



MASTER SERVICES AGREEMENT

Contractor Name: _____

Effective Date: _____

Contractor Address: _____

Expiration Date: Evergreen

Contractor Telephone: _____

This **MASTER SERVICE AGREEMENT** (the "Agreement" or the "Contract"), consisting of this signature page and the attached Terms and Conditions, is made and entered into as of the Effective Date by and between **TELGIAN CORPORATION**, ("Telgian") with offices at 10230 South 50th Place, Phoenix AZ 85044 and the above-named Contractor ("Contractor").

Agreed to by and between:

TELGIAN CORPORATION

("Telgian")

("Contractor")

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

1. Term

- 1.1. The term of this Agreement commences on the Effective Date and continues until terminated by either party for any reason upon 30 days written notice or until this Agreement is terminated as otherwise provided in this Agreement.

2. Work and Work Orders

- 2.1. The Contractor shall provide the services, products, and other items (individually and/or collectively, the "Work") as specified in a Telgian Service Order, Service Authorization Request, Work Order, or similar ordering document (individually or collectively, "Work Order") issued by Telgian from time-to-time during the term of this Agreement.
- 2.2. The Work shall be accomplished in accordance with the Contract Documents as set forth below.
- 2.3. This Agreement shall govern the Work to be performed.
- 2.4. Except for Work description, price, and those terms and conditions negotiated for a specific transaction and formalized by written agreement of both parties as taking precedence, no terms and conditions in a Contractor proposal or purchase order shall vary the terms of this Agreement.
- 2.5. Except as specifically approved in writing by Telgian, any term or condition in a Contractor proposal or purchase order (or equivalent document) that modifies the Agreement terms and conditions or is in addition to the Agreement terms and conditions is specifically rejected and is of no force and effect.
- 2.6. **Time is of the essence in performance of the Work, and any delay in Contractor performance may result in loss or damages to Telgian.**

3. Contract Documents

- 3.1. This Agreement consists of the following documents, as changed, modified, or added to from time to time by written agreement of Telgian:
 - 3.1.1. This **Master Service Agreement**
 - 3.1.2. Telgian Contractor Policy and Procedures (set forth and incorporated herein at www.telgian.com/subcontractor-documents)
 - 3.1.3. Pricing Exhibits
 - 3.1.4. Coverage Area Matrix

3.1.5. Telgian Work Order and other written agreements of the parties

- 3.2. If there is a conflict between or among the Contract Documents, the following order of precedence will control: (1) Telgian Work Order and other written agreements of the parties; (2) Master Service Agreement terms and conditions; (3) Telgian Contractor Policies and Procedures; (4) Pricing Exhibits (5) other documents.

4. Changes

- 4.1. In its sole discretion, Telgian unilaterally may make changes to Telgian Contractor Policy and Procedures and Work Orders (i) as required by changes in ordinances, laws, regulations, and similar governmental requirements ("Rules"), (ii) as requested by its Customers, and (iii) as Telgian otherwise determines to be in its business interests (all referred to as "Changes").
- 4.2. Type (i) and (ii) Changes shall be effective on the date of first notice to Contractor by publication of such Changes on its website, mailing such Changes to the Contractor, or other means of notice.
- 4.3. If any such Changes result in an increased cost to Contractor to perform the Work, Contractor shall notify Telgian of such increased costs and provide the details of such cost increases anticipated to be caused by the Changes. Such detail shall be provided within 14 days of the Telgian Change notice.
- 4.4. Additionally, from time to time Telgian may request type (iii) changes and modifications to Work Orders as it deems to be in the business interests of Telgian. Such type (iii) Changes shall be effective upon mutual agreement on the terms of such changes by the parties. Contractor shall respond to such type (iii) Change requests within 14 days of the change request from Telgian.
- 4.5. In the case of type (i), (ii) or (iii) Changes which will cause a cost impact on Contractor, the parties will negotiate in good faith to reach and equitable adjustment in Contractor's fees and compensation directly caused by such Changes.
- 4.6. Except as otherwise provided in this Section 4, Changes, modifications, or additions to this Agreement will not be effective unless such changes, modifications, or additions are in writing and signed by authorized representatives of each party.

5. Validation of Understanding

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- 5.1. By its signature on this Agreement or any Work Order or by initiating or performing any Work hereunder, Contractor acknowledges Contractor's complete understanding of the Agreement and the requirements hereunder, including but not limited to applicable rules, regulations, and standards cited in the Agreement or that a Contractor experienced in performing the Work would be expected to know and understand.
- 5.2. If during performance of Work, the Contractor discovers any ambiguities or discrepancies requiring revision or modification to the Agreement, the Contractor shall promptly notify Telgian of such ambiguities or discrepancies before proceeding with the assigned Work.
- 5.3. The Contractor shall have no claim against Telgian for any ambiguities or discrepancies which were known to or should have been discovered by the Contractor.
6. **Validation of Licensing and Insurance**
- 6.1. Prior to commencement of assigned Work under this Agreement, the Contractor shall provide to Telgian copies of the following:
- 6.1.1. The Contractor's licenses and/or operating licenses issued by the governmental entities having jurisdiction over the Contractor's service as detailed in the Contractor Coverage Area Matrix.
- 6.1.2. Insurance certificates and endorsements as required under this Agreement.
- 6.2. Failure of Telgian to obtain any Insurance certificates and/or endorsements, licenses or other forms of certification from the Contractor is not a waiver by Telgian of any requirements for the Contractor to secure and continuously maintain any and all insurance coverage, Contractor's licenses, business licenses and/or any other licenses as required by this Agreement and the governmental entities having jurisdiction over the Contractor's service as detailed in the Contractor Coverage Area Matrix
7. **Verification of Field Conditions**
- 7.1. The Contractor's execution of this Agreement and beginning performance of a Work Order is representation that the Contractor:
- 7.1.1. Has read and understands all of the Contract Documents, and the Contractor shall comply with the requirements thereof.
- 7.1.2. Is aware of the time constraints imposed on performance of the Work.
- 7.1.3. Has entered into this Contract and accepted a Work Order on the basis of Contractor's own examination, investigation and evaluation of all such matters and not in reliance upon any opinion or representation of Telgian, its subcontractors or employees, or any design professional.
- 7.1.4. Has verified all existing and surrounding Work to the extent necessary to ensure work can be performed as intended. Commencement of Work by the Contractor constitutes the Contractor's inspection, verification and acceptance of the Job Site and all adjacent or connected Work and/or the substrate.
8. **Performance of the Work**
- 8.1. Contractor shall perform the Work in a workmanlike manner and in strict accordance with the requirements of the Contract Documents and any applicable Rules. To the extent there is a conflict between the Contract Documents or Work instructions and any applicable Rules, the Contractor shall discuss such conflicts with Telgian prior to proceeding with those portions of the Work in conflict.
- 8.2. The Contractor shall proceed with assigned Work in a prompt and diligent manner to assure strict compliance with the scheduled completion date as stipulated on the Telgian Work Order.
- 8.3. Contractor agrees to cooperate with Telgian, owner, and other contractors and shall not interfere with the performance of work by others or the Owner's business operations.
- 8.4. Contractor shall require all persons performing Work at the Job Site to comply with the Agreement, all rules, policies and procedures established by Telgian ("Telgian Policies and Procedures"), and all Telgian Customer or other Job Site specific or customer specific personnel, facility, safety, and security rules and requirements.
- 8.5. Consistent with the above, Contractor shall take all measures to prevent injury and loss to persons or property including ensuring proper safety/ OSHA or other certifications of employees or subcontractors when such persons operate Telgian or Telgian Customer provided equipment such as

lifts, ladders, tools, and the like when performing work.

- 8.6. Unless directed by Telgian in the Work Order, the Contractor shall provide all engineering, surveying and coordination required for accurately locating and laying out the Work and will coordinate the Work to ensure the proper fitting, meeting and joining of all components.
- 8.7. Contractor shall verify all dimensions and measurements and will immediately report any discrepancies or errors to Telgian in writing.
- 8.8. Contractor shall prepare and submit to Telgian at such times as appropriate or when directed by Telgian all required administrative, technical and product submittals.
- 8.9. Contractor shall reimburse Telgian for the cost of Telgian provided equipment such as lifts, jacks, power tools should the provider fail to report for duty, notwithstanding reasons outside of the Contractor's control.
- 8.10. Contractor shall notify Telgian immediately from the Job Site of any condition(s) adversely impacting Work completion and if required, request additional authorization.
- 8.11. Contractor shall clean up, remove from the Job Site and properly dispose all of the Contractor's waste materials and refuse. If the Contractor fails to do so Telgian may undertake the cleanup work with its own resources and the expenses thereof shall be charged to the Contractor.

9. Audit

- 9.1. Telgian or Telgian's customer shall be entitled to perform confidential audits of Contractor's operations as they apply to the Work hereunder. Such audits will be conducted on mutually agreeable dates. If such audit results find the Contractor is not in substantial compliance with the requirements of this Agreement, then Telgian or Telgian's customer shall be entitled at Contractor's expense to perform additional audits in that year to ensure ongoing compliance. Vendor shall promptly correct at its expense those matters identified in any such audit that require correction. Failure to correct such matters shall be considered a material breach of this Agreement.

10. Subcontracting Work

- 10.1. The Contractor shall not assign, transfer, or sublet any portion or part of this Contract and the Work

required by this Agreement to others without prior written consent of Telgian.

- 10.2. If consent is given the Work will be performed by employees of the subcontractor who have the appropriate skill level and training.
- 10.3. The subcontractor will provide Telgian with a Certificate of Insurance with the same limits listed under the Insurance Section of this Agreement. No Work is to be sublet until this requirement is met.

11. Compliance with Law and Safety, Other Contractor Obligations

- 11.1. Contractor shall conduct its operations and perform all aspects of the Work in strict conformance and compliance with all Federal, provincial, State and local statutes, common law duties, ordinances or regulations, including without limitation, those relating to safety, hazardous waste, health, industrial hygiene, the environment, discrimination, fair employment, equal opportunity, immigration reform and control, worker's compensation and licenses
- 11.2. Contractor is solely responsible and liable for executing the Work in a safe and prudent manner, for establishing safety procedures and for protecting its employees and the public from property damage and/or injury arising out of or related to its Work. Contractor shall maintain its tools, equipment and moving vehicles in a safe and operational condition.
- 11.3. Contractor shall be liable for all damages and expenses sustained or incurred by Telgian and its Customer or Job Site Owner due to any delay, suspension or stoppage of the Work caused by the Contractor's failure to comply with the requirements of this Section.

12. Personnel Assurances

- 12.1. Unless otherwise exempted by Telgian, Contractor shall at its expense conduct a background screening consistent with the guidelines of this Section and in accordance with then applicable federal laws. Background screenings shall be updated as required by applicable federal laws and as requested by Telgian.
- 12.2. Contractor hereby agrees to defend, indemnify, and hold harmless Telgian in accordance with the Indemnification provisions of this Agreement for any failure to comply with this Section.
- 12.3.

- 12.4. The background screening shall apply to all employees, subcontractors, subcontractor employees, or subcontractor representatives who have access to Telgian customer information (e.g., inspection or testing services reports, invoicing, repair and maintenance work) or perform on-site services or maintenance at a Telgian customer location.
- 12.5. Contractor acknowledges and agrees that Contractor or Contractor's agents are not eligible to participate in any employee benefit or similar programs of Telgian or Telgian's customers. Contractor shall inform all of its personnel and its agent's personnel providing Work under this Agreement that they will not be considered employees of Telgian or its customers and that neither Telgian nor its customers shall be liable to any of them and an employer for any claims or causes of action arising out of or relating to their Work.
- 12.6. Prior to any person being trained, assigned or beginning work for Telgian under this Agreement, Vendor shall comply with the background screening guidelines set forth in this Section.
- 12.7. Requirements
- 12.7.1. Validate that employee or representative has United States (US) citizenship or a certificate to work in the US in accordance with 1986 Immigration Reform & Control Act (including any rules or regulations promulgated thereunder) and any other applicable local, state, or federal immigration laws or regulations ("Immigration Laws")
- 12.7.2. Perform a Social Security Number (SSN) search to verify the accuracy of the employee or representatives identity and current and previous addresses.
- 12.7.3. If requested in writing by Telgian, Contractor shall obtain from employee or representative, a minimum of at least two (2) confirmed work references prior to assignment on Telgian work.
- 12.7.4. If requested in writing by Telgian and at Telgian's expense, Contractor will ensure completion of the verification of any post high school education or degrees (i.e., B.A., B.S., Associate, or professional certifications).
- 12.7.5. Perform a comprehensive criminal background check of all criminal court records (misdemeanor, felony and federal courts) in each venue of the employee or representatives current and previous home addresses for the past ten (10) years from the date of being assigned to the Work.
- 12.7.6. To the extent permitted by law, not assign or permit any employee or representative to provide Services under this Agreement who, in the previous ten (10) year period, pled guilty to, no contest, or has been convicted of or entered a pretrial diversion program in connection with the prosecution of any criminal offense (regardless of whether described as a felony or as a misdemeanor) involving dishonesty, breach of trust, money laundering, violence, theft or use or distribution of illegal drugs and are not on any active sex offenders list.
- 12.7.7. Ensure employees or representatives do not use illegal drugs.
- 12.7.8. Keep copies of background screening documentation and drug screening, and provide certification of completion of same to Telgian as requested. Additionally, Contractor shall allow Telgian, or Telgian's customers for whom Contractor provides services to audit screening documentation and compliance when requested.
- 12.7.9. These requirements flow from, among other places, Section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829) and other laws applicable to Telgian and Telgian customers. Telgian will require confirmation in the form of certifications or other information from Contractor to ensure compliance with US rules.
- 12.8. To the extent Executive Order 13496 applies to this Agreement or to the Work performed hereunder, Contractor agrees to comply with the applicable portions of EO 13496. If requested by Telgian, Contractor shall certify that Contractor has fully complied with applicable EO 13496 requirements.
- 12.9. During the term of this Agreement, Contractor shall:
- 12.9.1. Inform Telgian immediately if it suspects or has determined that any employee or representative providing services under this Agreement is engaged in (1) unlawful activity involving or related to the services provided under this Agreement or (2) activity that would be a violation of the terms and conditions of this Agreement, including, but not limited to:
- 12.9.1.1. Insider Trading

- 12.9.1.2. Improper or illegal use of information obtained as a result of Contract Person's performance of the Services under this Agreement
- 12.9.1.3. Making a false statement to a Telgian employee or Telgian customer's employee
- 12.9.1.4. Breach of Confidentiality
- 12.9.1.5. Abusive or inappropriate action or communication directed to a Telgian employee or a Telgian customer employee
- 12.9.1.6. Sexual harassment of a Telgian employee or a Telgian customer employee
- 12.9.2. Provide reasonable cooperation to Telgian and Telgian customers in any Telgian or Telgian customer investigation of alleged breach of the terms of this Schedule by an employee or representative.

13. Contractor Warranties**13.1. Contractor Warrants that:**

- 13.1.1. Contractor is duly licensed in accordance with the licensing requirements of the Job Site jurisdictions as a Contractor for the type of Work to be performed under this Agreement and agrees to maintain such license or licenses until final completion of the Work.
- 13.1.2. Contractor is financially solvent and has the ability to perform its obligations hereunder.
- 13.1.3. Contractor's signatory to this Agreement has been properly authorized to commit Contractor to this Agreement and that this Agreement is a valid and enforceable against the Contractor.
- 13.1.4. Contractor has not entered into and will not enter into any other agreement that conflicts with this Agreement or limits Contractor's ability to perform the Work.
- 13.1.5. The Work will be performed by employees or subcontractors who have the appropriate skill level and training.
- 13.1.6. Contractor shall perform all Work in a professional and workmanlike manner in accordance with industry standards and in compliance with all applicable Rules.

- 13.1.7. All materials and equipment furnished pursuant to this Agreement will be of new, merchantable, good quality, and fit for the purpose intended.
- 13.1.8. Work will be free from defects in workmanship or materials for a period of one (1) year from the date of final completion and Telgian acceptance of the Work performed.
- 13.1.9. Work will conform to the requirements of the Contract Documents.
- 13.2. All guarantees or warranties of equipment or materials furnished by any manufacturer or supplier shall be deemed to run to the benefit of and are hereby assigned to Telgian and Owner. As soon as reasonably practical, but not later than the completion of the Work, the Contractor will deliver to Telgian copies of any guarantees and warranties on equipment and materials furnished by manufacturers and suppliers to the Contractor. All warranties provided by this Agreement shall survive termination of this Agreement.

14. Fees and Expenses

- 14.1. Compensation and fees allowed under this Agreement shall be as set forth in Pricing Exhibits or in the Work Order. Unless directed by Telgian in the Work Order, the Contractor shall bear all costs for fees and permits, and no other cost or expense incurred by will be owed to or paid to the Contractor unless such cost or expense is approved in advance by Telgian and noted on the Work Completion Report.
- 14.2. The Contractor agrees to provide pricing to Telgian for Work equal to or better than pricing (i) offered to Telgian's competitors or (ii) to other Customers of Contractor for similar goods or services under substantially similar conditions.

15. Taxes

- 15.1. Contractor compensation, fees and expenses and fees are inclusive of all federal, provincial, state, and local sales, use, and other taxes or governmental assessments for materials and labor used in the performance of the Work, except for taxes based on Telgian's income.
- 15.2. **CONTRACTOR SHALL LIST ALL APPLICABLE TAXES ON ITS INVOICE TO TELGIAN UNLESS TELGIAN PROVIDES A TAX RESALE CERTIFICATE FOR THE PARTICULAR TAX. AN INVOICE SHALL NOT BE PAYABLE UNTIL AND UNLESS THE TAXES PAYABLE**

ON THE APPLICABLE PORTIONS OF THE WORK ARE APPROPRIATELY IDENTIFIED.

15.3. Contractor shall indemnify, defend, and hold harmless Telgian from and against any tax liability that Telgian is assessed or required to pay in accordance with the Indemnification Section of this Agreement.

16. Payment

16.1. Invoices for payment shall be certified as correct by the Contractor and shall be presented in a form required by Telgian, together with such supporting information and documents as may be required by Telgian as specified in the Telgian Policies and Procedures.

16.2. **CONTRACTOR IS HERBY PLACED ON NOTICE THAT TELGIAN WILL NOT BE OBLIGATED TO PAY CONTRACTOR FOR WORK UNLESS AND UNTIL CONTRACTOR COMPLIES EXACTLY WITH THE BILLING AND PAYMENT PROCEDURES SPECIFIED BY TELGIAN IN ITS POLICIES AND PROCEDURES AND SUBMITS ALL REQUIRED DOCUMENTS REQUIRED BY TELGIAN. SUCH COMPLETE AND ACCURATE INVOICE IS A "VALID INVOICE."**

16.3. Telgian will pay Valid Invoices within _____ () days after receipt of such Valid Invoice.

16.4. Telgian will not be responsible for paying and may, in it's sole discretion, not pay any invoices submitted more than 30 days after the Work related to such invoice has been completed.

16.5. In addition, Telgian may deduct or set off from any amounts due or to become due to the Contractor any sum or sums that are owed by the Contractor to Telgian under this Agreement, any Work Order, or other contract. The rights of Telgian to withhold payment from the Contractor shall remain in effect until the situation has been satisfactorily remedied or removed by the Contractor.

16.6. Telgian may also withhold payment to the Contractor to the extent of the following:

16.6.1. Failure to meet performance level standards listed in the Policies and Procedure Manual.

16.6.2. Defective Work not remedied or any other non-complying aspect of the Work.

16.6.3. Damage caused in whole or in part by the Contractor to any portion of the Work or the Work performed by others.

16.6.4. Reasonable indication in Telgian's opinion, that the Work cannot be completed for the unpaid portion of the price or within the scheduled or agreed upon time for completion.

16.6.5. Failure to provide insurance certificates and/or bond requirements or to not maintain such insurance and bonds in full force and effect.

16.6.6. Amounts invoiced in excess of those amounts authorized in writing by Telgian in advance of Work performed.

16.6.7. Any other conditions which arise in connection with the Work which cause Telgian to deem itself insecure or in Telgian's reasonable opinion will result in loss to Telgian for which the Contractor is liable.

17. Liens

17.1. Contractor shall not place and shall not allow to be placed any liens (such as mechanics liens, construction liens, or any other encumbrance) against the property of Job Site that is the subject of any Work Order.

17.2. If a subcontractor or agent of Contractor places such a lien or threatens to place such a lien against a property or Job Site, Contractor shall immediately prevent the placement of such lien, remove such lien, or otherwise prevent the filing of such lien against the property, Contractor shall indemnify, defend, and hold harmless Telgian from and against any losses, damages, expenses (including reasonable attorney's fees) resulting from such lien or lien threat.

18. Insurance

18.1. Contractor shall maintain insurance equivalent to or exceeding the coverage and terms described in this Section.

18.2. Within ten (10) days of signing this Agreement and prior to commencing any Work under this Agreement, the Contractor agrees to furnish Certificates of Insurance, along with the specified endorsements/coverage extensions, as evidence of compliance.

18.3. **Commercial General and Umbrella Liability Insurance:** The Contractor shall maintain Commercial General Liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence

and \$2,000,000 aggregate. If such CGL contains a General Aggregate Limit, it shall apply separately to each Work Order.

18.3.1. CGL insurance shall be written on ISO form CG 00 01 10 93 or equivalent and shall cover liability arising from premises, operations, independent contractors, products-completed operations, contractual liability, real and personal property damage and personal and bodily injury or death.

18.3.2. There shall be no modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage.

18.3.3. Such CGL and umbrella liability insurance shall be maintained for three years following substantial completion of the Work.

18.4. **Business Auto and Umbrella Liability Insurance.** The Contractor shall maintain business auto liability and Commercial Umbrella Liability Insurance with a limit of not less than \$1,000,000.

18.4.1. Such insurance shall cover liability for bodily injury and property damage arising out of any auto (including owned, hired and non-owned autos).

18.5. **Worker's Compensation and Employer's Liability Insurance:** The Contractor shall maintain Worker's Compensation and Employer's Liability Insurances required by the law or applicable statute of the jurisdiction where the Job Site is located. The employer's liability and, if necessary, Commercial Umbrella, limits shall not be less than \$1,000,000 each accident for bodily injury by accident and \$1,000,000 each employee for bodily injury by disease.

18.6. **Professional (E & O) Liability Insurance:** If the Work Order calls for the Contractor to perform design, engineering, surveying, or any other professional Work, Contractor shall carry professional liability (errors & omissions) insurance with at least \$1,000,000 coverage.

18.7. **Coverage Extensions:** The insurance policies described in this Section shall be endorsed to include Telgian and its subsidiaries, agents, officers, directors and employees as additional insured on the ISO form CG 20 10 11 85 or equivalent. Also the following requirements apply to all insurance policies:

18.7.1. The insurance policies shall be endorsed and expressly acknowledged as the primary insurance for the Work and shall not contribute with respect to any other insurance afforded to or maintained by Telgian or any of its customers.

18.7.2. The insurance policies shall be endorsed to waive subrogation against Telgian and its affiliates, agents, officers, directors, employees, and customers.

18.7.3. The insurance policies shall be endorsed to provide Telgian with thirty (30) days advance written notice of cancellation or material change in coverage, except for non-payment of premium, in which case notice shall not be less than ten (10) days.

18.8. General Insurance Provisions

18.8.1. All policies required under this Section shall be issued by insurers acceptable to Telgian, but in no event shall any insurer carry a Best's rating of less than A-VII. All such insurers must be authorized to do business in the state in which the Job Site is located.

18.8.2. The CGL, Auto, Umbrella and E&O policies must contain the standard ISO separation of insured's provision or its equivalent.

18.8.3. The Contractor shall cause each subcontractor or agent employed by Contractor on the Work to purchase and maintain insurance of the type specified in this Article, with limits, endorsements, and other requirements as set forth in this Section. When requested by Telgian, the Contractor shall furnish to Telgian copies of certificates of insurance evidencing coverage for each subcontractor.

18.8.4. Telgian may, but shall not be required to, procure such required insurance if the Contractor fails to provide same of such Contractor provided insurance is inadequate or does not comply with this Section.

18.8.5. If required by Telgian or by the Contract Documents, the Contractor shall at its own expense obtain and provide to Telgian performance and payment bonds each having a bond penalty equal to the expected Agreement compensation and fees or as Telgian may otherwise require and be executed by a surety company, acceptable to

Telgian and duly authorized to transact business in the jurisdiction where the Job Site is located and on a form acceptable to Telgian.

19. Indemnification

19.1. To the fullest extent permitted by law, the Contractor agrees to defend, indemnify, and hold harmless Telgian, the Telgian customer, and Job Site owner/lessor/lessee (or affiliates of all of the foregoing), including the directors, officers, employees, members, agents and representatives of the above (individually and collectively an "Indemnitee" or "Indemnites"), from and against all liability and claims for death of, or injury to, any person, including, but not limited to, employees of the Contractor or of any Indemnitee, and against all liability and claims for property damage, including the loss of use of property, including expenses and attorneys' fees arising or alleged to have arisen out of or in any way related to this Agreement or the Contractor's performance or non-performance of the Work or other activities of the Contractor and his agents and employees on or around the Job Site, regardless of whether such claim or liability is caused in part by the negligence of any Indemnitee.

19.2. The Contractor's obligations under this Section 18 shall include, but are not limited to, providing a defense for any Indemnitee against any and all such claims and indemnifying any Indemnitee from judicial or administrative agency damage or penalty awards. An Indemnitee at its option may take control of the defense and investigation of such lawsuit or action and to employ and engage attorneys of its own choice to handle and defend the same, at the indemnifying party's cost, risk and expense. The Contractor may not, without the prior written consent of the applicable Indemnites, effect any settlement of any proceeding in respect of which and Indemnitee is an indemnified party hereunder and in respect of which indemnity has been sought.

19.3. The obligation of the Contractor under this Section 18 shall not extend the liability of the architect or other registered design professional and their agents or employees arising out of the preparation or approval of designs, drawings or specifications.

20. LIMITATION OF LIABILITY

20.1. UNDER NO CIRCUMSTANCE SHALL TELGIAN OR ITS CUSTOMERS, OR THEIR AFFILIATES,

MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES OR AGENTS BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES ARISING FROM OR CONNECTED WITH THIS AGREEMENT OR AND WORK ORDER HEREUNDER, WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE AND WHETHER OR NOT SUCH PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUE, ATTORNEYS FEES, DAMAGE TO BUSINESS OR BUSINESS RELATIONS AND DAMAGES FOR ECONOMIC LOSSES OF PROPERTY DAMAGE ARISING FROM, CONNECTED WITH, OR RELATING TO THE PARTIES' ACTS OF OMISSIONS, WHETHER UNDER NEGLIGENCE, STRICT LIABILITY, ENTERPRISE LIABILITY, PRODUCTS LIABILITY OR ANY OTHER THEORY.

21. Risk of Loss, Security

21.1. The Contractor shall be responsible for its own work, property and/or materials until completion and final acceptance of the Work by Telgian and its Customer, and shall bear the risk of any loss or damage to such work, property and/or materials from any cause until acceptance of same. In the event of loss or damage to the work, property and/or materials, the Contractor shall proceed promptly to make repairs or replacement of the damaged work, property and/or materials at the Contractor's own expense as directed by Telgian.

21.2. The Contractor shall be solely responsible for security of the Job Site, including all tools, materials, equipment and completed work.

21.3. All materials and equipment shall be suitably stored in compliance with manufacturer's recommendations, as required by Telgian and the locations and in a condition that does not interfere with Owner's activities or business operation.

22. Termination

22.1. Either Telgian or Contractor may, at its convenience and discretion, terminate this Agreement within 30 days written notice to the other party. All Work in progress and/or assigned to the Contractor at the time of notification of termination will be completed unless the Contractor is directed otherwise by Telgian. Subject to this Section, Contractor shall be entitled to payments for the Work assigned, properly performed and set forth in a Valid Invoice.

22.2. In addition to the termination for convenience stated above, if the Contractor fails to comply with any material requirement of the Agreement, or refuses to proceed with Work the Contractor has accepted, as directed by Telgian, or fails to perform the Work in whole or in part in accordance with the Contract Documents, or fails to pay any amounts which the Contractor is obligated to pay, Telgian will provide a notice to cure. If such default is not cured within the time specified by Telgian, Contractor will be considered to be in material breach of the Agreement; and Telgian may terminate the Agreement and take over all or part of the Work including, but not limited to, replacing the Contractor, and prosecuting such work to completion.

22.3. If this Agreement is terminated in accordance with for cause, any and all expenses incurred by Telgian, together with Telgian's contracted markup, and all losses, damages or other costs, including reasonable attorneys' fees, shall be deducted from the compensation and fees due or to become due the Contractor under this Agreement or any Work Order. If such amount is insufficient, the Contractor agrees to pay Telgian on demand the full amount due, together with interest accruing thereon at the rate of eighteen percent (18%) per annum or the maximum interest rate allowed by the law of the state jurisdiction of the Job Site.

22.4. In addition to any other remedies available to Telgian and notwithstanding any provision in this Agreement to the contrary, the Contractor shall be responsible for liquidated damages to the extent provided for in the Contract Documents for delays caused by or contributed to by the Contractor or any person or entity for whose acts as the Contractor is responsible or liable, including all or any portion of any liquidated damages assessed by the Customer against Telgian attributable in whole or in part to such the Contractor caused delays.

22.5. In addition to other remedies available to Telgian, the Contractor shall be responsible for actual damages to Telgian caused or contributed to by the delay caused by the Contractor or any person or entity for which the Contractor is responsible. In the event liquidated damages or actual damages, or both, are caused by the Contractor and another entity, Telgian shall reasonably apportion those damages between the parties and such apportionment shall be binding on the Contractor.

23. **Dispute Resolution**

23.1. If any claim, controversy or dispute arising out of or relating to any breach, enforcement, interpretation or default of this Agreement (including alleged misrepresentation concerning it), the transaction it memorializes or the business relationships between the parties that it creates, whether arising under contract, statute, tort or otherwise (a "Dispute"), cannot be resolved through negotiation, then the parties agree to first try, in good faith, to settle the Dispute by non-binding mediation. The parties intend that the term "Dispute" shall be construed broadly so as to include any kind of claim that they may have against each other. Unless the parties mutually agree otherwise with respect to a mediation format and rules, such mediation shall be administered by the American Arbitration Association ("AAA") in Phoenix, Arizona under the AAA Commercial Mediation Rules within thirty (30) days of a request by either party to mediate the dispute. The parties shall share the cost of the mediation equally. A good faith attempt at mediation is a condition precedent to the holding of an arbitration hearing, but it is not a condition precedent to the commencement of any arbitration proceeding under Section 23.2 following.

23.2. If the parties are unable to resolve any such Dispute by good faith negotiations or mediation, then the dispute shall be settled by binding arbitration under Arizona's Revised Uniform Arbitration Act (A.R.S Section 12-3001, et seq.; the "RUAA") as administered by the AAA under its then-current Commercial Arbitration Rules ("AAA Rules"). If the provisions of the RUAA conflict in any way with the AAA Rules, the AAA Rules as construed by the arbitrator(s) shall govern. Such arbitration shall be conducted in Phoenix, Arizona. Unless otherwise agreed to by the parties, the arbitration shall be conducted by a single arbitrator.

23.3. The provisions of Sections 23.1 and 23.2 shall not apply to any matter that is subject to the jurisdiction of the probate court or for any claim for monetary damages only that falls within the monetary jurisdictional limits of the Arizona Justice or Small Claims Courts.

23.4. If any lawsuit, arbitration, or other action or proceeding (except for set forth in Section 23.1) is brought concerning any Dispute arising out of or relating to this Agreement, then the successful or prevailing party shall be entitled to recover the prevailing party's reasonable attorneys' fees,

court costs and other expenses of litigation and/or arbitration incurred in that lawsuit, arbitration, action, or proceeding if the award of such attorneys' fees and costs is authorized by law in a civil action involving the same claim(s).

24. **Confidentiality**

- 24.1. "Confidential Information" means this Agreement and any confidential or proprietary information, data, or knowledge of Telgian, Telgian customers' or its contractors' (including past, present, or perspective Telgian contractors, contractor job sites, and contractor fire suppression system design and system testing and maintenance requirements), regardless of form, that is delivered or disclosed (whether before or after the date hereof) in writing, orally, or through visual means or electronic means, or that is learned of obtained orally, through observation or through analysis, compilation, or other study of such information, data or knowledge. Confidential Information does not include any information that (i) Contractor can prove was already known by the Contractor before it was furnished by or on behalf of Telgian or its Contractor provided that the source of such information was not bound by a confidentiality agreement with Telgian or its Contractor; (ii) is not or does not later become generally available to the public other than as a result of breach of the confidentiality provisions of this Agreement; (iii) is independently developed by the Contractor; or (iv) is approved for release by written authorization of Telgian.
- 24.2. During the term of this Agreement and for a period of three (3) years thereafter, Contractor shall not disclose Confidential Information to any third party or to any person who does not have a need to know such information for performance of this Agreement.
- 24.3. Contractor hereby grants Telgian the right to use Contractor's name and identifying marks in connection with publicizing Telgian's products, services and other business activities unless the parties agree otherwise.
- 24.4. Contractor shall use the same degree of care to maintain the confidentiality of Confidential Information that it uses to protect its trade secrets and similar confidential information.
- 24.5. If disclosure of Confidential Information to a court or administrative/government agency is requested or required, the Contractor will immediately notify Telgian to allow Telgian the opportunity to oppose such disclosure or to modify such disclosure.

25. **Non-Competition and Non-Solicitation**

- 25.1. Contractor agrees that during the term of this Agreement and for a period of one (1) year after the termination or expiration of this Agreement, neither Contractor and nor its officers, directors or members shall directly or indirectly without the written consent of Telgian, solicit on its own behalf or on behalf of any third party, or assist any third party in soliciting any contract or business relationship of the same or similar kind as the Work provided hereunder with any Telgian Customer.
- 25.2. The Contractor is authorized to provide services to the Customer which services Telgian is not then providing or proposing to provide the Customer.
- 25.3. Questions on what services Telgian then provides or is proposing to provide the Customer should be directed to the Telgian Contracting and Procurement Division.

26. **Ownership of Work Product**

- 26.1. All Work deliverables such as reports, analyses, engineering designs, and other tangible work products, whether or not patentable or copyrightable, shall be deemed to be "work made for hire" to the extent allowed under the U.S. Copyright Act or equivalent Canadian or Mexican laws. Such work products shall be owned exclusively by Telgian and Contractor hereby assigns to Telgian all worldwide right, title, and interest in and to all such work products. Contractor shall take such further actions as may be appropriate to give full and proper effect to this assignment without further compensation.

27. **Force Majeure**

- 27.1. Neither party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are caused by causes beyond that party's reasonable control and occurring without its fault or negligence, including, without limitation, failure of suppliers, subcontractors, and carriers, or party to substantially meet its performance obligations under this Agreement, provided that, as a condition to the claim of non-liability, the party experiencing the difficulty shall give the other prompt written notice, with full details following the occurrence of the cause relied upon and makes all reasonable efforts to perform.

28. **Customer Communications**

- 28.1. Communication with the Telgian Customer is restricted to the local level and only to the extent necessary to schedule work and brief the Customer on the status of the location's fire safety equipment and or system(s) after completion of work.
- 28.2. Any other required comments or communication e.g. quotes, comments on previous Contractor's workmanship, and observations outside the scope of work will be provided solely to Telgian.
29. **Corporate Identity.**
- 29.1. The Contractor shall not use the name, trade name, flame, trademarks, service marks or logos of Telgian in any publicity releases, news releases, annual reports, product packaging, signage, stationery, print literature, advertising or websites without securing the prior written consent of Telgian.
- 29.2. The Contractor shall not, without prior written consent of Telgian, represent, directly or indirectly, any product or service offered by the Contractor unless it has been approved or endorsed by Telgian.
- 29.3. Telgian reserves the right to review and provide final approval of any material produced with approved use of the Telgian Trademarks.
30. **Conflict of Interest**
- 30.1. The Contractor certifies it currently is under no obligation that might cause a conflict of interest or that might otherwise prevent or hinder performance of work under this Agreement. In the event that a conflict of interest should arise during performance, the Contractor shall immediately notify Telgian in writing.
31. **Independent Contractor**
- 31.1. The relationship between the Contractor and Telgian is that of an independent Contractor. The Contractor is not deemed to be an employee of Telgian for any purpose and the Contractor shall not be entitled to receive any pay, benefits, insurance, or compensation of any kind whatsoever, except as expressly herein provided.
32. **Waivers**
- 32.1. No waiver of any provision of this Agreement shall be effective, except pursuant to a written instrument signed by the party waiving compliance, and any such waiver shall be effective only in the specific instance and for the specific purpose stated in such writing.
33. **Headings**
- 33.1. The section headings used in this Agreement are intended for convenience only and shall not be deemed to supersede or modify any provisions.
34. **Further Assurances**
- 34.1. Each party agrees to take such further action and execute, deliver and/or file such documents or instruments as are necessary to carry out the terms and purposes of this Agreement.
35. **Miscellaneous Provisions**
- 35.1. Telgian may assign or transfer the whole or part of this Agreement and its rights hereunder, to any successor or affiliated corporation, individual, or partnership.
- 35.2. The Contractor shall not assign or attempt to assign in any manner funds accrued or to accrue under this Agreement without prior written consent of Telgian.
- 35.3. This Agreement comprises the full entire agreement between the parties and no other agreement or understanding of any nature has been entered into or will be recognized and that all negotiations, acts, work performed, or payments made prior to the execution thereof, shall be deemed merged in, integrated and superseded by this Agreement.
- 35.4. This Agreement can be modified only by written agreement signed by authorized representatives of each party hereto with the exception of Telgian Policies and Procedures and Telgian Work Order documents which may be modified or changed by Telgian at any time. This Agreement shall be interpreted in accordance with the laws of the State of Arizona. If any provision is deemed to be invalid, all other provisions shall remain in full force and effect.