediately if it becomes subject to any of the events listed in Clause 13.1.1 to Clause 13.1.11; and

6.3.6 give the Supplier such information relating to the Goods as the Supplier may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.

6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in Clause 13.1.1 to Clause 13.1.11, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irreparably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7 SUPPLY OF SERVICES

7.1 The Supplier shall provide the Services to the Customer either itself or through authorized sub-contractors on its behalf in accordance with the Service Specification in all material respects.

7.2 The Supplier shall use all reasonable endeavors to meet any performance dates for the Services specified in the Service Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

7.5 The Customer acknowledges that in the course of provision of the Services the Supplier’s personnel may only be required to work up to a maximum of 16 hours per day onshore and 18 hours per day offshore which in each case must include a minimum of 6 hours continuous rest per day.

8 CUSTOMER’S OBLIGATIONS

8.1 The Customer shall:

8.1.1 ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;

8.1.2 cooperate with the Supplier in all matters relating to the Services;

8.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer’s premises and other facilities as reasonably required by the Supplier to provide the Services;

8.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;

8.1.5 obtain and maintain all necessary licenses, permissions and consents which may be required for the Services before the date on which the Services are to start; and

8.1.6 keep and maintain all materials, equipment, documents and other property of the Supplier ("Supplier Materials") at the Customer’s premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier’s written instructions or authorization.

8.2 If the Supplier’s performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("Customer Default"):

8.2.1 the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier’s performance of any of its obligations;

8.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer or any other party directly or indirectly from the Supplier’s failure to delay or perform any of its obligations as set out in this Clause 8.2; and

8.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

9 CHARGES AND PAYMENT

9.1 The price for Goods shall be the price set out in the Order and accepted by Supplier. The price of the Goods is exclusive of all costs and charges of packaging, bank conversion and transfer, insurance, transport of the Goods, which shall be paid by the Customer when it pays for the Goods.

9.2 The charges for Services shall be on a time and materials basis:

9.2.1 in accordance with the figure given in the Supplier’s quotation; and

9.2.2 the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and the Supplier for the performance of the Services, and for the cost of any materials.

9.3 The Supplier reserves the right to:

9.3.1 increase the charge for the Services if the validity period for the quotation expires (being a 30 day period unless stipulated otherwise); and

9.3.2 increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:

9.3.2.1 any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labor, materials and other manufacturing costs);

9.3.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification;

9.3.2.3 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

9.4 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on performance of the relevant service.

9.5 The Customer shall pay each invoice submitted by the Supplier:

9.5.1 by the due date as stated on the invoice; and

9.5.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and

9.6 All quoted prices and charges are subject to the addition of any applicable sales, rental, excise, manufacturer’s use or other taxes that may be levied by any governmental entity.

9.7 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Customer under the Contract by the due date for payment ("Due Date"), the Supplier shall have the right to charge interest on the overdue amount at the rate of 4 per cent per annum above the then current Barclays Bank plc base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

9.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
10 INTELLECTUAL PROPERTY RIGHTS

10.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

10.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will enable the Supplier to license such rights to the Customer.

10.3 All Supplier Materials are the exclusive property of the Supplier.

11 CONFIDENTIALITY

A party ("Receiving Party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("Disclosing Party"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party’s business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party’s obligations under the Contract and/or in their due course of business, as the case may be.

12 LIMITATION OF LIABILITY: THE CUSTOMER’S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

12.1 Nothing in these Conditions shall limit or exclude the Supplier’s liability for:

12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
12.1.2 fraud or fraudulent misrepresentation; or
12.2 Subject to Clause 12.1:

12.2.1 the Supplier shall not under any circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract and/or in its due course of business, as the case may be.

12.3 EXCEPT AS OUT IN THESE CONDITIONS, ALL WARRANTIES, CONDITIONS AND OTHER TERMS IMPLIED, BY STATUTE OR COMMON LAW ARE, TO THE FULLEST EXTENT PERMITTED BY LAW, EXCLUDED FROM THE CONTRACT.

12.4 This Clause 12 shall survive termination of the Contract.

13 TERMINATION

13.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

13.1.1 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts, becomes bankrupt, or makes a composition or arrangement with its creditors;
13.1.2 the other party commences negotiations with all or any of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compounding arrangement with its creditors;
13.1.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party;
13.1.4 the other party is the subject of a bankruptcy petition or order;
13.1.5 a creditor or encumbreer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced or on sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
13.1.6 an application is made to court, or an order is made, for the appointment of a liquidator or receiver;
13.1.7 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
13.1.8 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 13.1.1 to Clause 13.1.6 (inclusive); or
13.1.9 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, or on all or substantially the whole of its business;
13.1.10 the other party (being an individual) dies, or by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation;

13.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

13.3 Without limiting its other rights or remedies, the Supplier shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to make any payment due under this Contract on the due date for payment; or
13.3.2 the Customer becomes subject to any of the events listed in Clause 13.1.1 to Clause 13.1.6, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

14 CONSEQUENCES OF TERMINATION

14.1 On termination of the Contract for any reason:

14.1.1 the Customer shall immediately pay to the Supplier all of the Supplier’s outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit such invoices, which shall be payable by the Customer immediately on receipt;

14.1.2 the Customer shall return all of the Supplier’s Materials and any Goods or Deliverables which have not been fully paid for and the Customer shall pay for damage to or deterioration in the value of any such Goods or Deliverables. If the Customer fails to do so, then the Supplier may reconstruct the Customer’s premises, and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

14.1.3 the accrued rights and remedies of the parties at as termination shall not be affected, including the right to claim damages in respect of any Part of the Contract which existed at or before the date of termination or expiry; and
14.1.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

15 FORCE MAJEURE AND UNUSUAL CIRCUMSTANCES

15.1 For the purposes of this Contract, “Force Majeure” Event means an event beyond the reasonable control of the Supplier including but not limited to strikes, lockouts or other industrial disputes, whether involving the workforce of the party or any other party, failure of a utility service or transport network, act of God, war, civil commotion, intentional damage, compliance with any law or governmental order, rule, regulation or direction, destruction of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

15.2 The Supplier shall not be liable to the Customer as a result of any delay, or failure to perform its obligations hereunder, as a result of a Force Majeure Event.

15.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than twelve weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Customer.

16 ASSIGNMENT AND SUBCONTRACTING:

Either party may at any time assign, transfer, charge or deal in any manner or with all or any of its rights and obligations under a Contract provided that the assignee gives prior written notice to the other party and the assignee agrees in writing with the assignor to be bound by all the obligations of the assignor under the Contract. Either party may subcontract or delegate in any manner or with all or any of its rights and obligations under a Contract to any third party or agent provided that it gives prior written notice of such subcontract or delegation to the other party. The assignment, subcontracting or delegation by a party shall not relieve the party of its obligations and liabilities under the Contract.

17 NOTICES:

17.1 Any notice or other communication required to be given to a party under or in connection with a Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first class post, recorded delivery or by commercial courier to the other party’s registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party’s main fax number or sent by email provided that the email is sent to [INSERT EMAIL ADDRESS] together with a PDF of the notice.

17.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such address or, if sent by prepaid first class post, recorded delivery, or by commercial courier, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier’s delivery receipt is signed, or if sent by fax, on the next Business Day after transmission, or if sent by email, on the day on which the communication is first received in the other party’s electronic mailbox.

17.3 This Clause 17 shall not apply to the service of any proceedings or other documents in any legal action.

18 WAIVER AND CUMULATIVE REMEDIES

18.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No waiver or delay by a party in exercising any right or remedy, or in not exercising the right or remedy under the Contract or its rights shall constitute a waiver of or that any other right or remedy, nor preclude or restrict to further exercise.

18.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.

19 SEVERANCE

19.1 If a part or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part/provision shall, to the extent required, be deemed deleted and the validity and enforceability of the other provisions of the Contract shall not be affected.

19.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

20 NO PARTNERSHIP

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any of the parties the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

21 THIRD PARTIES

Except as expressly provided under Clause 16 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.

22 VARIATION

Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Supplier.

23 GOVERNING LAW AND JURISDICTION

This Contract, and any dispute or claim arising out of or in connection with it, or its subject matter or formation (including non-contractual dispute or claims), shall be governed by, and construed in accordance with the laws of the State of Louisiana (excluding any principles of conflicts of law which would direct the application of the substantive law in any jurisdiction), and the parties irrevocably agree to the exclusive jurisdiction and venue of the federal and state courts with subject matter jurisdiction over any such dispute or claim in St. Charles Parish, Louisiana.