

TOYOTA TERMS AND CONDITIONS
(INDIRECT)

Effective 1-1-2011

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TOYOTA TERMS AND CONDITIONS
(INDIRECT)

1. GENERAL.

1.1 Parties. These terms and conditions (the “Terms”) are between (i) Toyota Party and (ii) each party providing Items to a Toyota Party pursuant to the Contract Documents (a “Supplier”).

1.2 Agency Relationship.

(a) **General.** Toyota Motor Engineering & Manufacturing North America, Inc. (“TEMA”) or any NAMC, as the case may be, may act as a designated agent in coordinating the purchase of Items for Toyota Motor Manufacturing, Kentucky, Inc., Toyota Motor Manufacturing, Indiana, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor Manufacturing, Alabama, Inc., Toyota Motor Manufacturing, Texas, Inc., Toyota Motor Manufacturing, Mississippi, Inc., Toyota Motor Manufacturing de Baja California, S. de R.L. de C.V., Bodine Aluminum, Inc., TABC, Inc., Catalytic Component Products, Inc., Toyota Motor Manufacturing Canada Inc., Canadian Autoparts Toyota Inc., New United Motor Manufacturing, Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor Manufacturing, Northern Kentucky, Inc., and any other direct or indirect subsidiary of TEMA currently existing or subsequently formed (collectively referred to as “NAMCs,” and individually as an “NAMC”), (TEMA and the NAMCs are collectively referred to herein as “Toyota Parties”, and where applicable, each individually as “Toyota Party”).

(b) **Agency Agreements.** The agency relationship between TEMA and a NAMC or between a NAMC and another NAMC is created pursuant to such documents as the Toyota Parties deem appropriate from time to time (collectively, the “Agency Agreements”). Pursuant to such Agency Agreements, TEMA and the NAMC, as the case may be, have both express and apparent authority to act as agent in conjunction with the Contract Documents. Notwithstanding such agency relationship created thereby, TEMA and each NAMC may, from time to time, act on their own behalf. As designated by TEMA or a NAMC, in its sole discretion, or as circumstances require for the reasonable interpretation of any applicable Contract Documents, Toyota Party means: (i) TEMA; (ii) TEMA as agent for the applicable NAMC; (iii) the applicable NAMC; (iv) the applicable NAMC as agent for TEMA; (v) the applicable NAMC as agent for another NAMC; or (vi) both TEMA and the applicable NAMC.

(c) **Rights of TEMA.** Nothing contained herein shall at any time limit the right of TEMA to act on its own behalf with respect to the Contract Documents by and between TEMA and any Supplier, irrespective of whether the relationship: (i) is a direct relationship between TEMA and such Supplier; or (ii) was an indirect relationship, with TEMA acting as agent on behalf of a NAMC, but is now a direct relationship because of the termination of the agency relationship between TEMA and the applicable NAMC.

1.3 Acceptance. The Parties do not intend for these Terms to be signed, but instead intend for these Terms to be accepted by the performance of Supplier for Toyota Party. Supplier’s commencement of work on Items for Toyota Party and/or its continuing and ongoing performance under the Contract Documents shall serve as evidence of and constitute Supplier’s acceptance of these Terms. In addition to the foregoing, submission of a Conforming Invoice by Supplier (or submission of any advance shipping notification, evidence of shipment of Items, other documentation concerning Supplier Payables or any other documentation which demonstrates that Supplier is performing its commercial relationship with Toyota Party, as may be deemed acceptable to Toyota Party in its sole discretion, and whether such notification, evidence or document is transmitted to Toyota Party electronically or otherwise but which can be reduced to writing) will constitute an independent written acknowledgement of Supplier’s acceptance of these Terms and of the agreement between the Parties. Notwithstanding the foregoing, the obligations of Supplier under *Section 3.5* shall apply to Confidential Information received by Supplier prior to its acceptance of these Terms by performance or as otherwise set forth herein.

- 1.4 Contract Documents.** The Parties intend to and will use additional documents to supplement these Terms and further define the purchasing relationship between the Parties, and such additional documents will be both specific to the Supplier (such as purchase orders, releases, manifests, specifications and drawings) (collectively, the “Specific Contract Documents”) and generic to all suppliers (such as the supplier quality assurance manual and other quality manuals, purchasing and accounting systems and similar matters) (collectively, the “Generic Contract Documents”). Specific Contract Documents and Generic Contract Documents are collectively referred to herein as “Contract Documents.” Contract Documents will be both in written form and Electronic Forms, and will be provided to Supplier independently of these Terms. Contract Documents will be created one time in some instances, and will be created, amended and modified on an ongoing basis in other instances. Contract Documents, which will be exchanged and updated from time to time, are not independent contractual agreements between Supplier and Toyota Party, but constitute additional terms and conditions of these Terms. All Contract Documents shall be such documents as are designated by Toyota Party from time to time and can be added or deleted by Toyota Party from time to time, all in its sole discretion. Toyota Party shall (i) provide copies of or access to Specific Contract Documents, including any amendments or modifications, pursuant to procedures established by Toyota Party in the reasonable exercise of its sole discretion and (ii) take reasonable steps to provide notice of Generic Contract Documents, including any amendments or modifications, pursuant to procedures established by Toyota Party in the reasonable exercise of its sole discretion. Supplier may at any time submit questions to Toyota Party about the Contract Documents and Toyota Party will review and take reasonable steps to respond to Supplier.
- 1.5 Items.** Unless otherwise defined, “Items” includes, from time to time, any and all of the following provided or performed by or on behalf of Supplier: (i) all raw materials, items, equipment, general stores, spare parts, goods, personal property, software and other intellectual property; (ii) all machinery, equipment and related items identified in or related to the Contract Documents; (iii) all labor, materials, equipment, software, spare parts and services provided by Supplier in connection with or reasonably related to the sale or performance of Items to Toyota Party; (iv) all specifications, plans, drawings, standards, project schedules, accessions and additions relating to any Items; (v) any and all aspects of Supplier performance under any of the Contract Documents and any and all services rendered by Supplier in performing under any of the Contract Documents (collectively, “Supplier Performance”); (vi) all price specifications and pricing data; and (vii) all Installation Activities.
- 1.6 Third Party Beneficiary Purchasing Relationship.** Since the performance of the purchasing relationship is intended to benefit TEMA and each applicable NAMC, the relationship of each Toyota Party to these Terms is that of a third party beneficiary. Supplier consents to the third party beneficiary status of each applicable Toyota Party as consistent with the intent of the parties.
- 1.7 No Requirements/Output Contract.** Toyota Party may buy items from other sources that are similar to Items or reduce quantities of Items acquired from Supplier irrespective of the course of dealing between the parties. The Contract Documents shall not constitute a requirements or output contract unless specifically designated as such in a Contract Document signed by Toyota Party and Supplier.
- 1.8 Guiding Principles.** Supplier understands the importance of guiding principles for Toyota Party (“Guiding Principles”) which provide, among other things, the philosophical direction for the company. Guiding Principles specifically govern the practices and policies of Toyota Party as a corporate citizen in its dealings with its suppliers, customers and communities in which Toyota Party team members and families live and work (“Local Community”). In all dealings between Toyota Party and Supplier, both parties agree to use their commercially reasonable efforts to comply with the Guiding Principles (as these may be adopted and modified by Toyota Party from time to time), including (a) compliance with the spirit of all applicable commercial and other laws and all principles of corporate ethics; (b) exhibiting proper care and concern for the environment and safety; (c) respect for and contribution to the betterment and improvement of the Local Community; (d) enlightenment, growth and continuous improvement of all management, employees and business partners; (e) adoption and practice of customer first principle; (f) practice of fair trade and sound business practices in all business dealings; (g) promotion of social responsibility for all management, employees and business partners; and (h) consideration of, and regular

contribution towards, sustainable development of society, the environment and the overall well-being of the Earth.

1.9 Good Faith. In performing these Terms and Conditions, including any provision of these Terms and Conditions whereby Toyota Party may act in its sole discretion, the parties agree (i) to at all times act in good faith towards each other and (ii) to negotiate in good faith all matters, issues and/or provisions which arise under or are related to these Terms and Conditions that require the parties to reach a consensus, understanding or agreement (a “Negotiated Matter”). Toyota Party agrees to discuss and seek input from Supplier on all Negotiated Matters. In the event the parties cannot agree on the resolution of a Negotiated Matter after complete discussion and negotiation, and as a matter of last resort, it is agreed that the decision of the Toyota Party, made in its sole discretion and in good faith on the basis of its best business judgment, will be final in reaching resolution of any Negotiated Matter, subject to Section 5.8 Alternative Dispute Resolution.

2. GENERAL TERMS AND CONDITIONS.

2.1 Quantity; Description. The quantity and description for all Items shall be as designated in one or more Contract Documents that expressly relate to or identify the Items to be purchased by Toyota Party, all as determined by Toyota Party in its sole discretion. By instructions issued to Supplier by an authorized representative of Toyota Party, Toyota Party may, from time to time, make changes, request Required Changes, issue additional instructions, require additional Items, or cancel Items ordered thereunder. If any such change causes an increase or decrease in the cost of or the time required for the performance of the Contract Documents, an equitable adjustment shall be made in the price and/or Delivery Schedules, as applicable, and the Contract Documents shall be modified accordingly.

2.2 Price.

(a) Generally. The price to be paid for Items (“Toyota Price”) shall be as designated in one or more Contract Documents that expressly relate to or identify the Items to be purchased by Toyota Party, all as determined by Toyota Party in its sole discretion. As part of the ongoing, ordinary course of business between the parties, the Toyota Price may be adjusted by Toyota Party from time to time, either higher or lower, all as evidenced by one or more Contract Documents issued by Toyota Party, after consultation with Supplier. Supplier certifies that the prices specified in the Contract Documents are as low as or lower than prices quoted by Supplier to any other customer purchasing the same type and/or quantity of Items as Toyota Party. In the event that the published prices of Supplier for the Items covered by the Contract Documents are reduced below the Toyota Price, or if Supplier provides or agrees to provide the type and/or quantity of Items covered by Contract Documents to any other customer for a price lower than the Toyota Price, Toyota Party shall receive the benefits of such reduction and shall pay the Toyota Price decreased by the amount of such reduction or difference in price.

(b) Waiver. To the extent that the furnishing of the Items constitutes improvements to real property and to the extent permitted under applicable law, Supplier waives the application of any statute that would require that any part of the price for the Items designated as retainage be set aside, placed in escrow or otherwise be paid to or become the property of Supplier in any manner except as set forth herein.

2.3 Liens.

(a) All Items are to be provided to Toyota Party free and clear of any and all claims, security interests, encumbrances and liens (collectively, a “Lien”).

(b) As requested by Toyota Party and to the extent permitted by applicable law, Supplier will provide Toyota Party with an executed release, satisfaction or waiver of all Liens (collectively, a “Lien Waiver”). The Lien Waiver must be in the form provided by Toyota Party. Moreover, an invoice

for final payment does not constitute a Conforming Invoice until Supplier, for itself and each of its subcontractors and materialmen, delivers to Toyota Party the requested Lien Waiver.

- (c) As requested by Toyota Party, Supplier's applications for payment shall be accompanied by Supplier's sworn statement (the "Sworn Statement") indicating the status and amounts of payments to laborers and materialmen as of the date on the invoice. The Sworn Statement must be in the form provided by Toyota Party.
- (d) Final payment to Supplier shall not relieve Supplier of its obligation to discharge any Lien filed before or after Supplier is paid for Items under a Contract Document.
- (e) Where less than the entire price is to be paid prior to delivery, title shall pass to Toyota Party upon delivery. To the extent permitted by law, Supplier hereby waives and disclaims any security interest, mechanic's lien or other lien right, whether statutory or otherwise, in favor of Supplier in and to all Items purchased from Supplier pursuant hereto which shall come into Toyota Party's control or actual or constructive possession prior to full payment of the price by Toyota Party.
- (f) In the event a Lien is filed, recorded or arises from any labor or material furnished for Toyota Party, Supplier must take any and all steps necessary and proper for the release and discharge of the Lien, by bond or other security, in an amount satisfactory to Toyota Party and in the manner required or permitted by the laws of the applicable jurisdiction, and in default of performing such obligation, agrees to reimburse Toyota Party for all monies paid by Toyota Party in the releasing, satisfying and discharging such liens, including, without limitation, reasonable attorneys' fees and court costs.

2.4 *Payments.*

- (a) **Generally.** Toyota Party will pay Supplier for amounts owed to Supplier for conforming Items accepted by Toyota Party (the "Supplier Payables").
- (b) **Payment Procedures.** Payment of Supplier Payables will be in accordance with such processes, procedures and payment systems as are designated by Toyota Party in its sole discretion (collectively, the "Payment Procedures"), including, without limitation, the electronic invoice presentment and payment system (the "EIPP System"). Payment Procedures also include provisions for additions to and offsets against Supplier Payables arising in the ordinary course of dealing between the parties.
- (c) **Conforming Invoice.** Supplier agrees to (i) invoice Toyota Party for Supplier Payables in strict conformity with the applicable Payment Procedures (a "Conforming Invoice") and (ii) accept payment for such Supplier Payables at the times and in the amounts determined by the applicable Payment Procedures.
- (d) **Payment Terms.** All Supplier Payables shall be paid in accordance with the payment terms set forth below (the "Designated Payment Terms") and otherwise in conformity with the applicable Payment Procedures.
 - (1) **Outside the EIPP System.** The Designated Payment Terms for Supplier Payables which are not eligible for payment in the EIPP System will be either (i) on or before the 25th day of the month following the month in which the Conforming Invoice is received ("Net 25th Prox"); (ii) 45 days following the date of any Conforming Invoice from Supplier ("Net 45 days"); or (iii) as otherwise set forth on the applicable Contract Documents, as determined by Toyota Party in its sole discretion.
 - (2) **The EIPP System.** The Designated Payment Terms for Supplier Payables which are eligible for payment under the EIPP System will be (i) Net 45 days or (ii) as otherwise designated by Supplier in the EIPP System.

- (e) **Payment Obligation of Toyota Party.** Notwithstanding any other provisions of the Contract Documents to the contrary, Toyota Party will have no obligation whatsoever to make any payment on Supplier Payables, unless and until Toyota Party is in receipt of a Conforming Invoice with respect to the Items at issue.
- (f) **Applicable Currency.** All payments due to Supplier under the Contract Documents shall be paid in United States Dollars or such other currency as evidenced by the Contract Documents.
- (g) **Audit.** Supplier agrees to allow Toyota Party or its agents, at all reasonable times, access to all pertinent bookkeeping and accounting information, as reasonably requested by Toyota Party, for the purpose of auditing Supplier Payables as invoiced to Toyota Party under the Contract Documents. Supplier also agrees to allow Toyota Party or its agents to make copies of those portions of its records that Toyota Party deems reasonably necessary for its audits, and further agrees to use commercially reasonable efforts to keep copies of such records for a period of 5 years after payment of the corresponding Supplier Payables. Supplier's information provided to Toyota Party under this *Subsection (g)* shall be protected as Confidential Information under these Terms.

2.5 *Reconciliation.*

- (a) **Offset.** Toyota Party may offset against Supplier Payables any amounts due to Toyota Party for undershipments, adjustments in invoices, credits, returns, price changes or any other similar quantity or price reconciliation arising out of or related to the Items (a "Designated Offset"). Toyota Party will attempt to reconcile the timing and calculation of the Supplier Payables to coincide with the corresponding Designated Offset, and will provide Supplier with an accounting of all calculations. To the extent the timing of payments and offsets cannot be aligned, it may be necessary from time to time for Toyota Party to maintain a credit or debit balance for Supplier. The amounts calculated by Toyota Party, and all records maintained by Toyota Party, shall be controlling except in the case of clerical or mathematical error.
- (b) **Set-off.** Prior to or as part of any payment to Supplier, Toyota Party reserves the right, in its sole discretion, to set-off against any amount(s) owed to Supplier: (i) any amount(s) owed by Supplier to any subcontractor with respect to any Item; (ii) the amount of any claims of Toyota Party against Supplier and/or subcontractor arising out of or related to their performance in respect to any Item; (iii) the amount of any damages to Toyota Party arising out of or related to any Default by Supplier or subcontractor with respect to these Terms, Contract Documents or any subcontract; and/or (iv) any amount owed to any third party, including government authorities, whether by or on behalf of Supplier or any subcontractor, which arise under or are related to these Terms, the Contract Documents, subcontract or Item.

2.6 *Delivery.*

- (a) **Generally.** In conjunction with the delivery of Items and as designated from time to time by Toyota Party in one or more Contract Documents, Supplier agrees to: (i) properly pack, mark and ship Items in strict conformity with the packaging and delivery requirements of Toyota Party and any applicable carrier; (ii) route deliveries of Items in strict conformity with the routing requirements of Toyota Party; (iii) deliver Items in quantities and at the time and the place specified by Toyota Party (the "Delivery Schedules"); (iv) not charge Toyota Party for handling, packaging, storage or transportation of Items unless otherwise stated in applicable Contract Documents; (v) provide with each shipment of Items such packing slips, bills of lading and/or other shipping receipts or identifying documentation which taken together will allow Toyota Party to identify the Items shipped and determine that such Items have been delivered in strict conformity with all applicable packaging, delivery and routing requirements of Toyota Party; and (vi) provide in any contract (written or oral) with any carrier that Supplier is liable for all freight costs, fees or other charges arising in connection with the Items shipped to Toyota Party and that carrier specifically waives any and all claims against Toyota Party for such amount.

- (b) **General Delivery Terms.** Except as otherwise provided in the Contract Documents, general delivery instructions shall be: (i) for all Items to be delivered to or on behalf of Toyota Party in the United States or Canada, F.O.B. destination as defined in the Uniform Commercial Code (as the same may be amended from time to time); (ii) for all Items which originate in a country other than in Mexico but which are delivered to or on behalf of Toyota Party in Mexico, DDU Buyer's designated delivery point (Incoterms 2000); and (iii) for all Items which originate in Mexico and which are delivered to or on behalf of Toyota Party in Mexico, DDP Buyer's designated delivery point (Incoterms 2000). Supplier shall ensure that all bills of lading in connection with Items are marked to reflect that the applicable carrier has been pre-paid and no bill of lading will be marked "no recourse," "nonrecourse," "without recourse," "freight collect" or otherwise provide that Toyota Party will be liable to carrier for any freight costs, fees or other charges. Items are to be prepared and packed according to packaging specifications provided by Toyota Party (if no packaging specifications are provided in the Contract Documents, then packaging shall be in a commercially reasonable manner), and deliveries shall meet all the requirements and regulations of all carriers and applicable authorities, including all deliveries to or on behalf of Toyota Party in Mexico, the Mexican Official Standards, Normas Oficiales Mexicanas (the "NOMS"). Unless otherwise provided in the Contract Document, Supplier shall be the Importer of Records for all Items which originate in a country other than in Mexico but which are delivered to or on behalf of Toyota Party in Mexico.
- (c) **Returnable Packaging.** In the event returnable packaging is deemed by Toyota Party to be advisable or necessary for the delivery of Items ("Returnable Packaging"), Toyota Party and Supplier shall negotiate the terms and conditions for the design, construction, use, ownership and costs of any Returnable Packaging on terms acceptable to Toyota Party in the reasonable exercise of its discretion.
- (d) **Right of Return.** Supplier agrees to accept the return of any tangible Items sold within 30 days of receipt by Toyota Party (a "Return"), freight prepaid, for refund of the purchase price, upon a determination by Toyota Party, in the reasonable exercise of its discretion, that the Items (i) do not meet Supplier's Warranties, (ii) fail to meet Toyota Specifications or Supplier Specifications or (iii) otherwise are mechanically unsatisfactory.
- (e) **Change, Temporary Suspension; Requested Delay.** Toyota Party may at any time or from time to time change the Delivery Schedule or direct temporary suspension of the Delivery Schedule (a "Delivery Change"). Supplier agrees to honor all instructions from Toyota Party concerning any Delivery Change.
- (f) **Overshipments; Undershipments.** Toyota Party will have no liability for payment of Supplier Payables arising from Items delivered to Toyota Party that exceed the quantities specified in the applicable Contract Documents. At the sole option of Toyota Party, Toyota Party may keep any overshipments of Items and elect to have the quantities of Items under the applicable Contract Documents increased by the same amount of Items as the quantity of overshipments. Alternatively, overshipments of any Items shall, if so requested by Toyota Party, be returned to Supplier at Supplier's expense. In case of undershipments of any Items, Supplier shall, if so requested by Toyota Party, immediately ship, at Supplier's expense, to the destination and by the time designated by Toyota Party the additional Items needed to fully complete the applicable Toyota Party requirements. Alternatively, Toyota Party may elect to have the quantities of Items under the applicable Contract Documents reduced by the same amount of Items as the quantity of any undershipments.
- (g) **Damaged Cargo.** To the extent that Supplier is responsible for transporting cargo for Toyota Party, the following sets forth the procedure for dealing with such cargo that is damaged by Supplier, its employees, subcontractors or agents.
- (1) *Items in Transit.* Unless otherwise agreed to in the Contract Documents, in the event of suspected damage to the cargo by Supplier, its employees, subcontractors or agents during

transit, Supplier shall deliver the cargo to the destination identified in the Contract Documents and immediately notify Toyota Party of the suspected damage via email and telephone.

- (2) *Non-Transit Items.* Unless otherwise agreed to in the Contract Documents, in the event that the suspected damage to the cargo is discovered after delivery of the Items to the destination identified in the Contract Documents, Toyota Party shall, upon determination that the cargo is damaged, promptly notify Supplier of the suspected damage via e-mail or telephone.
- (3) *Damaged Items.* Unless otherwise agreed to in the Contract Documents, Toyota Party shall inspect the cargo and, in its sole discretion, determine whether the cargo is damaged. Upon Supplier's request, Toyota Party will hold the damaged cargo for up to 5 business days to allow for examination by Supplier or its authorized insurance adjuster. At the discretion of Toyota Party, the damaged cargo will be scrapped, partially or totally. The damage claim will be the difference between the pre-damaged market value of the cargo and its scrap value plus any additional costs associated with the replacement cargo purchased, scrapping expenses, labor, and/or expedited shipment costs (the "Damage Claim"). Upon submission of the Damage Claim to Supplier, Toyota Party may elect, in its sole discretion, to (a) have Supplier promptly issue payment to Toyota Party or (b) set off the Damage Claim against Supplier's next invoice. It is understood and agreed to by the parties that the intent of this provision is to place Toyota Party in the same position it would have been in if damage to the cargo had not occurred.

2.7 Inspection. In conjunction with the inspection of Items, the following provisions shall apply:

- (a) **Inspecting Agent.** One or more Toyota Parties may, from time to time, act as agent for any other Toyota Party for purposes of performing inspections of Items.
- (b) **Inspection Period.** All Items shall be received subject to Toyota Party's acceptance or rejection on or before the end of the Inspection Period. Payment by Toyota Party for Items under the Contract Documents prior to the end of the Inspection Period shall not constitute its acceptance thereof, nor shall such payment remove Supplier's responsibility for any nonconforming Items. "Inspection Period" shall mean (i) a reasonable period of time after delivery to Toyota Party or (ii) for those Items whose conformity with the Contract Documents cannot be ascertained until such Items are installed, tested, tuned, calibrated and/or used in trials in conjunction with other systems or assemblies, as determined by Toyota Party, the time required after receipt by Toyota Party for such installation, testing, tuning, calibration and/or use in trials, whichever is applicable as determined by Toyota Party in its sole discretion. Neither inspection nor failure to inspect by Toyota Party shall relieve Supplier of any obligations, representations or Supplier's Warranties.

2.8 Rejected or Nonconforming Items. If any Item or shipment of Items is rejected as nonconforming by Toyota Party (for failure to meet Toyota Specifications or Supplier Specifications or any other reason) as of or before the end of the Inspection Period (the "Rejected Items"), Supplier shall, at its cost and as directed by Toyota Party: (i) accept a Return of such Items; (ii) repair such Rejected Items, which work shall include, but shall not be limited to, performing such additional work as is necessary to make such Rejected Items fully conforming (the "Remedial Work"); or (iii) replace the Rejected Items with new Items, such replacement Items to be delivered in accordance with any and all instructions provided by Toyota Party and to include at Supplier's cost any required installation (including removal of the Rejected Items). Remedial Work shall also include any action required to be taken by Supplier to cause the Installation Activities to comply with the Contract Documents.

- (a) **Right to Perform Remedial Work.** If Toyota Party determines in its sole discretion that Remedial Work is necessary for the repair of any Rejected Items, then Toyota Party may elect to either perform the Remedial Work itself or to have a third party perform the Remedial Work, in which case the cost of such Remedial Work shall be offset against the amounts otherwise due to Supplier for such Rejected Items or charged separately by Toyota Party to Supplier pursuant to one or more Contract Documents. Further, Toyota Party may require that the Remedial Work be performed on Toyota Party's premises by Supplier, in which case Toyota Party shall provide Supplier with

reasonable access to its premises and otherwise assist Supplier with such arrangements as are necessary to perform the Remedial Work. With respect to any Rejected Items to be repaired, Toyota Party will not be deemed to have accepted such Items unless and until the Rejected Items are fully repaired to the requirements of the Contract Documents and are independently accepted in writing by Toyota Party following such Remedial Work.

- (b) **Furnishing Specifications, Plans and Drawings.** Upon the request of Toyota Party, Supplier shall provide to Toyota Party all specifications, plans and drawings relevant to the Items, all of which may be utilized for the Remedial Work or subsequent maintenance of Items. If any Item contains one or more patented components, such component(s) shall be conspicuously labeled on such drawings. Such labeling shall include the patent number, date of issue and country of origin.
- (c) **Supplier's Use of Temporary Employees/Third Parties to Perform Remedial Work.** Supplier may use temporary employees and/or a third party to perform Remedial Work only with Toyota Party's prior written consent. At all times, such temporary employees and/or third parties shall be independent contractors of Supplier, and not employees of Toyota Party. Temporary employees, third parties and regular employees of Supplier shall comply with all of Toyota Party's practices, policies and procedures when on Toyota Party's facilities to perform Remedial Work, and Toyota Party may exercise supervisory control, if necessary, to ensure compliance with such practices, policies and procedures. Unless Toyota Party exercises its right to supervise, it is Supplier's responsibility to supervise temporary employees and third parties performing work on Toyota Party's premises.
- (d) **Removal of Rejected Items.** Rejected Items, if not required to be repaired as provided by this *Section 2.8*, shall be removed by Supplier at Supplier's expense from Toyota Party's premises immediately after notification, and, if not so removed by Supplier, such Rejected Items may be disposed of or stored by Toyota Party at Supplier's expense.

2.9 Delay.

- (a) **Notification of Delay; Substitute Items.** If at any time Supplier has reason to believe that the delivery of any Items may not be made in strict conformity with the applicable Delivery Schedules, Supplier shall immediately notify Toyota Party, setting forth the cause for the anticipated delay. Any oral communication shall be immediately confirmed in writing. During the period of any delay, Supplier shall use its best efforts to provide the Items called for in the applicable Contract Documents from other sources and reduce its deliveries of Items to Toyota Party by such quantities of substituted Items, all without cost or liability to Toyota Party. Supplier will not replace or supplement Items substituted by Alternative Items without new Contract Documents from Toyota Party.
- (b) **Right to Acquire Alternative Items.** In the event of any delay, Toyota Party shall have the right to immediately acquire substitute or replacement Items from one or more alternate sources ("Alternative Items"). Toyota Party may elect to have the quantities of Items under the applicable Contract Documents reduced by the same amount of Items as the quantity of Alternative Items, unless otherwise notified by Toyota Party in a separate Contract Document. Toyota Party will have no obligation to pay Supplier for Items replaced by Alternative Items.
- (c) **Force Majeure.** Except as otherwise provided in *Section 2.9(d)*, any delay or failure of Supplier to perform its obligations hereunder shall be excused if and to the extent that it is caused by an event or occurrence beyond the reasonable control of Supplier and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, actions by any government authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, embargoes, acts of terrorism, sabotage, or court injunction or order; provided that written notice of such delay (including the anticipated duration of the delay) shall be given by Supplier to Toyota Party within 10 days of the occurrence of such event. During the period of such delay or failure to perform by Supplier, the provisions of *Section 2.9(b)* shall apply. If requested by Toyota Party,

Supplier shall, within 10 days of such request, provide adequate assurances that the delay shall not exceed 30 days. To the extent that the force majeure event is reasonably foreseeable, Supplier shall at its expense take such actions as are necessary to ensure the uninterrupted supply of Items to the applicable Toyota Party, in the quantities and at the delivery times required by such Toyota Party, for a period of at least 30 days (the “Projected Force Majeure Expenses”). In the event the Projected Force Majeure Expenses will cause a financial hardship to Supplier, Toyota Party agrees to negotiate in good faith a reasonable allocation of the Projected Force Majeure Expenses between Toyota Party and Supplier. If the delay lasts (or is reasonably believed by Toyota Party that it will last) more than 30 days or Supplier does not provide adequate assurances that the delay will cease within 30 days, Toyota Party may immediately, in its sole discretion, (i) cancel or modify any and all outstanding Contract Documents and/or (ii) adjust, suspend (in whole or in part) or modify the performance of Supplier under the terms of outstanding Contract Documents, all in an effort to adjust the timing and quantity of Items being furnished by Supplier to Toyota Party to account for the force majeure event. The decision to resume Supplier performance under applicable Contract Documents, and the terms of such resumption shall be made by Toyota Party in its sole discretion.

- (d) **Labor and Supply Problems Not a Force Majeure.** Notwithstanding anything in this *Section 2.9* to the contrary, no delay or failure of Supplier to perform its obligations hereunder shall be excused if and to the extent that it is caused by (i) labor problems of Supplier, its subcontractors and/or its suppliers, such as, by way of example and not by way of limitation, lockouts, strikes and slowdowns or (ii) the inability of Supplier, its subcontractors and/or its suppliers to obtain power, material(s), labor, equipment or transportation.
- (e) **No Limitation of Remedies.** It is the intention of Toyota Party to work with Supplier in the event of any delay, but such intention shall not be deemed a limitation of its remedies. If Toyota Party obtains Alternative Items, such actions shall not be an election of remedies, nor shall it in any way limit the rights and remedies of Toyota Party under these Terms for the breach by Supplier caused by its delay.

3. CONTINUING TERMS AND CONDITIONS.

3.1 *Required Changes and Adjustments.*

- (a) **Required Changes.** Toyota Party reserves the right at any time and from time to time to direct changes (Toyota Specifications, engineering, design or other changes are collectively, “Required Changes”), and Supplier agrees to make such Required Changes as directed by Toyota Party. Required Changes may also extend to drawings and specifications for the Items supplied or manufactured by Supplier, and may additionally extend to the scope of work covered by the applicable Contract Documents including, without limitation, such matters as inspection, testing, quality control and other matters ancillary to the production of Items. Required Changes shall be evidenced by one or more Contract Documents, and all Required Changes shall be made in strict conformity with such Contract Documents.
- (b) **Adjustments for Required Changes.** In the event Required Changes have or will result in a material increase or decrease in the cost of and/or the time for performance by Supplier, Toyota Party and Supplier will negotiate in good faith a reasonable allocation of such costs or other equitable adjustment of the relationship between the parties. Any price or other adjustment shall be evidenced by new or revised Contract Documents. In the event the parties cannot mutually agree (even in the event of an objection) concerning Required Changes and the impact of such changes, or if Toyota Party reasonably deems it necessary to implement Required Changes without consultation, such Required Changes shall be effective as directed by Toyota Party, all as evidenced by additional Contract Documents.

3.2 *Compliance with Applicable Laws; Testing; Certification.*

- (a) **Compliance with Applicable Laws.** Supplier will comply with (and all Items manufactured,

produced or supplied by Supplier to Toyota Party will comply with) all applicable federal, state, local and provincial statutes, rules and regulations, orders, conventions, ordinances or standards of (i) the United States or (ii) other country or countries where Items are manufactured, produced or acquired, including, without limitation, those which directly or indirectly relate to (A) the manufacture of vehicles, vehicle equipment, vehicle materials or vehicle supplies, (B) the labeling, transportation, importation, exportation, licensing, approval or certification of any Item, or Toyota vehicle incorporating any Item and/or (C) environmental, vehicle safety, data protection, privacy, wages, hours and conditions of employment, subcontractor selection, discrimination, immigration and occupational health and safety (collectively, the “Manufacturing and Legal Requirements”). As part of the Manufacturing and Legal Requirements Supplier represents, for itself and for its agents, employees and subcontractors, that it has not and does not use slave, prisoner, child or any other form of forced or involuntary labor in the manufacture, production or supply of Items to Toyota Party under these Terms and the Contract Documents.

- (b) **Testing; Certifications.** In order to determine that all Items comply with all Manufacturing and Legal Requirements and all Toyota Specifications, Supplier shall perform (or have performed on its behalf), at its cost and in a manner satisfactory to Toyota Party, all testing, inspections, analyses, and certifications reasonably required to determine such compliance (collectively, “Testing and Certification”). Toyota Party reserves the right to determine with Supplier what Testing and Certifications are required to insure compliance with all Manufacturing and Legal Requirements. Supplier shall provide to Toyota Party originals or copies, as required, of the test reports or other written materials used to obtain or maintain compliance with all Manufacturing and Legal Requirements and Toyota Specifications as soon as they are available, or as otherwise required by law.
- (c) **Ongoing Compliance; Access.** If requested by Toyota Party, Supplier shall certify to Toyota Party in writing that it is in compliance with all Manufacturing and Legal Requirements and that all Testing and Certification have been performed and completed, and shall provide Toyota Party with copies of state, federal, provincial, local and applicable foreign country certifications, permits, approvals, and any other documentation that evidences that the Items satisfy Manufacturing and Legal Requirements.
- (d) **Access to Supplier’s Premises.** Toyota Party and its authorized representatives shall have the right from time to time and on reasonable notice to Supplier to access Supplier’s premises, as Toyota Party may reasonably request, to verify, validate and monitor: (i) compliance with Manufacturing and Legal Requirements; (ii) compliance with Toyota Specifications; and (iii) Supplier’s performance or ability to perform under these Terms. Supplier shall have the right to limit or restrict Toyota Party’s access to the extent necessary to protect confidential information of or relating to Supplier’s other customers. In exercising any access rights, Toyota Party will take commercially reasonable steps to protect the confidentiality of and not interfere with the business relationship between Supplier and any of its other customers.

3.3 *Environmental Reports; Material Safety Data Sheets and Other Ingredients.*

- (a) **Environmental Reports, Material Safety Data Sheets.** Prior to the shipment of any Item, Supplier will provide Toyota Party with (i) any and all Material Safety Data Sheets (“MSDS”) that are related, directly or indirectly, to the Items (or Items used in subassemblies or in the manufacture or production of Items) and (ii) such other documentation as Toyota Party may request from time to time that is prepared pursuant to any applicable Manufacturing and Legal Requirements and any and all Toyota Specifications relating to environmental or similar matters (collectively, “Environmental Reports”). Environmental Reports shall be deemed Confidential Information. Supplier agrees to promptly furnish to Toyota Party any modifications, amendments or supplements to the Environmental Reports. Further, Supplier agrees to promptly inform Toyota Party of any changes in materials or ingredients in Items, and to promptly furnish Toyota Party with updated or new Environmental Reports relating, directly or indirectly, to the Items. For all Items to be delivered to or on behalf of Toyota Party in Mexico, Supplier will provide Toyota Party with any and all

applicable MSDS and Environmental Reports translated to Spanish, or otherwise provide Toyota Party with such documents in English and Spanish, or in accordance with such other instructions as Toyota Party may designate from time to time. To the extent the applicable MSDS or Environmental Reports is translated, Supplier is responsible for such translation and remains responsible for any problems or issues resulting from such translation. Supplier also agrees to provide Toyota Party with any other ingredient information related, directly or indirectly, to the Items that is required to be provided by Supplier under any applicable Manufacturing and Legal Requirements.

- (b) **Additional Information.** Supplier agrees to notify Toyota Party immediately upon obtaining any information or indications that Items supplied by, or to be supplied by, Supplier have hazardous characteristics, regardless of the information provided in any Environmental Reports. If requested by Toyota Party, Supplier shall provide Toyota Party with any other information it reasonably requests concerning the ingredients, composition, manufacturing processes or materials in any Items.

3.4 *Toyota Property.*

- (a) **Definition of Toyota Property.** All layouts, models, tools, gauges, designs, sketches, drawings, blueprints, patterns, dies, specifications, engineering data, technical or proprietary information, special appliances, other equipment or material, and any reproductions and replacements furnished to Supplier by Toyota Party, including third party intellectual property for which Toyota Party has acquired the right to provide to Supplier (“Toyota Property”), or for which Supplier has been reimbursed by Toyota Party, shall be and remain Toyota Property and, as applicable, be deemed a bailment. Supplier shall bear the risk of loss of and damage to all Toyota Property. All Toyota Property shall be used solely by Supplier to perform under the Contract Documents, and shall not be moved from Supplier’s premises or possession without the prior written consent of Toyota Party.
- (b) **Identification of Toyota Property; Labeling.** Toyota Property shall be marked by Supplier as “PROPERTY OF [INSERT APPLICABLE TOYOTA PARTY NAME]”, or as otherwise directed by Toyota Party, stored and maintained, at Supplier’s expense, apart from Supplier’s property and in good condition, and subject to inspection by Toyota Party on demand. Supplier shall not substitute any property for Toyota Property, or use Toyota Property for any purpose except performing pursuant to the Contract Documents. Supplier assumes all risk of loss and expenses associated with the storage, bailment or use of Toyota Property.
- (c) **No License.** Performance by Supplier under these Terms shall not transfer any rights of ownership in, nor license of, nor constitute permission granted by Toyota Party to Supplier to use (i) any Toyota Property or (ii) any Toyota Party intellectual property, except (A) if otherwise agreed upon by Toyota Party in writing or (B) to the extent necessary for Supplier to produce the Items and to fulfill its obligations required by the Contract Documents.
- (d) **Return of Toyota Property.** Upon the request of Toyota Party, all Toyota Property shall be immediately released to Toyota Party or delivered by Supplier to Toyota Party or its designee, properly packaged and marked in accordance with instructions from Toyota Party, utilizing the carrier designated by Toyota Party, and delivered to the location designated by Toyota Party. Toyota Party will reimburse Supplier for the actual and necessary costs of any such transportation and delivery to a designated location. Supplier waives any lien or other rights it may have against or in any Toyota Property for work performed on any such property or otherwise. When any Toyota Property is no longer reasonably necessary for Supplier to perform under the Contract Documents, Supplier shall return all such Toyota Property to Toyota Party at Supplier’s expense. Toyota Property shall be returned to Toyota Party at Supplier’s expense upon demand, unless consumed or otherwise disposed of with Toyota Party’s prior written consent.

- 3.5 **Non-Disclosure Agreement.** Supplier agrees to execute, upon request by Toyota Party, a non-disclosure agreement in a form satisfactory to Toyota Party which shall relate to any confidential or proprietary data or information to be disclosed by Toyota Party to Supplier (a “Confidentiality Agreement”).

Notwithstanding the absence of such request, the following terms shall apply to Confidential Information:

- (a) **“Confidential Information”** shall be defined as: (i) any information provided to Supplier by Toyota Party, any affiliate, subsidiary and/or related entity of Toyota Party or any third party, or discovered or otherwise observed by Supplier relating to any operations of Toyota Party, or any affiliate or related corporation of Toyota Party, including, without limitation, information relating to products and products in development and Toyota Property and (ii) all documents, records, data compilations, computerized records, statements, drawings, plans, specifications, interviews, opinions or other information to which Supplier may be provided access by Toyota Party, any affiliate, subsidiary and/or related entity of Toyota Party or any third party as a result of the provision of the Items.
- (b) The term Confidential Information shall not include information that: (i) is or becomes available in the public domain through no wrongful act of Supplier; (ii) is already in Supplier’s possession prior to the commencement of performance hereunder without an obligation of confidentiality; (iii) is independently developed by Supplier; (iv) is required to be disclosed pursuant to any final and non-appealable order of a court or agency of competent jurisdiction served on Supplier, provided that Supplier gives Toyota Party written notice within 2 days of receipt of such order and at least 30 days prior to the production or disclosure of any such Confidential Information and that Supplier discloses only that information that is necessary to comply with such order; or (v) is required to be filed with any public agency as part of obtaining permits or approvals required for performance hereunder, provided that Supplier gives Toyota Party prior written notice of the disclosure of such information and that Supplier discloses only that information that is necessary to obtain such permit or approval.
- (c) **Use of Confidential Information.**
 - (1) Except as otherwise authorized in writing by Toyota Party, Supplier shall not, nor shall Supplier permit any related parties, or any other person under the respective control of Supplier, to (i) communicate, disclose, divulge, reveal or otherwise make known any Confidential Information to any person or entity not a party to a Confidentiality Agreement with Toyota Party or (ii) use any Confidential Information for any purpose which may adversely affect Toyota Party, or any respective business, operations or other business conducted by any of its subsidiaries, affiliates or related companies.
 - (2) Supplier shall take commercially reasonable steps to keep the Confidential Information confidential and, as requested by Toyota Party, expressly require, through appropriate legal documents, each of its directors, officers, employees, representatives, independent contractors, subcontractors, agents and suppliers exposed to any of the Confidential Information to keep all Confidential Information confidential. Supplier shall limit the use and circulation of Confidential Information within its organization and to the foregoing parties to the maximum extent possible, disclosing Confidential Information to individuals on a need to know basis only.
 - (3) Upon Toyota Party’s request and election, Supplier shall immediately return and/or certify destruction of all Confidential Information.
- (d) The obligations to maintain secrecy and confidentiality set forth herein shall continue indefinitely and shall survive the termination of the Contract Documents. Notwithstanding anything to the contrary herein, any party to the Contract Documents (and any employee, representative, or other agent of any such party) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transaction and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure (but no other details regarding non-tax matters covered by the Contract Documents, including, without limitation, the identities of the parties).

- (e) Neither party hereto may disclose to any third party the subject matter, or the terms and conditions of these Terms or the Contract Documents unless otherwise agreed upon by the parties hereto or unless, and to the extent, required by applicable laws.
- (f) Supplier acknowledges that the restrictions contained in this *Section 3.5* are necessary to protect the legitimate interests of Toyota Party, its affiliates, subsidiaries and/or related entities and that any violation thereof would result in irreparable harm and injury to Toyota Party, its affiliates, subsidiaries and/or related entities. In the event of a breach or threatened breach by Supplier of any provision of this *Section 3.5*, Supplier agrees that Toyota Party will be entitled to injunctive relief, without the need to post a bond or the requirement to prove the inadequacy of monetary damages, restraining Supplier from such breach or threatened breach and to any other legal or equitable remedies available to Toyota Party.

3.6 *Toyotasupplier.com.* Supplier agrees that Toyota Party may use electronic purchase orders (“EPOs”), price confirmations and other electronic forms (collectively, with EPOs, the “Electronic Forms”) as part of its internet network operated as *toyotasupplier.com* to supplement or replace written Contract Documents (collectively, “Toyota Written Forms”). From time to time, Electronic Forms will supplement Toyota Written Forms, or Electronic Forms may replace Toyota Written Forms entirely. Toyota Party reserves the right to set policies and procedures, from time to time, for the transition to and implementation of Electronic Forms, and such policies and procedures will be modifications to these Terms and the applicable Contract Documents as posted on *toyotasupplier.com*. All policies and procedures for *toyotasupplier.com* will become effective as of the date established by Toyota Party. By using *toyotasupplier.com*, Supplier agrees to and accepts any and all terms and conditions set forth on such Internet site, either in place of or in addition to these Terms, the Contract Documents and other Toyota Written Forms. Toyota Party reserves the right at any time to add, delete or modify the functionality of *toyotasupplier.com* upon notice, delivered by regular mail, by e-mail, or by an on-screen alert on the *toyotasupplier.com* site. Toyota Party also reserves the right to terminate Supplier’s enrollment in, and use of, the *toyotasupplier.com* site at any time.

4. GENERAL COVENANTS, RIGHTS AND REMEDIES OF PARTIES.

4.1 *Toyota Party’s Rules, Regulations, and Programs.* Supplier and all subcontractors and their employees shall be subject to and shall conform to Toyota Party’s rules, regulations, policies, procedures and programs while supplying Items to Toyota Party including, without limitation, the following manuals and guidelines: (i) safety; (ii) security; (iii) environmental management; (iv) anti-harassment; (v) supplier diversity; and (vi) corporate social responsibility.

4.2 *Independent Contractor.* Supplier is retained by Toyota Party only for the purposes and to the extent set forth in the Contract Documents. The relationship of Supplier to Toyota Party shall be that of an independent contractor. Neither Supplier nor its officers, directors, agents, independent contractors, subcontractors or employees shall be (i) considered employees of Toyota Party or (ii) entitled to participate in any pension, stock bonus, profit sharing or other benefits provided to employees of Toyota Party.

4.3 *Non-exclusive.* Nothing contained in these Terms or the Contract Documents shall be construed to create an exclusive relationship between Toyota Party and Supplier. Supplier retains the right to perform work for others. Toyota Party retains the right to cause work of the same or a different kind to be performed by its own personnel or other contractors.

4.4 *Insurance.*

- (a) Supplier shall, at its own cost and expense, procure and maintain in full force and effect insurance with sound and reputable insurance companies of the type and in such amounts as adequate for all risks in accordance with sound and prudent business practices including, without limitation, general liability, which shall include contractual liability, general automotive liability, public liability, workers’ compensation liability, property damage (fire, casualty and theft) insurance and any other

insurance required under the Contract Documents or as it may be applicable or required by law in the United States, Canada or Mexico (as applicable). Unless otherwise agreed to in writing by Toyota Party, Supplier's insurance coverage required hereunder shall not fall below the following amounts:

- (1) Workers compensation and employers liability insurance providing statutory coverage that will comply in all respects to the statutes of the state or province where the Items will be provided and providing employers liability limits of not less than \$1,000,000 for all claims in one policy period.
 - (2) Comprehensive general liability, including coverage for products, completed operations, contractual liability, bodily injury and property damages with limits of not less than \$5,000,000 (in the form of general liability and/or umbrella coverage) combined single limit per occurrence.
 - (3) Automobile and/or vehicle liability, including owned, non-owned and hired vehicles with limits of not less than \$1,000,000 for automobiles and vehicles, \$2,000,000 for trucks larger than pickups and \$5,000,000 for tractor-trailer units combined single limit per occurrence. The coverage amounts may be in the form of automobile and/or vehicle liability and/or umbrella coverage.
- (b) Supplier's insurance shall insure against any liability for loss, injury, damage or claims caused by or arising out of or in connection with the operation of Supplier's business including, without limitation, injury to or death of Supplier's employees, agents, or any other persons and damage to or destruction of public or private property. Upon request, Supplier shall provide Toyota Party proof of insurance, which shall include Toyota Party as an additional insured and state that such insurance will not be cancelled or materially changed without giving TEMA at least 30 days prior written notice. To the extent that Toyota Party has requested proof of insurance, Supplier must provide such proof of insurance prior to entering Toyota Party's premises. In the event of any Installation Activities or any other Supplier Performance where Supplier is required by Toyota Party to maintain general liability and other insurances with respect to such activities or performance, Supplier will, at the request of Toyota Party, participate in and obtain applicable insurance from an owner controlled insurance plan to insure against general liability and property damage risks during such Installation Activities or other Supplier Performance, all on such terms and conditions as required by Toyota Party.
- (c) Each policy obtained by Supplier pursuant to these Terms shall be in accordance with the above terms. If any federal, state or local government regulatory body in the United States shall prescribe minimum amounts of insurance in excess of the amounts prescribed in these Terms, including the appendices, the regulatory body requirements shall take precedence.

4.5 **Warranty.**

- (a) **Express Warranties.** Supplier expressly warrants that all Items will be manufactured, provided and transported to Toyota Party in full and complete conformity with the Contract Documents, including, without limitation, all manufacturing, design, quality and other requirements of Toyota Party as well as specifications, drawings, and samples or other descriptions furnished or specified by Toyota Party (collectively, "Toyota Specifications"), all specifications, drawings, and samples or other descriptions furnished or specified by Supplier (collectively, "Supplier Specifications") but only to the extent not superseded by Toyota Specifications, and all Manufacturing and Legal Requirements. Further, Supplier warrants that all Items will be merchantable, of good material and workmanship, free from defects and will be performed in a good and workmanlike manner utilizing personnel with skill levels appropriate to the task and in full and complete accordance with the Contract Documents. If Toyota Party does not provide the design for Items, Supplier expressly warrants that the design shall be free from defects. Supplier expressly warrants that all Items will be fit and sufficient for the purposes intended by Toyota Party (collectively, with all other warranties of Supplier set forth in these Terms or in the Contract Documents, the "Supplier's Warranties"). For any Items which contain patented, trademarked or copyrighted components which are otherwise the subject of

intellectual property rights held by third parties, Supplier further warrants that it has all rights to such intellectual property sufficient to permit its full and complete performance hereunder and afford Toyota Party all of the benefits provided for herein. Supplier's Warranties are in addition all warranties implied or provided by law.

- (b) **Conformity with Quality Standards.** Supplier agrees that its Supplier's Warranties for quality includes its express warranty that all Items shall comply strictly and completely with any and all Toyota Specifications related to quality and additional quality assurance procedures for particular Items separately prescribed by Toyota Party (collectively, the "Quality Standards"). Toyota Party shall, in its sole discretion, decide whether the Quality Standards are being met. Supplier shall, in accordance with the Quality Standards, provide, maintain and enforce all measures necessary to secure the quality of Items and the manufacturing process thereof, including, without limitation, quality control standards, inspection standards and specifications.
- (c) **Evidence of Supplier's Quality Assurance; Testing.** Upon Toyota Party's request, Supplier shall deliver to Toyota Party data, records and other materials to evidence Supplier's testing, inspection, and analysis of field quality data as provided by Toyota Party and such other quality assurance actions as will validate compliance with all Quality Standards. Toyota Party may, upon prior notice and during normal business hours, (i) inspect the Items and/or work in process on the Items and (ii) conduct quality control measures and tests at Supplier's, or any subcontractor's, premises. Without cost to Toyota Party, Supplier shall provide facilities and assistance for Toyota Party's inspections, tests and measures. Toyota Party shall not be liable for any reduction in value of samples used, nor shall any Items rejected be submitted to Toyota Party.

4.6 Taxes; Duty.

- (a) **Generally.** Toyota Party shall not be liable for any federal, state, provincial or local taxes, including, without limitation, sales, use, consumption and value-added taxes unless separately stated in the Contract Documents and billed as a separate item. No sales or use tax shall be added to the price of Items when an exemption is indicated in the Contract Documents or when an exemption certificate is furnished. Supplier agrees to provide Toyota Party with such documents as may be required to obtain any applicable benefits related to NAFTA, including without limitation, certificates of origin. Toyota Party reserves, at its sole option, to direct entry of all Supplier shipments in bond to a foreign-trade zone or subzone instead of a consumption entry. In the absence of contrary instructions, Supplier should arrange for a consumption entry prior to sale to Toyota Party. Supplier shall cooperate with Toyota Party to file such forms, provide such documents and do all things reasonably necessary at Toyota Party's request to enable Toyota Party to claim any exemption, credit, rebate, remission, refund, reduction or other relief from taxes, customs duty or duties under any applicable legislation or treaty or claim a foreign tax credit.
- (b) **GST/HST and Value-Added Tax.** Where Supplier is required to collect from Toyota Party any applicable goods and services tax ("GST") and/or harmonized sales tax ("HST") imposed pursuant to the *Excise Tax Act* (Canada) or any similar value-added tax (Mexico), Supplier shall provide to Toyota Party such documentation as is required by the *Excise Tax Act* (Canada) and prescribed by the *Input Tax Credit Information (GST/HST) Regulations*, any successor provision thereto or any similar provision of any other taxing statute and as is required in order for Toyota Party to claim an input tax credit, rebate, refund or any other form of relief in respect of such tax.
- (c) **Non-Resident Contract Rules.** Supplier shall comply in a timely manner with the requirements imposed on Supplier by all applicable taxing statutes, including requirements in respect of registration, payment, collection and remittance of taxes, timely filing of tax returns and provision to the applicable taxing authority of such deposits, guarantees or other forms of securities as may be required by law or the administration thereof, including, without limitation, payment of all applicable HST levied pursuant to the *Excise Tax Act* (Canada) and any other tax or duty imposed on the Importer of Record, and shall upon request provide Toyota Party with written proof of such compliance.

(d) **Withholding.** Toyota Party shall: (i) deduct or withhold from each payment to Supplier all taxes and any other withholdings which Toyota Party is required by law or by the administration thereof to deduct or withhold; (ii) pay the amount withheld or deducted to the relevant governmental authority in accordance with applicable law; and (iii) provide to Supplier a copy of the receipt of payment issued by the authority.

4.7 **Advertising.** Without Toyota Party's prior written consent, Supplier shall not use or permit use of the words "Toyota Motor Engineering & Manufacturing North America, Inc.", "Toyota", "TEMA", or any similar word or trademark of TEMA, TMC, or any of the Toyota Parties in the description or marketing of products produced by Supplier, nor shall Supplier advertise or publish that Supplier has contracted to furnish Items pursuant to the Contract Documents.

4.8 **Intellectual Property.** "Intellectual Property" shall mean (collectively) for any party (i) any patent, trade secret, trademark, service mark, copyright, mask work, or other intellectual property right of such party in information (electronic or written), documents, or property and (ii) all sketches, drawings, blueprints, CAD designs or renderings, process sheets, dimensional layouts, test and trial result data and similar data that is proprietary to such party and which is used (directly or indirectly) or otherwise made available to the other party for or in connection with the manufacture, supply or production of any Items. Intellectual Property shall be Confidential Information.

(a) **Toyota Intellectual Property.** Toyota Party does not transfer to Supplier any Intellectual Property of Toyota Party ("Toyota Intellectual Property") other than the limited right to use such Toyota Intellectual Property (which shall not be deemed a license) strictly and solely in conjunction with Supplier's manufacture, supply and/or repair of any Items.

(b) **Supplier Intellectual Property.** Supplier does not transfer to Toyota Party any Intellectual Property of Supplier ("Supplier Intellectual Property") other than the right to use such Supplier Intellectual Property in connection with the intended use of such Items provided to Toyota Party. Supplier grants to Toyota Party a non-exclusive, paid-up, worldwide license, with rights to grant sublicenses to any other Toyota Party (the "General License"), to use Supplier's Intellectual Property solely for such intended use by Toyota Party.

(c) **Infringement.**

(1) *Generally.* Subject to *subsection (2)*, Supplier will indemnify and defend Toyota Party against claims, liabilities, losses, damages, costs and expenses, including reasonable legal fees, arising out of the actual or alleged infringement by any Items manufactured or supplied by Supplier of a third-party Intellectual Property right (i) in the United States, the European Union or Japan, or (ii) in another jurisdiction if Supplier has knowledge or notice of the actual or alleged infringement in that other jurisdiction at any time and fails to promptly disclose it to Toyota Party in a manner and at a time which will allow Toyota Party to adequately respond to any such claim. If such a claim results, or is likely to result, in an injunction or other order that would prevent Supplier from producing or supplying, or Toyota Party from using, applicable Items, Supplier shall, at Toyota Party's sole election and at Supplier's expense (i) secure a license of the applicable Intellectual Property that permits Supplier to continue producing or supplying, or Toyota Party to continue using; (ii) if requested by Toyota Party and solely in conformity with any requirements of Toyota Party, modify the Items so that they become non-infringing, so long as the modification does not materially alter the operation or performance of the Items or (iii) replace the Items with non-infringing but practically equivalent Items, equivalency to be determined by Toyota Party in its sole discretion.

(2) *Limitations.* Supplier will have no liability under this *subsection (d)* unless Toyota Party provides Supplier with full information, cooperation, and assistance regarding a claim covered by *subsection (d)*. Toyota Party, in the reasonable exercise of its business judgment, will

determine if it has fully cooperated with Supplier in the event of any infringement claim. Supplier will have no liability under this *subsection (d)* if and to the extent that a claim of infringement is based on (i) an Item modification made by Toyota Party, or (ii) an Item modification made by Supplier at Toyota Party's request.

- (d) **Other Information.** At Toyota Party's request, Supplier will, from time to time, furnish to Toyota Party any other information and data of Supplier which is not Supplier Intellectual Property and which Toyota Party deems necessary to understand (i) the design, manufacture, engineering, transportation, operation or maintenance of any Items, or any other aspect of the Item and its relationship to any applicable Toyota Requirements, and (ii) any technical information, drawings, documents, data or other materials produced or acquired by Supplier in providing Items under these Terms which are not Supplier Intellectual Property (collectively, "Other Information"), without restrictions on disclosure or use by Toyota Party. Supplier agrees not to assert any claim with respect to any Other Information that Supplier has or may disclose to Toyota Party in connection with its performance of these Terms.
- (e) **Mutually Developed Design or Proprietary Product.** If a design or other proprietary product is mutually developed between Supplier and a Toyota Party (the "Mutually Developed Item"), the parties agree that control of the use of the Mutually Developed Item shall be governed by a joint agreement, to be mutually agreed upon by the parties (the "Joint Development Agreement"). As to any Mutually Developed Item, the parties agree that the terms of such Joint Development Agreement shall be deemed to supersede *Section 4.8* of these Terms. The parties further agree that no commercial development of any Mutually Developed Item shall occur without first entering into a mutually acceptable Joint Development Agreement.
- (f) **Work Made for Hire.** Any work of authorship created by Supplier or its employees which is ordered or commissioned by Toyota Party, or is a necessary part of the performance of Supplier under these Terms, will be considered a "work made for hire" and all copyrights for such work shall belong to Toyota Party.
- (g) **Inventions.** With respect to inventions which Supplier conceives or first reduces to practice in the course of Supplier's activities under Contract Documents which were issued by Toyota Party with the intent of having Supplier conceive and develop such inventions, Supplier grants to Toyota Party a permanent, paid-up, nonexclusive, worldwide license, with a right to sublicense others, to make, have made, use, have used any such inventions (whether patented or not) in any manufacturing or production process.

4.9 Term and Termination.

- (a) **Term.** Unless otherwise provided for in the applicable Contract Document, the term of the Contract Document shall be for the duration (as determined solely by Toyota Party) of the intended performance by Supplier with respect to the Items.
- (b) **Termination by Toyota Party.** Toyota Party may, at its sole option, immediately terminate all or any part of a Contract Document, at any time and for any reason or no reason, by giving written notice to Supplier as provided for in these Terms.
- (c) **Obligations of Supplier on Termination.** Upon receipt of a notice of termination, Supplier will, unless otherwise directed by Toyota Party: (i) promptly terminate all work in progress under any Contract Documents; (ii) inform Toyota Party of the extent to which performance has been completed through such date; (iii) transfer to Toyota Party any raw materials, inventory and such other materials which Supplier produced or acquired in performing under the Contract Documents; and (iv) take all actions reasonably necessary to protect any Toyota Property and Items in the possession of Supplier until it has received written instructions from Toyota Party regarding such property. The foregoing shall be inclusive of any other requirements set forth herein relating to the obligations of Supplier upon termination of any Contract Documents or part thereof.

(d) Obligations of Toyota Party on Termination.

- (1) *Generally.* Upon termination by Toyota Party under this *Section 4.9*, Toyota Party will pay to Supplier (i) the prevailing Toyota Party price for all conforming Items provided to Toyota Party, (ii) the actual cost to Supplier for all work in process, raw materials fabricated or procured by Supplier and finished goods inventory to the extent such costs and quantities are reasonable in amount and are proportional and properly allocated to the terminated portion of the Contract Documents and (iii) the actual cost of Supplier in protecting any Toyota Property or Items (collectively, a “Termination Payment”). Toyota Party will make no payment to or for the benefit of Supplier for work in process, raw materials fabricated or procured by Supplier and finished goods inventory in amounts in excess of those authorized in Contract Documents or in amounts inconsistent with releases and/or the general course of dealing between the parties concerning the quantity of Items generally purchased by Toyota Party at the time of termination. Payment for fixed price Items shall be on a pro rata basis, based on the Items completed or otherwise in accordance with a schedule of payment to be included in the Contract Documents.
- (2) *Calculation.* Supplier will furnish its written claim for a Termination Payment to Toyota Party within one (1) month of the effective date of a termination, consisting exclusively of the costs outlined in this section. Payment to Supplier under this section will not exceed the aggregate Toyota Party price payable to Supplier for the quantity of conforming Items that would have been manufactured or supplied by Supplier under the Contract Documents outstanding at the date of termination of these Terms. Subject to audit and review by Toyota Party, and verification of amounts in any claim for a Termination Payment, Toyota Party will pay the Termination Payment within 60 days after the claim is received. Toyota Party reserves the right to offset against any Termination Payment (i) any costs or other expenses related to any termination under this section, (ii) any amounts otherwise owed by Supplier to Toyota Party or (iii) for prior performance, acts or omissions of Supplier.
- (3) *Limitations.* Unless otherwise agreed to by Toyota Party in the Contract Documents, Toyota Party shall not be liable for and shall not be required to make payment to Supplier of any amount for claims by Supplier arising out of or related to subcontractor or other third party claims, labor or employee benefit charges, professional or other fees, for loss of anticipated profit, overhead, interest, product development or engineering and design costs, equipment or facilities costs, general and administrative burden, or operating costs of any kind related to the termination of the Contract Documents.

- (e) **Default.** Toyota Party shall have no obligation to Supplier under *subsection (d)* if Toyota Party terminates the Contract Documents because of Supplier’s breach of the Contract Documents, as set forth in *Section 4.9*.

4.10 Breach; Remedies.

- (a) **Breach.** The following events shall constitute a default (a “Default”) under the Contract Documents:
- (1) If Supplier repudiates, breaches or threatens to breach any provision of these Terms or the Contract Documents, or fails to timely perform or deliver Items as specified by Toyota Party;
 - (2) If at any time a material adverse change in the business, operations or property and assets of Supplier occurs, the consequence of which is a substantial likelihood that performance under the Contract Documents will be imminently interrupted, all as determined by Toyota Party in its sole discretion;

- (3) If at any time there is a material adverse change in the financial condition of Supplier, all as determined by Toyota Party in its sole discretion; or
 - (4) If Supplier fails to timely provide Toyota Party with adequate and reasonable assurance of Supplier's ability to perform timely any of Supplier's obligations under these Terms or the Contract Documents.
- (b) **Remedies in Event of Breach.** Upon the occurrence of a Default by Supplier, Toyota Party's remedies shall be cumulative, shall include the following and shall be in addition to any and all remedies provided to Toyota Party at law or in equity:
- (1) Canceling the Contract Documents, in whole or in part, which cancellation shall be effective immediately on the date of the notice of cancellation;
 - (2) Upon demand, Supplier shall grant Toyota Party access to its premises to allow Toyota Party to pursue its remedies, and if requested, immediately return Toyota Property pursuant to written instruction from Toyota Party regarding such property, such return to be at Supplier's cost and expense;
 - (3) Purchasing any and all Items, work in process, raw materials and inventory from Supplier by making a Termination Payment to Supplier (provided that Supplier has complied with Section 4.9(c)) and offsetting against any Termination Payment any damages or costs that Toyota Party may have under these Terms and the Contract Documents;
 - (4) Dealing directly with any applicable subcontractor, including, without limitation, the following actions: (i) to assume the subcontract or to contract independently with the subcontractor for completion of the Items and (ii) to make payments to subcontractor and require that all amounts paid to subcontractor be credited against any amounts still due and owing to Supplier, provided that subcontractor completes the Item and is paid in full for such work by Toyota Party. The payments to subcontractor shall fully satisfy and discharge any additional amounts due to Supplier, irrespective of the original agreed-upon price or the actual amount paid to subcontractor, and if subcontractor completes the Items due to Supplier's Default and in order to complete the Items is required to pay an amount in excess of the original agreed-upon price, Toyota Party shall have a claim against Supplier for such differential in price;
 - (5) Bringing suit or otherwise seek all rights and remedies to which it may be entitled, including all damages, under law or equity, including, without limitation, the Uniform Commercial Code or Sale of Goods Act (Canada) as a buyer of goods;
 - (6) Demand that Supplier provide Toyota Party with Remedial Work and/or replacement Items in conformity with the Contract Documents; and
 - (7) Offset against any amounts owed to Supplier and costs incurred in Toyota Party's exercise of its rights under these Terms and the Contract Documents prior to or as a result of Supplier's Default.
- (c) **No Election.** The remedies reserved in these Terms shall be cumulative and additional to any other or further remedies elsewhere in these Terms and provided by law or equity. Resort to any remedy by Toyota Party, as provided in these Terms or otherwise, shall not be deemed an election of remedies or a waiver of any breach or remedies.
- (d) **No Waiver.** No waiver of a breach of any provision of these Terms shall constitute a waiver of any other breach or of such provision. Any failure by Toyota Party to insist on strict performance by Supplier of any term or condition hereunder shall not be deemed a waiver of Toyota Party's rights thereunder.

- (e) **Taxes.** If Toyota Party receives from Supplier any payment in respect of a Default by Supplier where the payment is subject to GST/HST levied under the *Excise Tax Act* (Canada) or is deemed by the *Excise Tax Act* (Canada) to be inclusive of GST/HST or is subject to any other tax, including, without limitation, the Mexican Value Added Tax Law, Supplier shall be liable for and shall pay to Toyota Party, in addition to the payment, an amount equal to the GST/HST or other tax payable in connection with the payment and such additional amount including, without limitation, any interest and penalty imposed thereon.

5. MISCELLANEOUS.

- 5.1 **Order of Precedence.** In the event of any inconsistencies or ambiguities between these Terms and any Contract Documents, these Terms shall control, except for (a) matters that under these Terms are to be established in the Contract Documents and (b) provisions in the Contract Documents which, by their express terms, are intended to supersede the corresponding provision in these Terms.
- 5.2 **Governing Law; Choice of Forum.** For all Items to be delivered to or on behalf of Toyota Party in the United States or Canada, and for all Items which originate other than in Mexico but which are delivered to or on behalf of Toyota Party in Mexico, these Terms and the Contract Documents and the rights and obligations of the parties under these Terms and the Contract Documents shall not be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods (“**CISG**”) or the United Nations Convention on the Limitation in the International Sale of Goods (“**LISG**”), as amended; rather, this requirement and the rights and obligations of the Parties under these Terms and the Contract Documents shall be governed by the laws of the Commonwealth of Kentucky, including its provisions of the Uniform Commercial Code, without regard to its conflict of laws rules. For all Items which originate in Mexico and which are delivered to or on behalf of Toyota Party in Mexico, the Contract Documents shall not be governed by the provisions of the CISG or LISG, as amended; rather, this requirement and these rights and obligations shall be governed by the laws of Mexico (and applicable Mexican state province or local law). Any action or proceeding by Toyota Party against Supplier may be brought by Toyota Party in any court having jurisdiction over Supplier, or at the option of Toyota Party, in the courts having jurisdiction over Toyota Party, in which event Supplier consents to jurisdiction and service of process in accordance with applicable procedures. Any action or proceeding by Supplier against Toyota Party may be brought by Supplier only in the courts having jurisdiction over the location of Toyota Party from which the Contract Documents are issued.
- 5.3 **Assignment; Subcontracts.** Supplier may not assign its rights or obligations hereunder without Toyota Party’s prior written consent. Unless otherwise restricted by Toyota Party, Supplier may, as it deems necessary, engage subcontractors and/or independent contractors in rendering Services hereunder, provided that such subcontractors and/or independent contractors are subject to agreements that give effect to the rights and obligations of Supplier under these Terms and Contract Documents, including, without limitation, all provisions of these Terms relating to confidentiality and assignment of ownership of intellectual property rights hereunder, and provided further that Supplier must retain responsibility and liability for any and all acts of such subcontractors and independent contractors. Upon request, Supplier must provide Toyota Party copies of the agreements with subcontractors and independent contractors required under this provision.
- 5.4 **Notices.** Notices required under these Terms and the Contract Documents must be in writing and, must be sent by one of the following means: regular mail, a nationally recognized overnight courier service or electronic mail. Notices sent to Toyota Party must be sent only to the address designated by Toyota Party on the Contract Documents, and must refer to such Contract Documents. Notices sent to Supplier must be sent to such address and to the attention of such department or individual as is maintained in Toyota Party’s files concerning notices to Supplier.
- 5.5 **Battle of the Forms Not Applicable.** The parties have agreed and it is their intent that the battle of the forms section of Uniform Commercial Code §2-207 shall not apply to the Contract Documents or to any invoice or acceptance form of Supplier relating to the Contract Documents. The parties intend that these Terms and the Contract Documents shall exclusively control the relationship of the parties with respect to

all Items being purchased pursuant to these Terms and the Contract Documents and in the event of any inconsistency between any invoice or acceptance form sent by Supplier to Toyota Party and these Terms and the Contract Documents, these Terms and the Contract Documents shall control.

- 5.6 Entire Agreement.** These Terms and the Contract Documents constitute the entire agreement between the parties, and supersede all prior and contemporaneous agreements, representations and understandings of the parties as of the effective date.
- 5.7 Survival.** Any provision of these Terms or the Contract Documents which by its nature extends beyond the expiration, termination or cancellation shall remain in full force and effect until fulfilled and/or performed and shall inure to the benefit of and be binding upon Supplier and Toyota Party and their respective successors and assigns.
- 5.8 Alternative Dispute Resolution.** Subject to any party's right to seek injunctive relief, in the event of a dispute of any kind arising out of or in any way related to these Terms and the Contract Documents, the parties shall endeavor in good faith to settle the dispute through negotiation. If the dispute cannot be resolved through negotiation, or another mutually agreeable dispute resolution mechanism, either party has the right to request non-binding mediation. If mediation fails to resolve the dispute, the parties agree to submit the matter in dispute to binding arbitration. Written notice of the intent to submit a matter to arbitration shall be given by the party requesting the same. The arbitration proceedings shall be conducted in accordance with the CPR Rules for Non-Administered Arbitration, then in effect, or, if the parties so agree, the relevant rules of another arbitration entity or organization. In any case, regardless of any rules of the selected arbitration organization to the contrary, only one (1) arbitrator shall be used to decide the outcome of the arbitration and shall have ultimate authority to resolve all matters in the arbitration, including, but not limited to, disputes over the enforceability of this arbitration provision or claims of unconscionability. Such arbitration shall be held in Covington, Kentucky, or if the parties agree upon another location, that other location. The prevailing party shall be entitled to an award of reasonable attorneys' fees. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. §§1 et seq, and judgment upon the arbitrator's award may be entered in any court having jurisdiction over such matter. Each party agrees that any applicable limitations period, whether arising from contract, statute, or otherwise, will be tolled and suspended beginning when a party provides written notice to the other party, as provided for in these Terms, of a dispute to be resolved under this section or when the parties begin negotiations under this section, whichever is earlier. Tolling and suspension of the limitations period will continue until: (i) the parties resolve the dispute as evidenced by a written settlement agreement or (ii) 45 calendar days after a binding arbitration decision is rendered, whichever is earlier. Notwithstanding the foregoing, in the absence of a written notice from one party to the other to submit the dispute to either non-binding mediation or binding arbitration (an "ADR Notice"), then either party may provide the other party with written notice that it desires the running of the limitations period to recommence. Such limitations period shall recommence 45 days thereafter, unless within such 45 day period the receiving party delivers an ADR Notice to the other party, in which event the limitations period shall be tolled and suspended as set forth above.
- 5.9 Supplier's Liability and Indemnity of Toyota Party.**
- (a) **Assumption of Risks.** Supplier assumes all risks of injuries, death, sickness or disease to persons or damage to property used or employed on or in connection with performance under these Terms and the Contract Documents, including, without limitation, all risks of injuries, death, sickness or disease to persons or damage to property wherever located, arising out of the negligent performance, willful misconduct or breach of these Terms or the Contract Documents by Supplier or its employees, agents or representatives, or employees, agents or representatives of its subcontractors or suppliers.
- (b) **Indemnity.** Supplier shall indemnify, hold harmless and defend Toyota Party and their employees, agents, servants and representatives from and against any and all claims, damages, losses, liabilities and expenses, including, without limitation, reasonable attorney's fees and costs, of whatever nature, directly or indirectly, caused by or arising out of any action, omission or operation under these Terms or the Contract Documents or in connection with the Installation Activities (whether on or off

Toyota Party's premises) attributable in whole or in part to Supplier or any subcontractor, any of their respective employees, agents, servants and representatives, or any other person, including Toyota Party, their employees, agents, servants and representatives; provided, however, that Supplier shall not be required to indemnify Toyota Party or their employees, agents, servants and representatives hereunder for any such claims, damages, losses and liabilities, caused solely and exclusively by the negligence of Toyota Party, their employees, agents, servants and representatives where such indemnification is contrary to law. It is the intent of the parties that Supplier shall indemnify Toyota Party, and their employees, agents, servants and representatives to the fullest extent permitted by law. Without in any manner limiting the generality of the foregoing indemnity, Supplier further agrees as follows:

- (1) If Remedial Work is required or fines or legal costs are assessed against Toyota Party by a government agency due to non-compliance by Supplier with any laws or regulations relating to the environment or occupational health and safety, including, without limitation, those pertaining to (i) reporting, licensing, permitting, investigating, remediating and cleaning up in connection with any presence or release, or the threat of the same, of hazardous substances or (ii) the generation, manufacture, processing, distribution, use, re-use, treatment, storage, disposal, transport, labeling, handling and the like of hazardous substances ("Environmental Requirements"), or breach of any duty contained in these Terms and the Contract Documents, or if the work of Supplier or the work at the site of the Installation Activities or any part thereof is stopped by order of a governmental agency due to the Supplier's non-compliance with any such laws, regulations or Environmental Requirements, or if Toyota Party incurs any loss or liability due to any breach or Default by Supplier of its obligations, Supplier will indemnify, defend and hold harmless Toyota Party against any and all losses, liabilities, damages, claims, costs and reasonable attorney's fees and costs suffered or incurred on account of the failure of Supplier to comply therewith.
 - (2) Should Toyota Party be joined as a party in any action or proceeding arising out of the violation or an alleged violation of the Federal Wage and Hour Law, or any other state or federal law relating to wage and hour claims or immigration matters, in the performance of the Contract Documents, Supplier, or any subcontractor violating or alleged to have violated such law, or using or introducing goods manufactured or alleged to have been manufactured in violation of the law, shall indemnify, defend and hold harmless Toyota Party in any such action or proceeding and pay and defray any damage, expense and cost of any description by reasons thereof, including reasonable attorneys' fees and costs.
 - (3) Supplier shall indemnify, defend and hold harmless Toyota Party and its employees, agents, servants and representatives from and against any and all losses, liabilities, damages, claims, costs or expenses (including attorney's and other professional fees) arising from or related to Supplier's noncompliance with or violation of any Manufacturing and Legal Requirements.
- (c) **Notice of Occurrences.** In the event of any accident or occurrence resulting in injury, death, sickness or disease to persons or damage to or destruction of property, Supplier shall immediately notify Toyota Party of the accident or occurrence and shall submit a written report within 3 calendar days.
- (d) **Limitations Not Applicable.** In claims against any person or entity indemnified under these Terms or the Contract Documents by an employee of Supplier, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, such indemnification obligations shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Supplier or a subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
- (e) **Identification of Claims.** Prior to final payment under any Contract Documents, Supplier shall identify in writing to Toyota Party any outstanding claims, actual or threatened, known to Supplier or by any subcontractor at any tier, including, without limitation: (i) any claim for equitable

adjustment or equitable compensation based on purported delay, acceleration, or other changes (or refusal to change) in scheduling, deadlines, or milestones; (ii) lack of access; stacking of trades; (iii) impact claims, labor inefficiencies; (iv) loss of productivity; or (v) any conduct or omissions of Toyota Party. For any claims except those based solely on Toyota Party's conduct or omissions, and for any and all claims not specifically identified by Supplier to Toyota Party as provided herein, Supplier shall indemnify, hold harmless, and defend Toyota Party and its employees, agents, servants, and representatives from and against any and all such claims, damages, losses, liabilities, and expenses, including reasonable attorneys' fees and costs, of whatever nature, arising from or purporting to arise from the conduct or omissions of Supplier or Toyota Party. This indemnification shall not be exclusive of any other right of indemnification, contribution, setoff, credit, or apportionment Toyota Party may otherwise have.

(f) **Payment of Costs.** Supplier shall pay all costs, damages, losses, liabilities, and expenses incurred by Toyota Party in the enforcement of these Terms and the Contract Documents, including reasonable attorneys' fees.

5.10 Severability. If any provision of these Terms or the Contract Documents is held to be invalid, prohibited or unenforceable in any applicable jurisdiction, then as to such jurisdiction, and provided the essential terms of these Terms and the Contract Documents for the Toyota Party remain valid, binding and enforceable, these Terms and the Contract Documents shall be ineffective only to the extent of such invalid, prohibited or unenforceable provisions without invalidating the remaining provisions of these Terms or the Contract Documents or affecting the validity or enforceability of such provisions in any other jurisdiction.

6. PROVISIONS RELATING TO INSTALLATION. The purchase of Items by Toyota Party from Supplier may, to the extent identified in the Contract Documents, provide for installation and/or testing of the Items on Toyota Party's premises (collectively, the "Installation Activities"). Toyota Party may also contract for Installation Activities to be performed by Supplier or third parties pursuant to third party contracts ("Installation Contracts"). The additional provisions of this *Section 6* shall be applicable to such Installation Activities (collectively, the "Installation Provisions"). For purposes of the Installation Provisions, the following rules of construction shall apply. The term "Subcontractor" includes subcontractor or any third party subcontractor or materialmen performing any portion of the Installation Activities (or related activities) for or on behalf of Supplier. The term "Supplier," in addition to any other definition provided for in these Terms, and where the context requires an expanded definition in conjunction with the applicable provisions of these Terms (as determined by Toyota Party in its sole discretion), shall also include any applicable Subcontractor even where only the term "Supplier" is used. In the event of a conflict between the Installation Provisions and the remaining provisions of these Terms, the Installation Provisions shall control solely with respect to the Installation Activities.

6.1 Toyota Party's Operations. Toyota Party may, during the Installation Activities, elect to commence or continue operations on its premises. To this end, Supplier shall cooperate with Toyota Party as to performance of the Installation Activities. To avoid interference with Toyota Party's operations, Supplier shall perform the Installation Activities at hours and in such manner and at such times as to suit Toyota Party's convenience and all costs in connection therewith shall be included in Supplier's base bid. Toyota Party will not pay, entertain or recognize any claims by Supplier or others for increased compensation based on delay, lack of access or other problems caused, in whole or in part, by Toyota Party's commencement or continuation of operations on its premises during the Installation Activities. Without limiting the foregoing, Supplier acknowledges, and will require its Subcontractors to acknowledge, that unforeseen delays may arise as a result of (i) Toyota Party's actions in ensuring the uninterrupted continuance of its operations or (ii) the actions of Toyota Party or third parties taken in connection with work taking place concurrently on Toyota Party's premises. Supplier hereby expressly assumes the risk of such delays and has factored the possibility of such delays into its pricing as reflected in the Contract Documents.

6.2 Registrations, Permits and Tests.

- (a) **Registrations; Licenses.** Supplier shall maintain and shall cause its Subcontractors to maintain, all registrations and licenses required by applicable laws and shall provide, at the request of Toyota Party, written copies of such registrations and licenses.
- (b) **General Building Permit.** Unless otherwise directed by Toyota Party, Toyota Party will furnish, at its expense, a general building permit for the Installation Activities. Supplier shall not include or charge any fees for the general building inspections and permits. Toyota Party shall work directly with the governing authorities for the permit, and Supplier shall provide reasonable assistance if requested by Toyota Party.
- (c) **Permit and Inspection Fees.** Except as set forth in Section 6.2(b) above, Supplier or its Subcontractors shall obtain and pay the necessary fees required for all other permits and/or inspections required for the Installation Activities, and, at the completion of the Installation Activities, shall furnish certificates of approval and/or occupancy from all governing inspection authorities.
- (d) **Tests.** Supplier shall furnish all labor, materials and equipment required to complete performance and other tests of its Installation Activities, as required by the governing codes, regulations and specifications. Such tests shall be performed at no additional cost to Toyota Party. All tests shall be performed in the presence of Toyota Party representatives, unless attendance at the test has been waived by Toyota Party in writing. All materials required to be tested which are to be buried underground or otherwise concealed shall be tested before being covered, and the test conditions shall be maintained for a sufficient length of time to permit adequate inspection. Supplier shall furnish Toyota Party with test results and data upon completion of any and all the testing.

6.3 Salvage and Removal of Existing Work and Equipment.

- (a) **Removal of Structures, Materials, and Equipment.** Unless otherwise specified in the Contract Documents, Supplier shall remove, at its expense, existing structures, materials and equipment as may be necessary to permit the proper installation of the Items. All cutting, repairing or patching in connection with these removals shall be performed without additional cost to Toyota Party.
- (b) **Ownership of Equipment and Material Removed.** Unless otherwise specified in the Contract Documents, all equipment and materials removed from existing buildings shall be deemed Toyota Property. Supplier shall protect the materials and equipment from damage and loss until Supplier has afforded Toyota Party a reasonable opportunity to inspect and store the materials and equipment and execution of the Installation Activities, following which Supplier shall deliver the materials and equipment to a storage area designated by Toyota Party.
- (c) **Removal from Premises.** No material or equipment may be taken from the premises without first securing a properly executed property pass from Toyota Party. Boxes, cartons or similar items are subject to inspection by Toyota Party.

6.4 Repair Work. All necessary repair work shall be performed by Supplier or a Subcontractor with the appropriate trade. All cost associated with such repair work shall be paid by Supplier or Subcontractor responsible for causing such repair work. Supplier must obtain Toyota Party's written approval prior to drilling holes in structural steel or cutting openings of any size in walls, ceilings, roofs, floors or other structures in connection with any repair work.

6.5 Materials and Equipment Furnished by Toyota Party.

- (a) **Delivery to Job Site.** All material and equipment furnished by Toyota Party for Installation Activities by Supplier shall, upon delivery to the job site, be unloaded, transferred, stored and fully protected by Supplier until the Installation Activities are complete and the Items are accepted in

accordance with the Contract Documents. To the extent the material and equipment are delivered in accordance with the Delivery Schedule, or other delivery date agreed to by Toyota Party and Supplier, any demurrage or similar charge incurred due to the failure of Supplier to promptly unload the material and equipment shall be the responsibility of Supplier.

- (b) **Inspection by Supplier.** Supplier shall carefully examine all material and equipment furnished by Toyota Party and shall promptly notify Toyota Party in writing of any reasonably ascertainable defects or damage. Such examination shall be for the sole purpose of establishing the physical condition of such materials and/or equipment as between Toyota Party and Supplier. In no event shall Supplier's inspection be deemed an acceptance of such material and equipment with respect to the contract between Toyota Party and the provider of such materials and/or equipment. Supplier shall be responsible for subsequent damage or loss until the Installation Activities are completed and accepted by Toyota Party. Any damage reasonably ascertainable by Supplier and not identified in writing at the time of receipt shall be deemed to be subsequent damage.
- (c) **Materials Off Site.** Any material furnished by Toyota Party at an offsite location, on other than a charge basis in connection with the Contract Documents, shall be deemed held by Supplier on consignment. All such materials not used in the fabrication of Items required under the Contract Documents shall be returned to Toyota Party, as directed by Toyota Party and at Toyota Party's expense. Any material furnished and not accounted for or not returned shall be paid for by Supplier.
- (d) **Removal of Materials.** Supplier shall not remove any material or equipment furnished by Toyota Party for Installation Activities from the job site without the written consent from Toyota Party.

6.6 Approvals of Materials and Materialmen.

- (a) **Approval of Materials.** As requested by Toyota Party, Supplier shall secure and submit to Toyota Party for approval samples of materials to be used in the Installation Activities.
- (b) **Approval of Materialmen.** Unless Toyota Party has specifically identified otherwise, Supplier shall submit to Toyota Party for approval Supplier's proposed materialmen. Toyota Party will reply to Supplier in writing stating whether Toyota Party has a reasonable objection to the proposed person or entity serving as materialmen. Failure of Toyota Party to reply within 7 days shall constitute notice of no reasonable objection. If Toyota Party has a reasonable objection to the proposed person or entity serving as materialmen, Toyota Party and Supplier shall work together to identify a substitute materialmen to whom Toyota Party has no reasonable objection. The price shall be increased or decreased by the difference in cost resulting from such substitution and an appropriate change order shall be issued.
- (c) **Submission to General Contractor.** When Toyota Party has designated a general contractor (the "General Contractor"), all Subcontractors' materials and samples shall be submitted to the General Contractor for the General Contractor's review and coordination prior to delivery to Toyota Party.

6.7 Cleaning of Premises.

- (a) **Generally.** Supplier shall be fully responsible for keeping Toyota Party's premises free at all times from accumulations of all rubbish, debris, broken concrete and other waste material caused by Supplier's employees and its Subcontractors' employees during the Installation Activities.
 - (1) Supplier shall take all precautions to avoid depositing earth, debris or mud on Toyota Party's premises, existing roads, adjacent public roads, parking areas and other property. Supplier shall be responsible for removal of earth, debris and mud.
 - (2) No facilities or equipment of Toyota Party may be used for trash accumulation or the hauling away from the premises without Toyota Party's prior written approval.

- (b) **Combustible Materials.** All combustible waste materials shall be removed from all buildings at the close of every work day.
- (c) **Waste Containers.** When performing construction activities within an operating facility, rubbish, debris and other waste material must be placed in containers immediately. All containers shall be covered for removal through any area where Toyota Party is conducting operations.
- (d) **Supplier's Failure to Clean Premises.** If Supplier does not clean the premises as required:
 - (1) Toyota Party shall advise Supplier that the premises are not being maintained in the condition required.
 - (2) Should Supplier fail to initiate substantial progress toward clean up of the premises within twenty-four (24) hours following receipt of written notice, Toyota Party may elect to provide the necessary labor, materials or equipment to fulfill the necessary requirements and offset such cost from Supplier's Payables. If more than one party's work is involved, a proportionate share of Toyota Party's cost will be charged to Supplier and determined as follows:
 - (i) Costs resulting from the removal of all debris, rubbish, packaging and other waste material which are identifiable to the activity of a specific party or its Subcontractors shall be charged to that party.
 - (ii) Costs resulting from the removal of all other debris, rubbish and other waste material shall be prorated among all such suppliers on the basis of the ratio of the work force of each (including their Subcontractors) to the total work force on the applicable area of the job site.
 - (3) Toyota Party shall maintain adequate records related to the assessment of charges.
- (e) **Removal of Material.** As Installation Activities are completed in an area, Supplier shall remove all tools, scaffolding and surplus materials and leave the area broom clean and shall keep such areas clear and broom clean until turning the area over to Toyota Party.

6.8 Coordination on Site. Supplier shall work with other parties on the same site at the same time. The coordination between Supplier and the other contractors shall be done by Toyota Party.

7. PROVISIONS APPLICABLE TO CERTAIN JURISDICTIONS. Supplier acknowledges that the following provisions are applicable when (i) the Installation Activities are to be performed in the designated state, province or country, or (ii) any other aspect of Supplier Performance is required by the applicable laws of any of the following states, provinces or countries to be controlled by the laws of such state, province or country. To the extent the following provisions conflict with any other provisions of the Terms, the following provisions will control.

7.1 Alabama.

- (a) **Supplier Compliance with Licensing Requirements.** Supplier shall comply with the requirements of Section 34-8-1 et seq., of the Code of Alabama (1975), including, without limitation, the following:
 - (1) Pursuant to Section 34-8-6(b) of the Code of Alabama (1975), every person, firm or corporation licensed pursuant to Alabama Code Title 34, Chapter 8 shall include his or her license number in all construction contracts, subcontracts, bids and proposals.
 - (2) Pursuant to Section 34-8-7(c)(5) of the Code of Alabama (1975), every Subcontractor (as defined in these Terms) shall be licensed with the Alabama Licensing Board for General Contractors prior to beginning work on the Items.

- (b) **Subcontractor Compliance.** Supplier shall maintain and shall cause its Subcontractors to maintain, all registrations and licenses required by the authorities having jurisdiction over the Items and will, upon request, furnish Toyota Party with evidence of same.
- (c) **Tax Abatement Requirements.** The following are the procedures for qualifying purchases of Items for sales tax abatements granted to Toyota Motor Manufacturing, Alabama, Inc. (“TMMAL”) by The Industrial Development Board of the City of Huntsville. It is imperative that these procedures are followed and that all purchases of construction-related materials for the Items are tax exempt:
- (1) Each Supplier or Subcontractor purchasing tangible personal property for the Items must submit to the Alabama Department of Revenue (for purposes of this *subsection (c)*, the “Department”) an application for Sales and Use Tax Certificate of Exemption for an Industrial or Research Enterprise Project. The Department will subsequently issue to the qualified applicant (herein referred to as the “Certificate Holder”) a certificate of exemption (Form STE-2).
 - (2) A prime contractor applying for a Form STE-2 must submit with its application written confirmation from TMMAL that it is authorized to make purchases of tangible personal property to be incorporated into the Items specified on the application.
 - (3) A Supplier or Subcontractor applying for a Form STE-2 must submit with its application written confirmation from TMMAL or the prime contractor that it is authorized to make purchases of tangible personal property to be incorporated into the Items specified on the application.
 - (4) Upon receipt of Form STE-2, the Certificate Holder must copy, complete and provide the certificate to each vendor as documentation for the tax exempt status of the Certificate Holder’s qualifying purchases of tangible personal property. The following information should also be provided by the Certificate Holder on the certificate copy given to the vendor: (i) name and address of the vendor to whom the certificate copy is provided; (ii) date the certificate is provided; and (iii) Certificate Holder’s signature and title.
 - (5) A Certificate Holder regularly making tax exempt purchases may furnish a properly executed certificate to the seller specifying that all tangible personal property subsequently purchased will be for the purpose shown on the certificate and thus be relieved of the burden of executing a separate certificate for each individual tax-exempt purchase as long as the tangible personal property qualifies for the abatement.
 - (6) The Certificate Holder must maintain a list of all vendors to whom a copy of the exemption certificate is furnished. The list must be maintained in the Certificate Holder’s records for purposes of inspection by the Department and should contain the name, address and type of business of each vendor to whom the Certificate Holder provided a copy of the certificate.
 - (7) Certificate Holders are responsible for reporting and remitting non-abatable sales and use taxes due on all purchases for which they use the certificate to purchase tangible personal property without the payment of tax to the vendor or supplier.
 - (8) The Certificate Holder must notify the Department immediately upon any change in name or mailing address.
 - (9) The Certificate Holder must return the certificate to the Department after the Items have been placed in service.
 - (10) The certificate of exemption may only be used by the person or entity to which it is issued by the Department.

- (11) Supplier and each Subcontractor must obtain a certificate of exemption before making purchases for the Items and must use the certificate in accordance with the procedures outlined above in order to insure that all purchases of property qualify for the abatement of taxes.
- (e) Supplier acknowledges and agrees that for purposes of these Terms and the Contract Documents, it is providing materials to be included in automobiles which will be sold in interstate commerce.

7.2 *Arizona.*

- (a) **Compliance with Lien Waiver Requirements.** Supplier shall comply, and cause all of its subcontractors and suppliers to comply, in all respects with the lien waiver requirements set forth in Arizona Revised Statutes (A.R.S.) Section 33-981 et seq.
- (b) **Defense of Action on Claim of Lien.** Supplier shall comply in all respects with requirements set forth in A.R.S. 33-995:
- (1) When a lien is recorded or notice given by any person other than Supplier (in its capacity as a contractor), Supplier shall defend any action brought thereon.
 - (2) During pendency of such action Toyota Party may withhold the amount sued for, and if judgment is given upon the lien, Toyota Party may deduct from any amount due or to become due from Toyota Party to Supplier the amount of the judgment and costs.
 - (3) If Toyota Party has settled with Supplier in full, or if such an amount is not owing to Supplier, Toyota Party may recover back from Supplier the amount so paid by Toyota Party, and for which Supplier was the party originally liable.
 - (4) Any contractor, subcontractor or other person who is obligated by statute, contract or agreement to defend, remove, compromise or pay any claim of lien or action and who undertakes such activity has the rights of Toyota Party and beneficial title holder against all persons concerning such activity, as specified in A.R.S. Sections 33-420 and 33-994.

7.3 *British Columbia, Canada.*

- (a) **Supplier Liability to Pay Taxes.** Supplier shall comply in a timely manner with the requirements imposed on Supplier by all applicable taxing statutes, including requirements in respect of registration, payment, collection and remittance of taxes and provision to the applicable taxing authority of such deposits, guarantees or other forms of securities as may be required by law or the administration thereof, including, without limitation, payment of the GST/HST imposed pursuant to the Excise Tax Act (Canada) and any other tax or duty imposed on the Importer of Record, and shall, upon request, provide Toyota Party with written proof of such compliance. Supplier shall indemnify Toyota Party for any amounts assessed against Toyota Party arising from Supplier's failure to so comply.
- (b) **GST/HST.** Where required by law, there shall be added to each amount to be paid by Toyota Party to Supplier hereunder all applicable GST/HST. Supplier shall provide to Toyota Party such documentation as is required by the *Excise Tax Act* (Canada) and prescribed by the *Input Tax Credit Information (GST/HST) Regulations*, any successor or similar provision thereto and as is required in order for Toyota Party to claim an input tax credit, rebate or refund in respect of such tax. Supplier shall cooperate with Toyota Party to file such forms, provide such documents and do all things reasonably necessary at Toyota Party's request to enable Toyota Party to claim any exemption, credit, rebate, remission, refund, reduction or other relief from taxes, customs duty or duties under any applicable legislation or treaty or claim a foreign tax credit.

- (c) **Indemnity Payment.** If an indemnity payment made by Supplier to Toyota Party is subject to GST/HST or is deemed by the *Excise Tax Act* (Canada) to be inclusive of GST/HST, or is subject to any other tax, Supplier shall be liable for and shall pay to Toyota Party, in addition to the indemnity payment, an amount equal to the GST/HST or other tax payable in connection with the indemnity payment and such additional amount, including, without limitation, any interest and penalty imposed thereon.
- (d) **Non-Resident Supplier.** For Canadian projects, Toyota Party shall deduct or withhold from each payment to Supplier all taxes or other withholdings which Toyota Party is required by law or by the administration thereof to deduct or withhold, shall pay the amount withheld or deducted to the relevant governmental authority in accordance with applicable law, and provide to Supplier a copy of the receipt of payment issued by that authority.
- (e) **Builders Lien Act (British Columbia).** In the performance of its obligations under these Terms and the Contract Documents, Supplier shall comply with the provisions of the Builders Lien Act (British Columbia) or any successor legislation, as amended from time to time. Without limiting the generality of the foregoing, in making an application for partial or final payment, the Supplier shall be required to submit to Toyota Party a sworn statement, in a form satisfactory to Toyota Party, that all accounts for labor, subcontractors, products, materials and other indebtedness which may have been incurred by the Supplier in the performance of its obligations under these Terms and the Contract Documents and for which Toyota Party may in any way be held responsible have been paid in full. In addition, the Supplier shall use its best efforts to ensure that no claim of lien shall be filed in respect of any work performed or products or material supplied by the Supplier (collectively, the “Work”) and if a claim of lien shall be filed in respect of the Work, the Supplier shall take all necessary steps to have the claim of lien cancelled and discharged from the place of Work within 15 days of the date that the Supplier receives notice of such lien from Toyota Party, and the Supplier shall indemnify and save harmless Toyota Party from any and all loss, cost, expense, damage, and liability in respect of such claim of lien. Toyota Party in addition to any right or remedy, shall have the right, but shall not be obliged, to discharge any claim of lien from the place of Work by paying the amount claimed to be due or by procuring a discharge of such lien by deposit in the appropriate court, and in any such event Toyota Party shall be entitled, if it so acts, to expedite the prosecution of any action for the enforcement of such claim of lien by the lien claimant and to pay the amount of the judgment, if any, in favor of the lien claimant with interest and costs. In any such event, the Supplier shall forthwith pay to and reimburse Toyota Party for all money expended by Toyota Party and all costs and expenses incurred by Toyota Party.
- (f) **Alternative Dispute Resolution.** Section 5.8 is deleted in its entirety and replaced with the following language:

Subject to either party’s right to seek injunctive relief, in the event of a dispute of any kind arising out of or in any way related to the Contract Documents, the parties shall endeavor in good faith to settle the dispute through negotiation. If the dispute cannot be resolved through negotiation, or another mutually agreeable dispute resolution mechanism, either of the parties has the right to request non-binding mediation. Any such mediation shall be held in Vancouver, British Columbia, Canada, or if the parties agree upon another location, that other location. If mediation fails to resolve the dispute, the parties agree to submit the matter in dispute to binding arbitration. Written notice of the intent to submit a matter to arbitration shall be given by the party requesting the same. The arbitration proceedings shall be conducted in accordance with the National Arbitration Rules of the ADR Institute of Canada, Inc., then in effect, or, if the parties so agree, the relevant rules of another arbitration entity or organization. In any case, regardless of any rules of the selected arbitration organization to the contrary, only one (1) arbitrator shall be used to decide the outcome of the arbitration and shall have ultimate authority to resolve all matters in the arbitration, including, but not limited to, disputes over the enforceability of this arbitration provision or claims of unconscionability. Such arbitration shall be held in Vancouver, British Columbia, Canada, or if the parties agree upon another location, that other location. The prevailing party shall be entitled to an award of reasonable attorneys’ fees. The arbitration shall be governed by the Arbitration Act,

(British Columbia), as may be amended from time to time, and judgment upon the arbitrator's award may be entered in any court having jurisdiction over such matter. Each party agrees that any applicable limitations period, whether arising from contract, statute, or otherwise, will be tolled and suspended beginning when a party provides written notice to the other party, as provided for in these Terms, of a dispute to be resolved under this section or when the parties begin negotiations under this section, whichever is earlier. Tolling and suspension of the limitations period will continue until: (i) the parties resolve the dispute as evidenced by a written settlement agreement or (ii) forty-five (45) calendar days after a binding arbitration decision is rendered, whichever is earlier. Notwithstanding the foregoing, in the absence of a written notice from one party to the other to submit the dispute to either non-binding mediation or binding arbitration (an "ADR Notice"), then either party may provide the other party with written notice that it desires the running of the limitations period to recommence. Such limitations period shall recommence 45 days thereafter, unless within such 45 day period the receiving party delivers an ADR Notice to the other party, in which event the limitations period shall be tolled and suspended as set forth above. If the court sets aside an award, terminates the arbitration or declares the arbitration to be invalid, the period from the commencement of the arbitration to the date of the order shall be excluded from the computation of the time within which an action may be brought on a cause of action that was a claim in the arbitration.

- (g) **Governing Law; Choice of Forum.** Section 5.2 is deleted in its entirety and replaced with the following language:

These Terms and the Contract Documents shall be governed and construed in all respects in accordance with the laws of the Province of British Columbia, and the law of Canada applicable therein, as such applicable laws apply to a contract entered into and performed in British Columbia, Canada and without regard to conflict of law rules or the International Sale of Goods Act. Subject to Section 7.3(f), the parties agree that neither shall commence any litigation against the other except in a court located in the city of Vancouver, British Columbia, Canada. Each party consents to jurisdiction over it by and exclusive venue in such a court.

- (h) **Compliance with Applicable Immigration Laws and Policies.** Supplier acknowledges and agrees that it shall be responsible for complying with the Immigration and Refugee Protection Act of Canada with respect to its employees and independent contractors and its Subcontractor's employees and independent contractors. If Toyota Party becomes aware of any information, which, based upon a reasonable interpretation of such events or information, supports the conclusion that Supplier may be out of compliance with applicable immigration laws, Supplier shall, at the option of Toyota Party: (i) provide written certification that Supplier is in compliance with all applicable immigration laws and/or (ii) upon prior notice, allow for an independent auditor, selected and paid for by Toyota Party, to conduct a full review and/or audit of records relating to the Immigration and Refugee Protection Act of Canada. If the audit discloses one or more failures of Supplier's compliance with the Immigration and Refugee Protection Act of Canada, Supplier agrees to assume responsibility for all cost associated with the audit. Furthermore, such disclosure, or Supplier's failure to otherwise adhere to the terms of this provision may, at Toyota Party's sole discretion, be deemed a material breach and be grounds for immediate termination of the Contract Documents. Supplier agrees to indemnify and hold Toyota Party harmless from and against any and all claims, demands and actions and any liabilities, damages or expenses resulting therefrom, including court costs and reasonable legal fees, arising out of or relating to noncompliance with this provision by Supplier, its permitted Subcontractors, or their respective agents or representatives.
- (i) **Employee Relations Training.** All of Supplier's employees and agents assigned to provide services pursuant to the Contract Documents shall have been trained and be provided on-going training in employee relations, equal opportunity and other employment laws, including, without limitation, the British Columbia Human Rights Code and any corresponding or similar laws.
- (j) **Indemnity.** The indemnity obligations set forth in Section 5.9(b)(2) includes, but is not limited to, any violation or alleged violation of British Columbia's Employment Act, 1996, as amended.

7.4 California.

- (a) **INDEMNIFICATION BY SUPPLIER.** IN ANY AND ALL INSTANCES UNDER THE CONTRACT DOCUMENTS WHERE SUPPLIER IS REQUIRED TO INDEMNIFY OR HOLD TOYOTA PARTY AND/OR OTHER INDEMNITIES HARMLESS, SUCH OBLIGATION OF SUPPLIER SHALL APPLY REGARDLESS OF WHETHER OR NOT THE CLAIM, DAMAGE, LOSS, LIABILITY OR EXPENSE THAT IS THE SUBJECT OF SUCH OBLIGATION IS CAUSED IN PART BY THE NEGLIGENCE OR OTHER ACT OR OMISSION OF TOYOTA PARTY OR ANY OTHER PARTY INDEMNIFIED OR HELD HARMLESS BY SUPPLIER.
- (b) **Environmental Activity and Requirements.** Section 5.9(1)(b) of these Terms is hereby modified to add the following laws to the definition of Environmental Requirements: “Sections 117690, 25115, 25117, 25122.7, 25140, 25249.8(a), 25281, 25316, 25501, 25501.1, 114960 et seq. 39655 or 44321 of the California Health and Safety Code, portions of Chapter 11 of Title 22 of the California Code of Regulations which list or define “Hazardous Waste,” “Extremely Hazardous Waste” or “Acutely Hazardous Waste,” and the California Occupational Safety and Health Act, California Labor Code §§ 6300 et seq.”
- (c) **Retainage.** Toyota Party may withhold any retention amount provided in the Contract Documents for up to 45 days after the date of completion as such term is defined in Section 3260 of the California Civil Code; provided that Toyota Party may continue to withhold 150% of any disputed amount until the dispute is resolved. Toyota Party and Supplier agree that the retainage shall be subject to all other provisions of Section 3260 of the California Civil Code.
- (d) **Lien Waivers.** Section 2.3(b) of these Terms is hereby modified to require that the forms of waiver of mechanic’s lien identified therein shall be substantially consistent with the applicable forms set forth in Section 3262(d)(1)-(4) of the California Civil Code.
- (e) **Confidential Information.** The obligation of Supplier and each of its directors, officers, employees, representatives, independent contractors, Subcontractors, agents and suppliers to maintain the secrecy of the trade secrets that constitute Confidential Information shall survive for so long as such trade secret remain protectable under California law.
- (f) **1542 Waiver.** With respect to Supplier’s waivers pursuant to Section 2.3(b) of these Terms, Supplier expressly waives and relinquishes all rights and benefits pursuant to Section 1542 of the California Civil Code, and does so understanding and acknowledging the significance and consequence of such specific waiver of Section 1542 that reads: “Section 1542. [CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE.] A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”
- (g) **Equal Opportunity.** The following shall be applicable to these Terms. “Supplier shall have a policy to ensure equal opportunity without regard to race, color, national origin, sex, religion, handicap, marital status, gender, ancestry, medical condition, sexual orientation or status as a disabled or Vietnam veteran, and shall cause its Subcontractors to have a substantially similar policy.”

7.5 Indiana.

- (a) **Tax Abatement Requirements.** Supplier shall comply with all state and local requirements necessary to ensure any qualifying purchases are exempt from sales tax under any tax abatement programs granted by state or local governmental entities.

- (b) **Liens.** Supplier agrees to indemnify and save Toyota Party harmless from all liability, costs and expenses, including all attorneys' fees, to: (1) discharge (by bond or otherwise) or to defend any lawsuit brought to enforce any mechanic's or materialmen's lien, rights or claims to a lien, bond claims, personal liability notices pursuant to Indiana Code § 32-28-3-9, or any other claim for payment relating to labor and/or materials covered by the Payment and all prior payments; and/or (2) satisfy any claims or demands arising out of, due or which may be made, directly or indirectly attributable to the Supplier or any work performed or supplies furnished by or through the Supplier.
- (c) **Governing Law.** The *Governing Law; Choice of Forum* provision contained in section 5.8 of the Terms shall control except the rights and obligations of the parties that relate to and arise from a contract for the improvement of real estate located in the State of Indiana. If the rights and obligations of the parties under these Terms relate to and arise from a contract for the improvement of real estate located in the State of Indiana, then (1) the rights and obligations of the parties shall be governed by the laws of the State of Indiana; and (2) any action or proceeding relating to the rights and obligations of the parties shall be brought in any court with jurisdiction located in the State of Indiana.

7.6 **Kentucky.** Supplier expressly waives the application of KRS § 371.160 to any retainage withheld by Toyota Party under the Contract Documents.

7.7 **Mexico.**

- (a) **Arbitration.** All disputes arising out of or in connection with these Terms or the Contract Documents shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (the "Rules") by one or more arbitrators appointed in accordance with the Rules and the arbitrators shall have ultimate authority to resolve all matters in the arbitration, including, but not limited to, disputes over the enforceability of this arbitration provision or claims of unconscionability. The arbitration, including the rendering of the arbitral award, will take place in Mexico City, Mexico and the arbitration shall be conducted in English. The prevailing party shall be entitled to an award of attorney's fees.
- (b) **Additional Representations and Warranties of Supplier.** The following are special representations and warranties that are made: (i) by any Supplier who is duly organized and in operation pursuant to the laws of Mexico and (ii) by any other Supplier who is qualified to do business in Mexico and whose performance under any of the Contract Documents will be performed in Mexico. These representations and warranties shall be continuing and shall be updated in writing by Supplier from time to time as needed to remain accurate and in full force and effect, or as requested by Toyota Party.
 - (1) Supplier is a Mexican company, duly organized and in operation pursuant to the laws of Mexico, as set forth in a duly recorded public instrument which has been duly registered with the appropriate Public Registry of Property and Commerce (the "Public Instrument"). An authenticated copy of the Public Instrument has been furnished to Toyota Party, as recorded. Supplier has granted ample powers and authority to enter into the Contract Documents, powers that have not been amended, restricted or revoked as of the Effective Date of the Contract Documents, as set forth in the Public Instrument.
 - (2) The acceptance by performance (or otherwise) of the Contract Documents by Supplier is within Supplier's corporate purpose.
 - (3) Supplier will take all necessary steps to maintain sufficient economic resources and capital to comply with all of its labor obligations with its employees, including, but not limited to, fringe benefits and any other applicable legal benefits ("Employee Obligations"). Supplier will also take the necessary steps in order to be certain that any Subcontractor or other parties (as approved by Toyota Party), which perform with or on behalf of Supplier under the Contract Documents also complies with all of its Employee Obligations.

7.8 Michigan.

- (a) **Compliance with the Construction Lien Act.** Supplier shall comply and cause all of its subcontractors and material suppliers to comply in all respects with the Michigan Construction Lien Act, MCL 570.1101 *et. seq.* (the “Act”) when performing Installation Activities on the premises of Toyota Party. Supplier’s failure to comply with the Act will result in Toyota Party having the right to make payments of any claims directly to any subcontractor or materialmen. Supplier shall comply with the following and include a provision in each of its subcontracts incorporating this provision and requiring compliance with the Michigan Construction Lien Act, which apply to the subcontractor or materialmen.
- (b) **Michigan Builders Trust Fund Act.** Supplier shall receive each payment from Toyota Party to be held in trust in accordance with the terms and conditions of the Michigan Builders Trust Fund Act, MCL 570.151 *et. seq.* (the “Trust Fund Act”) and make all disbursements to subcontractors and materialmen as required to comply with the Trust Fund Act. Upon Supplier’s failure to comply with the Trust Fund Act, Toyota Party shall have the right to make payments of any claims directly to any subcontractor or materialmen.
- (c) **Bond.** If a construction lien is filed or is attempted to be filed in connection with the Project or on Toyota Party's property, Supplier shall, at the option and election of Toyota Party, furnish a bond to remove the construction lien from Toyota Party's property in accordance with the requirements of MCL 570.1116 within 15 days of Toyota Party's written request. Supplier shall pay all costs and expenses to bond off the construction lien in accordance with such statute.
- (d) **Indemnification by Supplier.** In any and all instances under the Contract Documents where Supplier is required to indemnify, defend or hold Toyota Party harmless, including, such obligation by Supplier shall apply regardless of whether or not the claim, damage, loss, liability or expense that is the subject of such obligation is caused in part by the negligence or other act or omission of Toyota Party or any other party indemnified or held harmless by Supplier, but shall not extend to that which is caused by the sole negligence of the party otherwise entitled to indemnity.

7.9 Mississippi.

- (a) **Supplier Licensing Requirements.** Supplier shall comply with the requirements of *Miss. Code Ann. 31-3-1, et seq.*, if and to the extent that such statutory provisions are applicable to Supplier’s performance of the Installation Activities.
- (b) **Subcontractor Compliance.** Supplier shall ensure that all of its Subcontractors secure and maintain all registrations and licenses required by the authorities having jurisdiction over the Installation Activities, including, without limitation, a current certificate of responsibility issued by the Mississippi State Board of Contractors to the extent required for the particular Subcontractor.
- (c) **Stop Payment Notices.** In the event Supplier receives a Stop Payment Notice pursuant to *Miss. Code Ann. § 85-7-181*, Supplier shall take any and all necessary steps to secure the release of the Stop Payment Notice within 5 business days. In the event Supplier fails to do so, Toyota Party may take whatever action it deems necessary or appropriate to secure the release of the Stop Payment Notice, including, without limitation, payment of the amount claimed to be due. Toyota Party shall be entitled to deduct from the amounts due to Supplier under the Contract Documents any and all costs and expense incurred in securing the release of the Stop Payment Notice, including, without limitation, the amount paid to secure such release and attorneys fees and expenses incurred in the process.
- (d) **Payment to Subcontractors.** Supplier shall comply with *Miss. Code Ann. § 87-7-5* in making payments to its Subcontractors and suppliers with respect to the Installation Activities.

- (e) **Indemnification by Supplier.** In any and all instances under the Contract Documents where Supplier is required to indemnify or hold Toyota Party and/or other indemnitees harmless, Supplier shall have no obligation to indemnify or hold harmless any person from that person's own negligence to the extent that *Miss. Code Ann. § 31-5-41* is applicable and would render such an obligation void and unenforceable.

7.10 *Missouri.* None.

7.11 *Ontario, Canada.*

- (a) **Supplier Liability to Pay Taxes.** Supplier shall comply in a timely manner with the requirements imposed on Supplier by all applicable taxing statutes, including requirements in respect of registration, payment, collection and remittance of taxes and provision to the applicable taxing authority of such deposits, guarantees or other forms of securities as may be required by law or the administration thereof, including, without limitation, payment of the GST/HST imposed pursuant to the *Excise Tax Act* (Canada) and any other tax or duty imposed on the Importer of Record, and shall, upon request, provide Toyota Party with written proof of such compliance. Supplier shall indemnify Toyota Party for any amounts assessed against Toyota Party arising from Supplier's failure to so comply.
- (b) **GST/HST.** Where required by law, there shall be added to each amount to be paid by Toyota Party to Supplier hereunder all applicable GST/HST or any similar tax. Supplier shall provide to Toyota Party such documentation as is required by the *Excise Tax Act* (Canada) and prescribed by the *Input Tax Credit Information (GST/HST) Regulations*, any successor or similar provision thereto and as is required in order for Toyota Party to claim an input tax credit, rebate or refund in respect of such tax. Supplier shall cooperate with Toyota Party to file such forms, provide such documents and do all things reasonably necessary at Toyota Party's request to enable Toyota Party to claim any exemption, credit, rebate, remission, refund, reduction or other relief from taxes, customs duty or duties under any applicable legislation or treaty or claim a foreign tax credit.
- (c) **Indemnity Payment.** If an indemnity payment made by Supplier to Toyota Party is subject to GST/HST or is deemed by the *Excise Tax Act* (Canada) to be inclusive of GST/HST, or is subject to any other tax, Supplier shall be liable and shall pay to Toyota Party, in addition to the indemnity payment, an amount equal to the GST/HST or other tax payable in connection with the indemnity payment and such additional amount, including, without limitation, any interest and penalty imposed thereon.
- (d) **Non-Resident Supplier.** For Canadian projects, Toyota Party shall deduct or withhold from each payment to Supplier all taxes and other withholdings which Toyota Party is required by law or by the administration thereof to deduct or withhold, shall pay the amount withheld or deducted to the relevant governmental authority in accordance with applicable law, and provide to Supplier a copy of the receipt of payment issued by that authority.
- (e) **Construction Lien Act (Ontario).** The requirements for lien waivers are subject to applicable lien legislation to the location of the Work. Where lien waivers are not permitted, the Supplier shall be required, in making an application for partial and final payment, to provide statutory declarations declaring that payment has been made in full to the Supplier's Subcontractors in a form satisfactory to Toyota Party.
- (f) **Alternative Dispute Resolution.** Section 5.8 is deleted in its entirety and replaced with the following:

Subject to either party's right to seek injunctive relief, in the event of a dispute of any kind arising out of or in any way related to the Contract Documents, the parties shall endeavor in good faith to settle the dispute through negotiation. If the dispute cannot be resolved through negotiation, or another mutually agreeable dispute resolution mechanism, either of the parties has the right to

request non-binding mediation. Any such mediation shall be held in Toronto, Ontario, Canada, or if the parties agree upon another location, that other location. If mediation fails to resolve the dispute, the parties agree to submit the matter in dispute to binding arbitration. Written notice of the intent to submit a matter to arbitration shall be given by the party requesting the same. The arbitration proceedings shall be conducted in accordance with the National Arbitration Rules of the ADR Institute of Canada, Inc., then in effect, or, if the parties so agree, the relevant rules of another arbitration entity or organization. In any case, regardless of any rules of the selected arbitration organization to the contrary, only one (1) arbitrator shall be used to decide the outcome of the arbitration and shall have ultimate authority to resolve all matters in the arbitration, including, but not limited to, disputes over the enforceability of this arbitration provision or claims of unconscionability. Such arbitration shall be held in Toronto, Ontario, Canada, or if the parties agree upon another location, that other location. The prevailing party shall be entitled to an award of reasonable attorneys' fees. The arbitration shall be governed by the Arbitration Act, 1991 (Ontario), as may be amended from time to time, and judgment upon the arbitrator's award may be entered in any court having jurisdiction over such matter. Each party agrees that any applicable limitations period, whether arising from contract, statute, or otherwise, will be tolled and suspended beginning when a party provides written notice to the other party, as provided for in these Terms, of a dispute to be resolved under this section or when the parties begin negotiations under this section, whichever is earlier. Tolling and suspension of the limitations period will continue until: (i) the parties resolve the dispute as evidenced by a written settlement agreement or (ii) 45 calendar days after a binding arbitration decision is rendered, whichever is earlier. Notwithstanding the foregoing, in the absence of a written notice from one party to the other to submit the dispute to either non-binding mediation or binding arbitration (an "ADR Notice"), then either party may provide the other party with written notice that it desires the running of the limitations period to recommence. Such limitations period shall recommence 45 days thereafter, unless within such 45 day period the receiving party delivers an ADR Notice to the other party, in which event the limitations period shall be tolled and suspended as set forth above.

- (g) **Governing Law; Choice of Forum.** Section 5.8 is deleted in its entirety and replaced with the following:

These Terms and the Contract Documents shall be governed and construed in all respects in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein (collectively, the "Applicable Laws"), as such Applicable Laws apply to a contract entered into and performed in Ontario, Canada and without regard to conflict of law rules or the International Sale of Goods Act. Subject to Section 7.11(g), the parties agree that neither shall commence any litigation against the other except in a court located in the city of Toronto, Ontario, Canada. Each party consents to jurisdiction over it by and exclusive venue in such a court.

- (h) **Compliance with Applicable Immigration Laws and Policies.** Supplier acknowledges and agrees that it shall be responsible for complying with the *Immigration and Refugee Protection Act of Canada* with respect to its employees and independent contractors and its Subcontractors' employees and independent contractors. If Toyota Party becomes aware of any information, which, based upon a reasonable interpretation of such events or information, supports the conclusion that Supplier may be out of compliance with applicable immigration laws, Supplier shall, at the option of Toyota Party: (i) provide written certification that Supplier is in compliance with all applicable immigration laws and/or (ii) upon prior notice, allow for an independent auditor, selected and paid for by Toyota Party, to conduct a full review and/or audit of records relating to the *Immigration and Refugee Protection Act of Canada*. If the audit discloses one or more failures of Supplier's compliance with the *Immigration and Refugee Protection Act of Canada*, Supplier agrees to assume responsibility for all cost associated with the audit. Furthermore, such disclosure, or Supplier's failure to otherwise adhere to the terms of this provision may, at Toyota Party's sole discretion, be deemed a material breach and be grounds for immediate termination of the Contract Documents. Supplier agrees to indemnify and hold Toyota Party harmless from and against any and all claims, demands and actions and any liabilities, damages or expenses resulting therefrom, including court

costs and reasonable legal fees, arising out of or relating to noncompliance with this provision by Supplier, its permitted Subcontractors, or their respective agents or representatives.

- (i) **Employee Relations Training.** All of Supplier's employees and agents assigned to provide services pursuant to the Contract Documents shall have been trained and be provided on-going training in employee relations, equal opportunity and other employment laws, including, without limitation, the *Ontario Human Rights Code* and any corresponding or similar laws.
- (j) **Indemnity.** The indemnity obligations set forth in Section 5.9(b)(2) includes, but is not limited to, any violation or alleged violation of British Columbia's Employment Act, 1996, as amended.

7.12 *Tennessee.*

- (a) **Tax Abatement Requirements.** Supplier shall comply with all state and local requirements necessary to ensure any qualifying purchases are exempt from sales tax under any tax abatement programs granted by state or local government entities.
- (b) **Indemnification by Supplier.** In any and all instances under the Contract Documents where Supplier is required to indemnify or hold Toyota Party and/or other indemnitees harmless, Supplier shall have no obligation to indemnify or hold harmless any person from that person's own negligence to the extent that *T.C.A. § 62-6-123* is applicable and would render such an obligation void and unenforceable.
- (c) **Retainage.** Sums otherwise payable to Supplier in connection with the Items shall be subject to five percent (5%) retainage pursuant to *T.C.A. 66-34-103*. Such sums shall be retained by Toyota Party during the progress of the Supplier's Performance and for 90 days after the earlier to occur of (i) the completion of Supplier's Performance or (ii) substantial completion of the project for work completed. The foregoing retainage shall be withheld under each application for payment, against both the original contract sum and against change order amounts increasing the contract sum. Retained amounts shall be deposited in a separate interest bearing escrow account with a third party pursuant to *T.C.A. 66-34-104*.
- (d) **Payments to Subcontractors.** Supplier shall pay all money properly due and unpaid to subcontractors, laborers, suppliers, and materialmen, within 10 days after receipt of payment from Toyota Party.
- (e) **Bond.** In the event any mechanics' and materialmen's lien is filed or is attempted to be filed in connection with any labor or material furnished to Toyota Party or its property, Supplier shall, at the option and election of Toyota Party, furnish a bond to remove the mechanics' and materialmen's lien from the Toyota Party's property in accordance with the *T.C.A. 66-11-142* within 10 days of Toyota Party's written request. Supplier shall pay all costs and expenses to bond off the mechanics' and materialmen's lien in accordance with such statute and Supplier agrees to reimburse Toyota Party for all monies paid by Toyota Party in the releasing, satisfying and discharging such liens, including reasonable attorneys' fees and court costs. Supplier agrees to indemnify and save Toyota Party harmless from all liability, cost and expense, including all attorneys' fees, to: (1) discharge (by bond or otherwise) or to defend any lawsuit brought to enforce any mechanic's or materialmen's lien, rights or claims to a lien, bond claims, or any other claim for payment relating to labor and/or materials covered by the Payment and all prior payments; and/or (2) satisfy any claims or demands arising out of, due or which may be made, directly or indirectly attributable to the Supplier or any work performed or supplies furnished by or through the Supplier.
- (f) **Notice of Completion.** Supplier shall, at the option and election of Toyota Party, assist and/or join Toyota Party in preparing and filing a Notice of Completion in compliance with *T.C.A. 66-11-143*.

7.13 Texas.

- (a) **INDEMNIFICATION BY SUPPLIER.** THESE CONTRACT DOCUMENTS CONTAIN SPECIFIC PROVISIONS AND OBLIGATIONS OF INDEMNITY, WHICH ARE SET FORTH IN MULTIPLE SECTIONS. IN ANY AND ALL INSTANCES UNDER THE CONTRACT DOCUMENTS WHERE SUPPLIER IS REQUIRED TO INDEMNIFY OR HOLD TOYOTA PARTY AND/OR OTHER INDEMNITEES HARMLESS, SUCH OBLIGATION BY SUPPLIER SHALL APPLY REGARDLESS OF WHETHER OR NOT THE CLAIM, DAMAGE, LOSS, LIABILITY OR EXPENSE THAT IS THE SUBJECT OF SUCH OBLIGATION IS CAUSED IN PART BY THE NEGLIGENCE OR OTHER ACT OR OMISSION OF TOYOTA PARTY OR ANY OTHER PARTY INDEMNIFIED OR HELD HARMLESS BY SUPPLIER.
- (b) **Supplier's Payment Bond.** If the Contract Documents require that Supplier furnish a payment bond (or if Toyota Party otherwise requires that Supplier furnish a payment bond), Supplier shall, at the option and election of Toyota Party, furnish such bond in the form contemplated by Subchapter I of Chapter 53 of the Texas Property Code. In such event, Supplier shall be responsible for complying with and satisfying the provisions of Section 53.202 and 53.203 of the Texas Property Code.
- (c) **Supplier's Indemnity Bond.** In the event any mechanic's or materialmen's lien is filed or attempted to be filed against the Items or Toyota Party's property, Supplier shall, at the option and election of Toyota Party furnish a bond to indemnify against liens in the form contemplated by Subchapter H of Chapter 53 of the Texas Property Code. In such event, Supplier shall be responsible for complying with and satisfying the provisions of Sections 53.172, 53.173 and 53.174 of the Texas Property Code.
- (d) **Retainage.** Sums otherwise payable to Supplier in connection with the Items shall be subject to ten percent (10%) retainage pursuant to Section 53.101 of the Texas Property Code. Such sums shall be retained by Toyota Party during the progress of the Supplier's Performance and for 30 days after the Supplier's Performance is completed. The foregoing retainage shall be withheld under each application for payment, against both the original contract sum and against change order amounts increasing the contract sum.
- (e) **Waivers of Lien.** Partial or progress waivers of lien executed by Supplier or any Subcontractors during the Supplier's Performance on the Items required by the Contract Documents shall not be required to release claims to statutory retainage under Section 53.101 of the Texas Property Code until such retainage is actually due and paid or payable. The forms of the waivers shall be required by Toyota Party.
- (f) **Affidavit of Commencement/Affidavit of Completion.** Supplier shall, at the option and election of Toyota Party, assist (and to the extent required, join) Toyota Party in preparing and filing an Affidavit of Commencement as defined under Section 53.124 of the Texas Property Code and/or an Affidavit of Completion under Section 53.106 of the Texas Property Code.
- (g) **Toyota Party's Right to Apply Monies.** In the event a Subcontractor of Supplier notifies Toyota Party of non-payment by Supplier and attempts to assert a claim against Toyota Party, Toyota Party shall have the right to withhold from payment to Supplier the amount so claimed and make payment thereof by joint check or directly to such Subcontractor if the claim is not disputed by Supplier as required by Section 53.083 of the Texas Property Code.
- (h) **Acceleration.** Toyota Party shall have the right to direct that Supplier's Performance be accelerated by means of overtime, additional crews, additional shifts or re-sequencing notwithstanding that Supplier's Performance is progressing without delay in accordance with the established schedule. Supplier agrees to perform in such manner on the basis of the reimbursement of direct cost (i.e., premium portion of overtime pay, additional crew, shift or equipment cost and such other items of

cost requested in advance by Supplier and approved by Toyota Party, which approval will not be unreasonably withheld) plus a fee in an amount and at a rate otherwise applicable to changes in Supplier's Performance under the Contract Documents. Supplier expressly waives any other compensation therefore unless otherwise agreed to by Toyota Party in writing in advance of performing the accelerated work. In the event of any acceleration requested pursuant to this section, Supplier shall provide promptly a plan setting forth its recommendations for the most effective and economical means of accomplishing such acceleration, which shall be subject to the review and approval of Toyota Party.

(i) Sales Tax.

- (1) Notwithstanding any provision in these Terms or the Contract Documents to the contrary, these Terms and the Contract Documents are intended to be treated as a "separated contract" for Texas sales and use tax purposes pursuant to Title 34, Section 3.291(a)(13) of the Texas Administrative Code (a "Separated Contract"). Pursuant thereto, the Contract Sum shall be divided into a separately stated agreed contract price for incorporated materials and a separately stated agreed contract price for skill and labor. Incorporated materials are tangible personal property that becomes a part of the real property plus any additional charges directly attributable to the incorporated materials. Each contract entered into by Supplier with a Subcontractor that provides skill and labor in addition to materials will be structured as a Separated Contract. Under a Separated Contract, the incorporated materials are treated as sold by the Subcontractors to the Supplier and by the Supplier to Toyota Party.
- (2) The Supplier and each Subcontractor will acquire its materials to be incorporated into the real property by preparing and issuing its own Texas Resale certificate and delivering that certificate to its suppliers. The supplier will also prepare and issue its Texas Resale certificate to each Subcontractor. The Supplier and each Subcontractor shall be treated as buying and not reselling, and the Contract Sum includes sales and use tax on those unincorporated materials, suppliers, tools and equipment consumed or used by Supplier or its Subcontractors to perform the Work and includes sales and use tax on rental charges for equipment used by the Supplier and its Subcontractors. If Supplier pays sales or use taxes in violation of this section (i), then Toyota Party shall not be obligated to reimburse Supplier for such tax.
- (3) Toyota Party will obtain a direct payment permit for the payment of any sales or use tax in the State of Texas and will issue a "Texas Direct Payment Sales Tax Permit" to Supplier and Supplier will not collect any state or local sales or use tax in the State of Texas from Toyota Party. Supplier will provide Toyota Party with sufficient information and backup material to enable Toyota Party to properly determine its sales and use tax liability. In the event that Toyota Party decides to appeal any assessment, then Supplier will cooperate with and allow Toyota Party to appeal such assessment and will provide Toyota Party with such documents or materials as may be required in relation thereof and, if necessary, to allow Toyota Party to appeal the assessment in the name of Supplier. All costs of such appeal shall be borne by Toyota Party.
- (4) Each application for payment shall state separate amounts for incorporated materials and skill and labor. The material amounts shown on each application shall not include any mark up. Allowed overhead and profit shall be included in the overhead and profit column of the application for payment. Each of such applications for payments is hereby incorporated into the Contract Documents by reference.
- (5) Change orders including, without limitation, incorporated materials, will be separated for Texas Sales and use Tax Purposes, in accordance with section (i).

(j) Precedence. The foregoing provisions of this section shall have priority and take precedence over any other conflicting or inconsistent provision of the Contract Documents.

- (k) **Indemnity.** The indemnity set out in Section 5.9(b)(2) includes, but is not limited to, any violation or an alleged violation of Ontario's Employment Standards Act, 2000, as the same may be amended.

7.14 West Virginia.

- (a) **Payment Bond for Wages.** Supplier shall at all times post and maintain any payment bond for wages required by the West Virginia Payment and Collection Act (W.Va. Code § 21-5-1, et seq.) and shall furnish Toyota Party with evidence of same or any documentation of any waiver of the bond requirement from the West Virginia Commissioner of Labor pursuant to W. Va. Code § 21-5-14(b), upon request.
- (b) **Withholding from Final Payment.** Notwithstanding anything herein to the contrary, Toyota Party shall, if required by W.Va. Code § 11-10-11(b)(1) and (2), withhold 6 percent of the Contract Sum from Supplier at the time of final payment until receipt of a tax certificate as required by law.
- (c) **Worker's Compensation Insurance Coverage.** Prior to commencing work, Supplier shall furnish to Toyota Party proof of workers' compensation insurance coverage from an insurance company authorized to sell workers' compensation insurance by the West Virginia Office of the Insurance Commissioner for itself and for all Subcontractors. Following commencement of the Work, Supplier shall furnish, and shall cause its Subcontractors to furnish, quarterly updates confirming such continued workers' compensation insurance coverage.
- (d) **Supplier Licensing Requirements.** Supplier shall comply with the requirements of *W.Va. Code 21-11-6 et seq.*, if and to the extent that such statutory provisions are applicable to Supplier's performance of the Installation Activities.

SUPPLIER ACKNOWLEDGES AND AGREES THAT ITS PERFORMANCE IS MADE SUBJECT TO THE CONTRACT DOCUMENTS, ALL OF WHICH ARE HEREBY INCORPORATED BY REFERENCE, NOTWITHSTANDING THAT SOME OF THE TERMS AND PROVISIONS ARE CONTAINED IN DOCUMENTS WHICH ARE NOT ATTACHED TO THESE TERMS.