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## APPENDIX B

### STANDARD TERMS AND CONDITIONS OF PURCHASE OF GOODS AND SERVICES

In these standard terms and conditions (“**Standard Terms**”):

“**Goods**” means goods ordered by the Purchaser from the Supplier under a Purchase Order;

“**Project Schedule**” means the schedule of delivery of the Works under a Purchase Order;

“**Purchase Order**” means an order for Goods or Services placed by the Purchaser in accordance with these Standards Terms;

“**Purchaser**” means Gradient Corporation or any of its related bodies corporate;

“**Services**” means any services to be provided by the Supplier under a Purchase Order;

“**Special Terms and Conditions**” means, if any, written terms and conditions annexed in Appendix A to a Purchase Order that are:

- (a) different from or additional to the terms and conditions set forth in these Standard Terms, and
- (b) specially negotiated by the parties in reference to a Purchase Order;

“**Supplier**” means the party on which a Purchase Order is placed;

“**Technical Specifications**” means the technical specifications, if any, of the Works annexed in Appendix C to a Purchase Order;

“**Works**” means collectively the supply of all labour, materials and performance of all tasks necessary to produce all of the deliverables specified in the Contract.

#### 1. FORM AND CONTENT OF THE CONTRACT

1.1. The contract (hereinafter the “**Contract**”) that shall govern the supply of Goods and Services by the Supplier to the benefit of the Purchaser shall consist of the documents quoted in decreasing order of priority as follows:

1.1.1. Purchase Order;

1.1.2. Special Terms and Conditions (Appendix A of the Purchase Order);

1.1.3. these Standard Terms;

1.1.4. the Technical Specifications (Appendix C of the Purchase Order).

1.2. Any start of performance of the Contract and especially the fact of proceeding to the design, manufacture, delivery, invoice or supply of Goods and/or Services, shall be deemed to constitute the definitive acceptance of the terms and conditions of all of the documents of the Contract.

1.3. All documents other than those covered in Clause 1.1 shall not be applicable between the parties to the Contract, unless otherwise stated in the Purchase Order.

#### 2. APPLICATION OF TERMS AND ORDERS

2.1. In consideration of the Purchaser placing a Purchase Order, the Supplier agrees to the Standard Terms, Special Terms and Conditions (if any) and Technical Specifications, which collectively apply to, and are incorporated the Purchase Order to the exclusion of any other terms and conditions contained in any quotation, conditions of sale, letter or any other document of the Supplier, unless otherwise expressly agreed in writing by the parties.

2.2. Without prejudice to Clause 1.2, the Supplier must within seven (7) days of issuance of a Purchase Order:

2.2.1. notify the Purchaser of its acceptance of the Purchase Order; or

2.2.2. notify the Purchaser of its refusal to accept the Purchase Order because it is unable to satisfy any of the terms of the Purchase Order (including by specifying which terms it is unable to satisfy and, where appropriate, alternative terms which it would be able to satisfy).

2.3. Without prejudice to Clause 1.2, if the Supplier fails to notify the Purchaser in accordance with Clause 2.2, the Purchase Order is deemed to be accepted by the Supplier on these Standard Terms, Special Terms and Conditions (if any) and Technical Specifications.

2.4. The Supplier must supply Goods or Services in accordance with the terms of the Contract.

2.5. Subject to the Purchaser bearing any reasonable cost increase, the Purchaser may revise a Purchase Order, including changing the delivery point or deferring the delivery date, by notice to the Supplier before the delivery date specified in the Purchase Order.

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2.6. The Purchaser may cancel a Purchase Order by at least five (5) business days' notice to a Supplier before the delivery date specified in the Purchase Order.

2.7. Capitalized terms used herein without definition shall have the meanings assigned to them in the Purchase Order.

**3. MODIFICATIONS**

3.1. The Supplier shall accept any modification that the Purchaser may legitimately require of it as regards the subject of the Purchase Order, the Technical Specifications, or deadlines for performance. The related price may be adjusted in order to take into account the said modification, based on the rates and prices indicated in the Contract or, if these are not applicable, on the basis of what is fair and reasonable.

3.2. Any modification to the Contract shall only be binding upon the parties if the said modification has been formalized through a written amendment to the Contract.

A delivery docket quoting the Purchase Order number and any other information reasonably required by the Purchaser must accompany each delivery of Goods. The Purchaser may refuse to accept delivery of Goods without a delivery docket.

**4. TIME**

4.1. Where time for delivery or other action is specified in the Contract, time is of the essence in relation to the Supplier's obligations.

4.2. If the Supplier does not deliver Goods or Services on time in accordance with the Contract, the Purchaser may cancel the Purchase Order in whole or in part. The Purchaser is entitled to exercise its rights under this Clause 4.2 notwithstanding that it has acquiesced in any delay, unless a written extension of time has been granted to the Supplier by the Purchaser prior to the delivery date specified in a Purchase Order.

4.3. The Supplier must notify the Purchaser as soon as it becomes aware that Goods or Services may not be delivered by the time specified in a Purchase Order and must use its best endeavours to provide the Purchaser with an alternative acceptable to the Purchaser. A notice under this Clause does not relieve the Supplier of its obligations or affect the Purchaser's rights under the Contract.

4.4. The Works shall be performed in accordance with the Project Schedule as set forth in the Purchase Order.

4.5. The Supplier shall strictly adhere to the Project Schedule and perform the Works with due diligence as set forth in the Purchase Order; in particular the Supplier shall:

4.5.1. commence the Works on the Commencement Date; and

4.5.2. deliver the Goods no later than by the Scheduled Delivery Date of Goods; and

4.5.3. perform the Services no later than by the Scheduled Performance Date of Goods or Services.

**5. PRICE AND PAYMENT**

5.1. In consideration of the Works performed by the Supplier under the Purchase Order, the Purchaser shall pay a lump sum amount for the Goods and Services as described in the Purchase Order (the "**PO Price**").

5.2. Unless otherwise notified in writing by the Purchaser, all prices specified in a Purchase Order are fixed and in United States Dollars.

5.3. The PO Price shall be paid in accordance with the Purchase Order Milestones as set forth in the Purchase Order (the "**Purchase Order Milestones**").

5.4. The Purchaser is not responsible for the cost of any delivery charges, excises, duties, labelling, cases, crates or other packaging materials unless this is specified in a Purchase Order or agreed in writing by the Purchaser.

5.5. All invoices for Goods or Services must bear the Purchase Order number. Unless otherwise specified in a Purchase Order, the Purchaser must approve or reject the invoice within fifteen (15) days of submission and pay the Supplier's undisputed invoice within forty-five (45) days from approval of the invoice by the Purchaser.

5.6. The Purchaser is entitled to set off from any amount owed by the Purchaser to the Supplier any amount the Supplier owes the Purchaser, whether under the Contract or otherwise.

5.7. The Purchaser may withhold disputed payments for Goods or Services supplied that it disputes in good faith until the dispute has been resolved. The Purchaser must notify the Supplier if it intends to rely on this Clause.

**6. DELIVERY**

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- 6.1. Delivery of Goods will be made to the Purchaser's premises or such other delivery location specified in a Purchase Order.
- 6.2. The Supplier is responsible for any extra costs involved in delivery if the Supplier's failure to comply with the Contract requires Goods to be sent by a more expeditious method than is usual.
- 6.3. Delivery of Goods is deemed to have occurred only when Goods have been unloaded at the delivery location and the delivery has been accepted by the Purchaser in accordance with the delivery terms specified in a Purchase Order.
- 6.4. Performance of Services is deemed to have occurred only when a duly authorised representative of the Purchaser has approved the Services in writing.
- 6.5. A delivery docket quoting the Purchase Order number and any other information reasonably required by the Purchaser must accompany each delivery of Goods. The Purchaser may refuse to accept delivery of Goods without a delivery docket.

**7. PACKAGING AND SHIPPING**

- 7.1. The Purchaser is only responsible for returning cases or other durable packaging to the Supplier if this is specified in a Purchase Order. Such cases or packaging must be clearly marked 'returnable' by the Supplier and display the Supplier's name and return delivery address. All costs incurred by the Purchaser in the returning the cases and packaging must be borne by the Supplier. If the Supplier does not comply with the requirements of this Clause 7.1, the Purchaser is not responsible for the return of the cases or packaging.
- 7.2. The Supplier must ensure that all Goods are secured and packed in a manner that protects them against damage and deterioration during transportation to the delivery location.
- 7.3. For Goods that involve shipping activities, at all times and irrespective of the agreed INCOTERMS, Supplier shall mark, pack and/or crate the Goods worthy for sea or air transportation as the case may be in accordance with the delivery mode stated in the Purchase Order.
- 7.4. Supplier shall be held liable for any loss and damage (including scratches) to the Goods which are due to improper or insufficient packing and/or crating.

- 7.5. Unless otherwise stated in a Purchase Order, the packing and/or crating costs are deemed to be included in the Purchase Order.
- 7.6. Supplier shall ensure Purchase Order number, description of Goods, packing details such as weight, volume and quantity are all clearly indicated in the shipping documents.

**8. TITLE AND RISK**

- 8.1. Title and risk in Goods shall pass to the Purchaser on delivery in accordance with Clause 6.3, the Purchaser accepts no responsibility for any Goods that are not delivered in accordance with that Clause.
- 8.2. The Supplier is responsible for all transport and unloading costs and must insure Goods to their full insurable value and with a reputable insurer, against all risks of damage or loss prior to delivery in accordance with Clause 6.3. Goods must be delivered free of any encumbrances.

**9. PRE-DELIVERY INSPECTION AND TESTING**

- 9.1. The Purchaser, who may be accompanied by any person appointed thereby, may at any time during normal working hours make any inspection visit that it considers necessary to the premises where the Goods and/or Services are to be performed, to monitor or inspect the performance by the Supplier of its contractual obligations.
- 9.2. The Supplier shall promptly remedy any defects notified relating to the Goods and/or Services during the abovementioned visits as well as any defect notified to it by the Purchaser concerning its performance.
- 9.3. The Supplier shall inform the Purchaser in writing, with a minimum of seven (7) calendar days' notice, of the date on which testing is to be performed. The Purchaser and any person appointed by it shall have the right to be present during the tests. The Supplier shall provide the Purchaser with official reports of the corresponding tests.
- 9.4. If the test results do not comply with the Technical Specifications and/or performance requirements, the Supplier shall immediately carry out the necessary measures to make the Goods or Services compliant and shall repeat the relevant testing at its sole expense, and under conditions that are compatible with the deadlines stipulated in the Contract.
- 9.5. Any inspection and testing performed shall not release the Supplier from its liability and shall not be considered as an acceptance of the Goods and/or Services by the Purchaser, the latter retaining all of its rights and contractual remedies.

**10. GOODS OR SERVICES SUBJECT TO ACCEPTANCE**

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- 10.1. If the Purchase Order provides Acceptance Tests for Goods and/or the result of Services after their completion and/or delivery to the Purchaser, the acceptance shall only be considered as definitive when such tests have demonstrated the compliance of the Goods and/or the result of the Services to the requirements defined in Clause 9.
- 10.2. Where the Contract provides for an acceptance procedure in the presence of both parties, at the end of such procedure, the parties shall sign an acceptance certificate if they agree on the compliance of the Goods and/or result of the Services with the requirements of Clause 9 (the “**Acceptance Certificate**”). Such Acceptance Certificate shall be produced in two (2) originals.
- 10.3. Signature of the Acceptance Certificate without any reservations by the parties shall authorize the Supplier to invoice the Purchaser in accordance with Clause 5 on acceptance date.
- 10.4. The Purchaser may pronounce the acceptance of the Goods and/or the result of the Services, subject to reservations for all or part of the Goods and/or the result of the Services in question depending on the circumstances at the sole discretion of the Purchaser and if the non-compliances are revealed to be of an insignificant nature, especially if they do not affect the safety and/or use of the Goods and/or their environment. The Supplier undertakes to remedy any non-compliances revealed in the Acceptance Certificate within the deadline that it is stipulated therein. In such case all or part of payment due upon acceptance date may be withheld by the Purchaser until it has been established by both parties that the Goods and/or Services in question have been made compliant.

**11. INTELLECTUAL PROPERTY**

- 11.1. Supplier shall promptly disclose to Purchaser in writing any and all ideas, conceptions, inventions, improvements, techniques, processes, or other valuable discoveries, whether patentable or not, and any original works of authorship, software, copyrightable materials, data, results, know-how, or other proprietary information that are conceived, developed, created, or acquired by Supplier (or its agents) solely or jointly with others in connection with Supplier’s performance of the Works (the “**Works IP**”). All copyrights, patents, trademarks, trade secrets, mask rights, or other intellectual property rights associated with any Works IP shall belong exclusively to Purchaser and, with respect to works of authorship, shall be considered a work made for hire for Purchaser. To the extent any Works IP is not

considered a work made for hire, Supplier agrees to assign and hereby assigns, and shall cause its employees and agents automatically to assign, at the time of creation of the Works IP, without any requirement of further consideration, any rights, title, or interest it or they may have in such Works IP, including any patents, copyrights or any other intellectual property rights pertaining thereto.

- 11.2. Each Party shall retain ownership of all of its ideas, conceptions, inventions, improvements, techniques, processes, or other valuable discoveries, whether patentable or not, and any original works of authorship, software, copyrightable materials, data, results, know-how, or other proprietary information that are conceived, developed, created, or acquired prior to entering into the Contract (“**Existing IP**”), regardless of whether the Existing IP is used within or to create the Works covered by the Contract. In the event that the Works requires the use of Supplier’s Existing IP, Supplier hereby grants to Purchaser a worldwide, fully paid up, perpetual, irrevocable, sublicensable, assignable, non-exclusive license to use Supplier’s Existing IP for whatever extent and purpose needed for the Works. Such license shall include, without limitation, the right to use and/or reproduce Supplier’s operating and maintenance manuals, technical publications, prints, drawings, training manuals, and other similar supporting documentation and sales literature.
- 11.3. Supplier will not use or designate for use in connection with the Works any patented or patent-pending article, method or device which involves or requires payment of any license fee or royalty not incorporated into the purchase price payable hereunder for such Works without Purchaser’s prior written approval. **SUPPLIER AGREES TO INDEMNIFY PURCHASER AGAINST ANY COST OR EXPENSE INCURRED IN CONNECTION WITH THE PAYMENT OF ANY SUCH LICENSE FEE OR ROYALTY IN THE EVENT THAT PURCHASER’S PRIOR APPROVAL IS NOT OBTAINED.** Supplier shall defend any suit or proceeding brought against Purchaser based on a claim that any item or part of an item furnished by Supplier under this Contract constitutes an infringement of any patent, trademark, service mark, copyright or any other intellectual property right, and shall pay all damages and costs awarded against Purchaser or required to be paid in settlement of the claim. If the use of an item or part of an item is enjoined, Supplier shall at its own expense either procure for Purchaser the right to continue using the item or part or replace it with a non-infringing item or part or modify the item or part so that it becomes non-infringing.

**12. PERFORMANCE BOND**

- 12.1. By way of security for the due performance of and observance by the Supplier of the Supplier’s obligations for the Works, within 14 days of receipt of the Purchaser’s written request, the Supplier shall procure the issuance of a performance bond by a financial institution acceptable by the Purchaser and in accordance with the

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template annexed to these Standard Terms in Annexure A (the “**Performance Bond**”). The Performance Bond shall remain with the Purchaser until the expiry of the Warranty Period or extended Warranty Period.

- 12.2. The Purchaser may utilise the Performance Bond to make good any loss or damage sustained or likely to be sustained as a result of any breach of contract whatsoever by the Supplier, including any liquidated damages.
- 12.3. The provisions of this Clause shall not affect the rights and remedies expressly reserved herein to the Purchaser or restrict the Purchaser from claiming loss, expense, costs or damages incurred or sustained or likely to be sustained by the Purchaser as a result of any breach of contract of whatsoever nature by the Supplier.
- 12.4. If the Supplier fails or is unable to comply with Clause 12.1 for any reason whatsoever, the Purchaser has the right to withhold from the progress payments due to the Supplier the amount that would have been secured by the Performance Bond, until the Supplier complies with Clause 12.1.
- 12.5. Nothing in Clause 12.4 shall prejudice the Purchaser’s other rights and remedies with regard to the Supplier’s failure to submit or submit in a timely manner the requisite Performance Bond.

**13. CONFIDENTIALITY**

The Supplier must keep the terms of the Contract and any other confidential information of the Purchaser (including all technical information and drawings, data, specifications, business data and other commercially valuable information) confidential and not disclose it to any other person except as required to fulfil the Contract, or use the Purchaser’s confidential information in any manner which may cause injury or loss to the Purchaser or in any manner other than contemplated by the Contract. The obligations in this Clause 13 do not apply to confidential information which is lawfully in the public domain or required by law to be disclosed. The Supplier acknowledges and agrees that the Purchaser may freely disclose any information provided by the Supplier to its parent company, subsidiary or affiliated companies.

**14. LIQUIDATED DAMAGES**

- 14.1. If the Supplier fails to comply with the dates or deadlines for the delivery of the Goods and/or performance of the Services specified in the Contract, except for reasons solely attributable to the Purchaser, the latter is entitled

to apply Liquidated Damages as set forth in the Purchase Order, without any further notice to the Supplier, from the moment any date or deadline has been reached.

- 14.2. Subject to applicable laws, it is expressly agreed that these penalties as a result of the delay, shall be applicable without prejudice to any other rights and remedies of the Purchaser under the Contract.
- 14.3. The Supplier acknowledges and accepts that the loss or damage to be suffered by the Purchaser if the Works are not substantially completed within the time set forth in the Project Schedule or any extended time is likely to substantially exceed the liquidated damages calculated at the rate or rates in the Purchase Order and the Supplier shall therefore not be entitled to dispute such Liquidated Damages as being a penalty or that it is not a genuine pre-estimate of the Purchaser’s loss or damage.

**15. DRAWINGS, SPECIFICATIONS, DESIGNS AND SOFTWARES**

- 15.1. If any specifications, technical data, drawings, designs and other materials in connection with the Contract are prepared by the Supplier, its employees or any other person commissioned by the Supplier for the purpose of fulfilling a Purchase Order, the Supplier must assign all intellectual property rights in these to the Purchaser, and take any action required by the Purchaser to give effect to this Clause, including obtaining any assignment from its employees or a third party.
- 15.2. The Supplier must not copy or use any specifications, technical data, drawings, designs and other materials referred to in Clause 15.1 for any purpose other than fulfilling a Purchase Order.
- 15.3. The Supplier is responsible for any errors or omissions in any specifications, technical data, drawings, designs and other materials referred to in Clause 15.1, regardless of whether they have been approved by the Purchaser.
- 15.4. The Supplier warrants that Goods manufactured, or Services performed in accordance with any specifications, technical data, drawings, designs and other materials referred to in Clause 15.1 comply with all relevant laws and regulations, including all product safety laws and standards.
- 15.5. Any software delivered within the scope of the Contract or necessary for the operation of any Goods shall be embedded therein or provided to Purchaser together with all licenses, code (unless deemed to be vendor proprietary code), superseded development versions, backups, data, instruction manuals, user guides and other information, materials or documentation relating to the installation, operation and use of such software (“**User Information**”).

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- 15.6. The price of the Goods shall be deemed to include the price of the relevant software, licenses and the User Information. Any and all such software required for the due fulfilment of the Contract, whether newly developed by the Supplier or by modification to existing programs, shall be available to Purchaser upon request.
- 15.7. Purchaser shall, at its discretion and without the Supplier's right to object, request said software and the Supplier shall provide the software within one (1) working day.
- 15.8. All information, descriptions, specifications, drawings and data published or otherwise given by the Supplier in relation to Goods are true and accurate.

**16. MATERIALS AND LABOUR**

- 16.1. If specified in a Purchase Order that the Supplier is to manufacture or otherwise obtain from any other source, including the Purchaser, dies, tools, component parts, raw materials and patterns specifically for the purpose of manufacture or assembly of Goods ('**Materials**'), or in the case of general utility Materials where they are to be charged to the Supplier as a specific priced item:
  - 16.1.1. title in the Materials (if not previously vested in the Purchaser) will vest in the Purchaser when they are obtained by the Supplier; and
  - 16.1.2. any price quoted by the Supplier for the Goods must include the price of Materials and, if no separately priced item is included in the quotation for Materials, the Supplier must not make any separate or further charge for Materials.
- 16.2. The Supplier must, at any time on the Purchaser's request, immediately deliver to the Purchaser all Materials belonging to the Purchaser which are in the possession of the Supplier or any other person.
- 16.3. The Supplier must not use, or permit any other person to use, the Materials for any purpose other than the fulfilment of the Contract.
- 16.4. The Supplier is responsible for ensuring the safekeeping, insurance and proper maintenance of all Materials belonging to the Purchaser until such time as they are provided to the Purchaser.
- 16.5. Labour rates for all proposed personnel resource roles shall be provided in writing by the Supplier and agreed at the commencement of the Contract.
- 16.6. Labour rates shall not be subject to change for the duration of the Contract.

- 16.7. Material rates for all materials required to complete the works shall be provided in writing by the Supplier and agreed at the commencement of the Contract.
- 16.8. Material rates shall not be subject to change for the duration of the Contract. Material rates shall include, but not be limited to, cost per meter of pipe, diameter inches or cabling installation (Supplier to provide breakdown for individual sizes, materials of construction, ratings, manufacturers), bracketry installation, instrument installation, hook ups, terminations, testing and labelling.
- 16.9. If a Purchase Order sets forth that any Materials are to be free issued by the Purchaser to the Supplier, the Supplier shall by seven (7) days written notice to the Purchaser, acknowledge receipt and acceptance of such Materials per quantity, specification and condition as stated in the corresponding Purchaser Order.

**17. WARRANTIES**

- 17.1. Unless the Purchase Order provides otherwise, the contractual term of the warranty shall be:
  - 17.1.1. twelve (12) months from the date of the Acceptance Certificate; and
  - 17.1.2. twenty-four (24) months as a maximum from the delivery of the Goods and/or performance of the Services at the Site (the "**Warranty Period**").
- 17.2. During the Warranty Period, the Supplier shall correct or replace, at its expense, any defect notified to it by the Purchaser, within a period not exceeding two (2) working days as from the written notification sent by the Purchaser. To this end, it shall apply the most appropriate solution between repair, replacement of the defective part in the Good, or re-design of the Good, after the Purchaser has consented thereto. Replacement, repair or re-design operations shall cover all of the Goods to be delivered in the context of a single Purchase Order, including spare parts. The Supplier shall also cover the costs relating to the logistics, disassembly and installation of the Goods on the Purchaser's or client's equipment, depending on the case. Any replacement or repair, even partial, of/to a Good affected by a defect shall give rise to the application of a new Warranty Period covering the Good concerned for a period of twenty-four (24) months from the date of the repair or replacement.
- 17.3. Furthermore, the Supplier undertakes to ensure subject to further Purchaser's orders, that the Goods will remain available, as well as depending on the case, their sub-sets, components or spare parts, in compliance with the Technical Specifications and this shall be for a period of thirty (30) years from the date of the Purchase Order. Should the Supplier be unable to fulfil such a commitment, it undertakes to transmit to the Purchaser, free of charge, all of the drawings,

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specifications documentation, specific tools, documents and other information, regardless of the medium they are on, in order to enable the Purchaser to find an alternative source of manufacture, sale, repair and/or maintenance relating to the Goods, their sub-sets, components or spare parts.

- 17.4. The Supplier warrants that during the Warranty Period:
  - 17.4.1. All Goods supplied under a Purchase Order: (i) are of good and satisfactory quality, (ii) fit for their purpose or for any specific purpose the Purchaser has communicated to the Supplier; (iii) conform to any sample of a Good provided to the Supplier; (iv) are made with high quality materials; (v) are free from any hazardous substances referred to in articles 4 and 6 of the European Directive 200295/EC; (vi) comply with all relevant US and European laws and regulations concerning the Goods and the laws and regulations of the country to which they are being delivered, including those relating to the restriction or prohibition of the use of certain substances; and (vii) are made with relevant best industry practice and the highest level of care, skill and diligence; and
  - 17.4.2. all Services provided under a Purchase Order are supplied in accordance with best industry practice and performed with the highest level of skill, care and diligence; and
  - 17.4.3. it, its officers, employees, agents and contractors have the necessary experience, skill and ability to properly fulfil its obligations under each Purchase Order.
- 17.5. Supplier shall transfer to Purchaser upon request, any transferable warranties or indemnities given by the manufacturer of any commercial items used in the manufacture of the Goods or that are given by third party vendor/service provider to the Supplier.

**18. NON-COMPLIANT GOODS**

- 18.1. In this Clause 18, '**Non-Compliant Goods**' means Goods that are not supplied in accordance with the terms of a Purchase Order.
- 18.2. If the Supplier supplies any Non-Compliant Goods, without limiting the Purchaser's rights:
  - 18.2.1. the Purchaser may notify the Supplier that it rejects the Non-Compliant Goods, giving details of the non-compliance;

- 18.2.2. the Purchaser may, at the Supplier's cost, dispose of or destroy the Non-Compliant Goods, return them to the Supplier or require the Supplier to dispose of or destroy the Non-Compliant Goods; and
- 18.2.3. if requested by the Purchaser, the Supplier must give the Purchaser a credit for the Non-Compliant Goods or repair or replace the Non-Compliant Goods within a period specified by the Purchaser.

- 18.3. The Supplier must comply with all lawful and reasonable requests of the Purchaser in connection with any product recall of Goods.

**19. LICENCES AND PERMITS**

If the fulfilment of the Purchase Order requires the Supplier to have any licence or other permit from any government or other authority, the Supplier must ensure that it holds such licence or permit.

**20. COMMUNICATIONS**

The Supplier must not communicate directly with any authority in relation to the Purchaser, any of its related bodies corporate, the Goods or the Services without the Purchaser's prior written approval except as required by law, nor may it refer to the name of the Purchaser or the Goods or Services for its own promotional, advertising or publicity purposes without the Purchaser's prior written approval.

**21. SUB-CONTRACTORS**

The Supplier must not, without the prior written consent of the Purchaser, sub-contract any of its obligations under a Purchase Order. Any subcontracting of its obligations under this Clause 21 does not relieve the Supplier of any of its obligations under the Contract.

**22. COMPLIANCE WITH DIRECTIONS AND LAWS**

- 22.1. The Supplier must comply with all reasonable and lawful directions of the Purchaser (including but not limited to the directions under the Purchaser's Business Integrity Program (which may be found at: <https://www.gradiant.com/business-integrity-program/>) and all applicable laws, regulations, requirements of any relevant authority and requirements of any industry codes of practice and the Purchaser's corporate business principles from time to time (as notified to the Supplier) when performing its obligations under a Purchase Order, including all laws relating to occupational health and safety and the environment.
- 22.2. The Supplier undertakes to the Purchaser that it shall comply with all applicable laws relating to anti-bribery and anti-corruption and represents to and assures the Purchaser that it is familiar with the requirements of the UK Bribery Act 2010, the

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United States Foreign Corrupt Practices Act (“**FCPA**”) and any analogous law of Singapore, the European Union and any other jurisdiction in which the Works are carried out and any similar applicable laws relating to anti-bribery and anti-corruption, that it has not and will not violate such laws, and that it neither has nor will offer, make, or agree to make, directly or indirectly, any gift or payment of any kind or any political contribution to any:

- 22.2.1. officer or employee of a foreign government or any department, agency, or instrumentality thereof;
- 22.2.2. officer or employee of a government or organization associated with a government, including any state-owned commercial enterprise;
- 22.2.3. person acting in an official capacity for or on behalf of any government or department, agency, or instrumentality;
- 22.2.4. officer or employee of a public international organization (including the United Nations, the World Bank, or the International Monetary Fund);
- 22.2.5. official or employee of a foreign political party or candidate for office; or
- 22.2.6. individual with ties to a government agency who maintains some government decision-making authority,

(each a “**Foreign Official**”), in connection with efforts to secure any governmental approvals or otherwise in order to obtain or retain business, or in order to secure any improper advantage on behalf of, or for the benefit of, the performance of its obligations under the Contract.

- 22.3. Any payment, offer of payment, or agreement to make a payment that is contrary to the laws of England and Wales, the United States of America, Singapore or the European Union or the laws of the country in which it is made, or any other payment in conflict with this Clause 22, will constitute a material breach of this Contract.
- 22.4. Should the Supplier ever receive, directly or indirectly, a request from any official or employee that it believes will or might constitute a violation of the UK Bribery Act 2010, the FCPA, or other applicable laws relating to anti-bribery or anti-corruption, the Supplier must immediately notify the Purchaser.

22.5. **NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONTRACT TO THE CONTRARY, THE SUPPLIER SHALL INDEMNIFY, DEFEND AND HOLD THE PURCHASER HARMLESS FROM AND AGAINST ANY AND ALL LOSSES AND INVESTIGATION COSTS OF WHATEVER NATURE INCURRED BY THE PURCHASER AS A RESULT OF ITS BREACH OF THIS CLAUSE 22.**

**23. INDEMNITY**

**23.1. THE SUPPLIER INDEMNIFIES, DEFENDS AND HOLDS HARMLESS THE PURCHASER AND ITS DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS AGAINST ALL CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES INCURRED BY ANY OF THEM ARISING OUT OF:**

- 23.1.1. ANY BREACH OR NON-FULFILMENT BY THE SUPPLIER OF THIS PURCHASE ORDER;**
- 23.1.2. THE SUPPLY OF THE GOODS OR THE PERFORMANCE OF THE SERVICES HEREUNDER; AND**
- 23.1.3. ANY ACT OR OMISSION OF THE SUPPLIER OR ITS DIRECTORS, OFFICERS, EMPLOYEES, CONTRACTORS OR AGENTS IN CONNECTION WITH THE GOODS, THE SERVICES OR A CONTRACT.**

23.2. **THE INDEMNITIES EXPRESSED IN THIS PURCHASE ORDER SHALL APPLY EVEN IN THE EVENT OF FAULT, NEGLIGENCE (IN WHOLE OR IN PART), STRICT LIABILITY, BREACH OF CONTRACT OR OTHERWISE OF THE PARTY INDEMNIFIED. IN THE EVENT THAT ANY INDEMNITY PROVISIONS IN A PURCHASE ORDER ARE CONTRARY TO THE LAW GOVERNING THE CONTRACT, THEN THE INDEMNITY OBLIGATIONS APPLICABLE HEREUNDER SHALL BE APPLIED TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW. EACH PARTY ACKNOWLEDGES SPECIFIC PAYMENT OF TEN U.S. DOLLARS (US\$10) AS LEGAL CONSIDERATION FOR THE INDEMNITY OBLIGATIONS AS MAY BE PROVIDED IN A PURCHASE ORDER.**

**24. TERMINATION ON SUPPLIER'S DEFAULT**

24.1. Without prejudice to any other rights or remedies to which it may be entitled, the Purchaser may terminate a Contract by notice to the Supplier if:

- 24.1.1. the Supplier ceases or threatens to cease to carry on business;
- 24.1.2. the Supplier becomes bankrupt or goes into liquidation (whether voluntary or otherwise);
- 24.1.3. the Supplier has a receiver or receiver and manager appointed to it or any part of its assets, enters into a scheme or arrangement with creditors or suffers any other form of external administration;
- 24.1.4. any event occurs which, in the Purchaser's reasonable opinion, has a material adverse effect on the Supplier's business or financial condition



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and on the ability of the Supplier to perform its obligations under the Contract;

24.1.5. the Supplier commits any breach of its obligations under the Contract and fails to remedy such breach within 7 days of receipt of notice from the Purchaser requiring it to do so; or

24.1.6. the Supplier commits a breach of its obligations under the Contract which is incapable of remedy.

24.2. The Purchaser reserves the right to suspend the performance of the Contract at any time through notification made by registered letter to the Supplier. In such a case, the Supplier may claim compensation that shall be restricted to the additional expenditure duly proven that has been directly caused by the suspension, to the exclusion of any indirect damage including loss of profit.

24.3. The Purchaser may terminate the Contract for convenience with at least fifteen (15) days' notice, merely by sending a registered letter to the Supplier.

24.4. The Purchaser may terminate the Contract if there is a corresponding contract that exists between the Purchaser and the end-user of the Goods and/or Services and that such contract is terminated.

24.5. In the circumstances covered in Clauses 24.3 and 24.4 above, the Supplier may claim compensation from the Purchaser on condition that it has complied with its contractual obligations, representing direct, reasonable and justified costs, legitimately incurred in the performance of the Contract until the termination thereof and that the Supplier shall otherwise have no other reasonable means of avoiding or recovering them. In no case may this compensation exceed the PO Price of the Contract.

24.6. The Supplier shall introduce into its own purchase orders or sub-contracting contracts linked to the Contract, similar provisions to those contained above in order to minimize the potential financial impact of the application thereof.

### 25. GST

All prices quoted in a Purchase Order are inclusive of GST (or any similar or relevant tax applicable in the country where the Goods are delivered or Services performed), unless otherwise stated. In relation to any tax payable for a taxable supply under these Standard Terms, the recipient of the supply must pay the GST (or any similar or relevant tax applicable) subject to the supplier providing a valid tax invoice. The terms used in this Clause 25 shall

refer to the definitions under the applicable legislation (in Singapore, being the Singapore Goods and Service Tax Act 1993). The Price includes all customs duties, fees and applicable taxes, including, but not limited to, all sales, use, or excise taxes.

### 26. FORCE MAJEURE

Neither party will be liable for a failure to perform its obligations under a Purchase Order if such failure was caused by unforeseeable circumstances beyond the party's reasonable control, except that labour and industrial disputes (including disputes between the Supplier and its own employees) and lack of Goods, equipment or materials will not be taken to be matters outside the control of the Supplier.

### 27. INSURANCE

27.1. Unless otherwise provided in a Purchase Order, Supplier shall provide and maintain during the term of this Contract, at Supplier's expense, the minimum limits of insurance listed below:

27.1.1. Workers' compensation, disability benefit, and employer's liability insurance (as applicable) in at least the minimum amounts required by and in compliance with the laws of the country where the Works is performed.

27.1.2. Commercial general liability insurance, including contractual liability, completed operations, hazards and explosion, collapse and underground hazard coverage with a limit of not less than US\$750,000.00 per occurrence and US\$1,500,000.00 aggregate. All such insurance policies shall provide coverage for: (a) damage to above-ground or underground property; (b) collapse of structures; (c) damage resulting from explosion or blasting; (d) damages or losses arising out of liabilities assumed, except infringement, under the indemnity provisions of this Contract; and (e) damage to completed operations.

27.1.3. If the Works to be performed is within or near a railroad right-of-way and other railroad facilities, Supplier's insurance shall not include any exclusions of coverage for any claims or liabilities associated with work, occurrences or incidents occurring within 50 feet of railroad right-of-way and other railroad facilities.

27.1.4. Automobile liability insurance covering owned, non-owned, and hired vehicles used by Supplier in connection with the Works with a limit of not less than US\$750,000.00 per accident combined single limit, US\$750,000.00 aggregate.

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- 27.1.5. Excess umbrella liability insurance extending coverage under Supplier's comprehensive general, automobile and employer's liability insurance policies with a limit of US\$1,500,000.00 per occurrence and in the aggregate.
- 27.2. If professional services, including but not limited to engineering, architectural, laboratory analyses and/or surveying services, are part of the Works, professional liability insurance with a limit of not less than US\$750,000.00 per claim, US\$750,000.00 aggregate. Supplier at its cost, agrees to maintain such professional liability insurance meeting these requirements for a period of two (2) years after the date of the Contract.
- 27.3. If the Works involves the handling or use of chemicals or contaminants or work areas containing pollutants or hazardous materials, pollution liability with a limit of not less than US\$750,000.00 per incident, US\$750,000.00 aggregate to coverage damage or losses relating to environmental impairment as may have been caused by Supplier.
- 27.4. If requested by Purchaser, Supplier shall (i) provide Purchaser with a certificate of insurance indicating that the minimum types and limits of insurance have been procured by Supplier and (ii) cause its insurers to provide a policy provision providing Purchaser with a minimum of thirty (30) days written notice prior to the effective date of cancellation of, or diminution in the coverage provided by, any and all such policies.
- 27.5. If requested by Purchaser, Supplier agrees to name "Gradiant International Holdings Pte Ltd" as an additional insured on all policies (with the exception of the workers' compensation, employer's liability, and any professional liability policy). Supplier shall provide copies of such endorsements.
- 27.6. If requested by Purchaser, Supplier shall cause the underwriters of each of the insurance coverages required above to waive all rights of subrogation against "Gradiant International Holdings Pte Ltd, its client and their affiliates, directors, officers, employees, and agents" where allowed by law under each of the foregoing policies.
- 27.7. Upon request Supplier shall provide Purchaser with certified copies of its insurance policies.
- 27.8. Supplier agrees to promptly notify Purchaser of any claims or losses or potential claims or losses resulting from or arising out of Supplier's performance of the Works and shall, within three (3) days of occurrence, provide Purchaser with copies of Supplier's correspondence pertaining to the incident, including any and all Supplier accident reports.
- 27.9. Any coverage provided to the Purchaser by Supplier's insurance under this Contract is primary insurance and shall not be considered contributory insurance with any insurance policies of Purchaser.
- 28. WORKFORCE**
- 28.1. Supplier shall furnish all labour necessary to carry out the Works in a safe and diligent manner.
- 28.2. At all times, all foreign workers engaged by the Supplier for the performance of the Works must have and hold valid work visas and documentation for the jurisdiction within which the Works are to be executed.
- 28.3. Supplier shall be liable for any offences under any applicable immigration laws and regulations if any illegal immigrant is found to be so employed.
- 28.4. Before commencement of the Works, Supplier shall, on request, submit the names and documentary evidence of valid work permits of all foreign workers employed for the performance of the Works to the Purchaser and shall thereafter inform the same of any other new workers that will be employed subsequently or any workers that have been removed from the premises where the Works are to be executed.
- 29. CONFLICT OF INTEREST**
- The Supplier warrants that after making diligent inquiry at the date of each Purchase Order, no conflict of interests exists or is likely to arise in the performance of the Purchase Order.
- 30. SEVERANCE**
- Any part of these Standard Terms that is illegal or unenforceable may be severed and the remaining provisions of these Standard Terms continue in force.
- 31. ASSIGNMENT**
- The Supplier must not assign or transfer a Contract without the prior written consent of the Purchaser. The Purchaser may assign or transfer a Contract without the prior written consent of the Supplier.
- 32. GOVERNING LAW AND JURISDICTION**
- Unless otherwise agreed in writing between the parties, these Standard Terms and the Contract are governed by and construed in accordance with and all matters arising out of or relating to the Contract, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts, United States of America (including its statutes of limitations), without giving effect to its conflict of laws provisions. The parties agree that the

**[USA]**

United Nations Convention on Contracts for the International Sale of Goods does not apply to the Contract.. Each party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other party in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments, and appendices attached to this Agreement, and all contemplated transactions, including contract, equity, tort, fraud, and statutory claims, in any forum other than the United States District Court for the District of Massachusetts or, if such court does not have subject matter jurisdiction, the courts of the State of Massachusetts sitting in Suffolk County, and any appellate court from any thereof. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation or proceeding only in the United States District Court for the District of Massachusetts or, if such court does not have subject matter jurisdiction, the courts of the State of Massachusetts sitting in Suffolk Country. Each party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. **EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS PURCHASE ORDER IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS PURCHASE ORDER OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

**33. LIMITATION OF LIABILITY**

- 33.1. Regardless of any other provision of the Contract, Supplier shall not be responsible or held liable to Purchaser for punitive damages, for any type of consequential, special or incidental damages suffered by Purchaser, or for loss of profits, loss of product, loss of business or business interruption; provided that the limitation of liability set forth in this Clause 33.1 shall not apply (i) to amounts encompassed within Liquidated Damages; or (ii) to Supplier's third party indemnification obligations under the Contract.
- 33.2. Regardless of any other provision of the Contract, Purchaser shall not be responsible or held liable to Supplier for punitive damages, for any type of consequential, special, incidental damages suffered by Supplier, or for any loss of profits, loss of product, loss of business or business interruption.

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**Annexure x A:  
FORM OF PERFORMANCE BOND**

To: GRADIANT CORPORATION (the "Purchaser").

WHEREAS on the \_\_\_\_\_ day of \_\_\_\_\_, a Purchase Order number [\_\_\_\_\_] (hereinafter called the "Purchase Order") was issued to and subsequently accepted by \_\_\_\_\_ (name of Supplier) of \_\_\_\_\_ (address) (hereinafter called the "Supplier") whereby the Supplier agreed to \_\_\_\_\_ (state nature of contract) for the sum of United States Dollars \_\_\_\_\_ (amount in words) (US\$ \_\_\_\_\_) (the "PO Price").

AND WHEREAS the Supplier is required under the Purchase Order to provide a performance bond for the sum of United States Dollars \_\_\_\_\_ (amount in words) (US\$ \_\_\_\_\_) as a security deposit for the performance of his obligations under the Purchase Order.

We (at the request of the Supplier) hereby agree as follows:

1. We shall unconditionally pay to the Purchaser any sum or sums up to a maximum aggregate of United States Dollars \_\_\_\_\_ (US\$ \_\_\_\_\_) (the "Bond Sum") upon receiving your written notice of claim for payment made pursuant to Clause 4 of this Performance Bond without any proof of actual default on the part of the Supplier and without need to satisfy any other condition.
2. We shall not be discharged or released from this Performance Bond by any arrangement between the Purchaser and the Supplier whether with or without our knowledge or consent, or by any other or further arrangement between the Supplier and us whether with or without the Purchaser's knowledge or consent, or by any alteration in the obligations undertaken or to be undertaken by the Supplier or by any forbearance on the Purchaser's part whether as to payment, time, performance or otherwise.
3. Our liability under this Performance Bond shall continue and this Performance Bond shall remain in full force and effect from [insert effective date: \_\_\_\_\_] until [insert expiry date: \_\_\_\_\_] [insert if expiry date is subject to automatic extension : provided always that the expiry date of this Performance Bond and our liability under this Performance Bond shall be automatically extended for successive periods of [specify duration of each extension: \_\_\_\_\_ days/months] unless we give you 90 days' written notice prior to the expiry of our liability (the "Notice Period") of our intention not to extend this Performance Bond in respect of any future extension and provided further that you shall be entitled –
  - a. upon receiving such notice of our intention either to:
    - i. make a claim under this Performance Bond; or

- ii. direct us to pay such amount (not exceeding the Bond Sum) as you may specify into a suspense account to be governed and disbursed by us subject to the Association of Banks in Singapore's Guidelines for operation of a Suspense Account; or
  - b. direct us (within the Notice Period) to extend the validity of this Performance Bond for a further period not exceeding \_\_\_\_\_ days/months (and this Performance Bond shall then expire at the end of such further period).]
4. The Purchaser may make a claim on this Performance Bond at any time and as many times as the Purchaser may deem fit by way of a notice in writing addressed to us and the same being received by us at [insert address of Bank's notification office: \_\_\_\_\_] before the end of 90 days after the expiry of this Performance Bond.
  5. We shall be obliged to effect the payment required under such a claim within 30 business days of our receipt of the written notice from the Purchaser. We shall be under no duty to inquire into the reasons, circumstances or authenticity of the grounds for such claim and shall be entitled to rely upon the Purchaser's written notice received by us as final and conclusive and binding on us. For the purposes of this Performance Bond, "business day" means a day other than a Saturday, Sunday, or public holiday in Singapore.
  6. The Purchaser may make more than one claim on this Performance Bond so long as the aggregate amount specified in all such claims does not exceed the Bond Sum.
  7. This Performance Bond is issued subject to the laws of the Republic of Singapore and the exclusive jurisdiction of the Singapore courts.
  8. A person who is not a party to this Performance Bond shall have no rights or remedies under the Contracts (Rights of Third Parties) Act 2001 to enforce any of the terms in this Performance Bond.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

AS WITNESS our hand

Signed by: \_\_\_\_\_

(Name and designation of officer)

for and on behalf of the

\_\_\_\_\_

(Name of Bank)

(Signature)

in the presence of:

Name \_\_\_\_\_

Designation \_\_\_\_\_

(Signature of Witness)