

PKS CONCRETE PUMPING SERVICES – TERMS AND CONDITIONS

Effective March 1, 2020

By submitting an order or other written or electronic confirmation of acceptance of our quotation (including, without limitation, a job ticket) (an "Order"), for the rental of concrete pumping and related equipment (all such equipment provided by Company, "Equipment") and concrete pumping operators from SECOND ACT HOLDINGS, LLC, a Georgia limited liability company d/b/a PKS CONCRETE PUMPING SERVICES ("Company"), the customer listed in such order or job ticket ("Customer") acknowledges and agrees to the following terms and conditions (the "General Terms"):

1. AGREEMENT. These General Terms are deemed part of all quotations, acknowledgments, invoices, orders and other documents, whether electronic or in writing, relating to the rental of Equipment and Operators by Company to its customers. These General Terms, together with the Company's quotation, order acknowledgement and invoice to an Order accepted by Company (collectively, the "Agreement"), constitute the entire contract of Rental between Company and Customer with respect to the Equipment and leased Operators covered by this Agreement, will supersede all previous communications, agreements or contracts, written or verbal between you and us, and no understanding, agreement, term, condition or trade custom at variance with these General Terms will be binding on us. In the event of a conflict between or among the terms of documents relating to the Equipment or leased Operators, the following order of priority will govern, except where Company and Customer have expressly agreed otherwise in a writing signed by an authorized representative of each party: (a) any separate written services agreement executed by Company and Customer; (b) any applicable order acknowledgment and invoice by Company; (c) these General Terms; (d) the applicable quotation; and (e) the applicable Order. No waiver, amendment or modification of this Agreement will be effective unless in writing and signed by an officer of Company. COMPANY OBJECTS TO, AND IS NOT BOUND BY, ANY TERMS OR CONDITIONS ON COMPANY'S PURCHASE ORDER, CONFIRMATION FORMS OR OTHER DOCUMENTS, THAT ATTEMPT TO IMPOSE UPON COMPANY ANY TERMS AND CONDITIONS AT VARIANCE WITH THESE GENERAL TERMS, AND PROVISION OF EQUIPMENT OR OPERATORS OR OTHER PERFORMANCE BY COMPANY WILL NOT CONSTITUTE ASSENT TO ANY SUCH INCONSISTENT TERMS. COMPANY OFFERS TO RENT AND LEASE ITS EQUIPMENT AND OPERATORS ONLY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT, AND YOUR SUBMISSION OF AN ORDER SERVES AS YOUR ACKNOWLEDGMENT AND AGREEMENT TO SUCH TERMS AND CONDITIONS, WITHOUT VARIANCE. The laws of the State of Georgia and any applicable superseding laws of the United States of America (including, but not limited to, federal transportation law while the Equipment is in transit), without any conflict of laws analysis, will apply to the interpretation and enforcement of this Agreement and all matters relating to the rental of Equipment and Operators; provided, however, if a particular state's law requires that a construction indemnity statute apply to Equipment rented in the state where the Equipment is being used, then that state's laws will apply.

2. CONTROL OF EQUIPMENT AND OPERATORS. Customer acknowledges and agrees that all Equipment and all persons operating, repairing, or maintaining the equipment ("Operators", and including, without limitation, any Operators provided by Company that are not rejected by Customer prior to commencement of work) are under the exclusive jurisdiction, supervision and control of Customer during the "Rental Period", which means the period (i) beginning at the time the Equipment and leased Operators depart Company's premises or the customer premises for the job immediately preceding Customer's job, as applicable (provided, however, that regardless of the actual travel time between such location and Customer's jobsite, Customer's rental charges will include at least one (1) hour of travel time); and (ii) ending at the time the Equipment and leased Operators depart Customer's jobsite in the same condition as the Equipment was received by Customer. The Rental Period includes all time necessary for the transport, mobilization, demobilization, assembly and disassembly of the Equipment and restoration of the Equipment to its condition at the beginning of the Rental Period. It is Customer's duty to give specific instructions and directions to all to all persons operating the Equipment, including the Operators, regarding the tasks required by Customer, and Customer agrees to provide or otherwise select competent and experienced personnel to direct the operation of the Equipment. Customer further agrees that the standard of care and responsibilities will be in accordance with all applicable safety standards, including but not limited to the following: Subpart Q - CONCRETE AND MASONRY CONSTRUCTION (29 CFR Part 1926.700); 1926.20(b)(4) [1926 Subpart C, General Safety and Health Provisions]; 1926.21(b)(2) [1926 Subpart C, General Safety and Health Provisions]; 1926.95(a) [1926 Subpart E, Personal Protective and Life Saving Equipment]; 1926.101(a) [Subpart E, Personal Protective and Life Saving Equipment]; 1926.600(a)(6) [1926 Subpart O, Motor Vehicles, Mechanized Equipment, and Marine Operations; applicable manufacturer "operation, maintenance, and parts manual" materials; the "American Concrete Pumping Association Safety Manual"; ASME B30.27 (2014) Material Placement Systems; and <http://www.osha.gov/distracted-driving/initiative.html>.

3. ASSUMPTION AND RELEASE. Customer assumes all of the risks associated with the performance of any and all work occurring under or arising out of this Agreement, including, without limitation, any risks, claims, suits, or causes of action that may arise from negligence or carelessness on the part of Customer, or Customer's agents, servants or employees, independent contractors, any Operators under Customer's supervision and control or any other persons. To the maximum extent permitted by applicable law, Customer waives, releases and discharges Company and its agents, servants or employees, from any and all liability, including but not limited to, liability arising from any and all negligence or fault, for any death, disability, personal injury, property damage, or actions of any kind which may hereafter occur or arise out of the performance of any and all work under, or arising out, of this Agreement.

4. INDEMNIFICATION. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, CUSTOMER AGREES TO INDEMNIFY, RELEASE, AND SAVE COMPANY, ITS EMPLOYEES AND AGENTS HARMLESS FROM ALL FROM AND AGAINST ALL CLAIMS, DEMANDS, ACTIONS, DAMAGES, LIABILITIES, LOSSES AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE LEGAL FEES AND COSTS) (COLLECTIVELY, "CLAIMS"), ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THE SELECTION, LEASING, RENTING, CONTROL, POSSESSION, USE, OPERATION, MAINTENANCE OR RETURN OF THE EQUIPMENT, AND ANY ACTS OR OMISSIONS OF OPERATORS, DURING THE RENTAL PERIOD, EXCEPT TO THE EXTENT SUCH CLAIMS ARE FOUND BY A COURT OF COMPETENT JURISDICTION TO BE DIRECTLY CAUSED BY COMPANY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. SUCH INDEMNIFIED CLAIMS INCLUDE, WITHOUT LIMITATION, ANY CLAIMS OR LOSS FOR DEATH OR INJURY TO PERSONS INCLUDING COMPANY'S AND CUSTOMER'S EMPLOYEES, OF ALL LOSS, DAMAGE OR INJURY TO PROPERTY, ARISING IN ANY MANNER OUT OF CUSTOMER'S WORK OR OPERATIONS. THE PARTIES INTEND THAT THIS DUTY TO INDEMNIFY IS AS BROAD AS PERMITTED BY APPLICABLE LAW. In no event will Customer settle or compromise any Claim without Company's prior written consent Customer's duty to indemnify hereunder will include (i) all costs or expenses arising out of all claims specified herein, including all court and/or arbitration costs, filing fees, attorneys' fees and costs of settlement; and (ii) the cost of any investigation or adjustment (including but not limited to, attorneys' fees and costs, private investigator/adjuster fees and costs, expert fees and costs, costs of storage and down time and costs of testing of property, or other items) initiated by Company, Company's insurance carriers or Company's third party adjusters into any accident of any kind, when such accident, or occurrence happens, involving directly or indirectly the Equipment or Operators during the Rental Period, or otherwise related to Customer's work or operations, whether or not such accident involves personal injury, death or damage to property or any persons. To the maximum extent permitted by applicable law, Customer will be required to indemnify Company for Company's own negligence or fault, whether the negligence or fault of Company be direct, indirect or derivative in nature. The indemnification above will not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for Customer under workers' compensation acts, disability benefits acts, or other employee benefits acts. This provision is separate and distinct from any other provision or paragraph in this contract, including any provision or paragraph concerning partial indemnification or procurement of insurance.

5. INSURANCE. To the fullest extent permitted by applicable law, Customer agrees to purchase, maintain and carry the following insurance coverages prior to commencement of the Rental Period: a) worker's compensation and employer's liability insurance, with limits of at least the statutory minimum or \$1,000,000, whichever is greater; b) primary non-contributory commercial general liability ("CGL") insurance on an occurrence basis, including bodily injury and property damage coverage with minimum limits of \$1,000,000 per occurrence and \$2,000,000, in the aggregate; c) excess/umbrella following form non-contributory insurance in the amount of at least \$5,000,000 and Customer's primary and excess/umbrella policies must be endorsed so that they are primary and non-contributory to all of Company's insurance policies; d) inland marine/all-risk and or builder's risk which includes an all-risk physical damage insurance, on a primary non-contributory basis, to cover the full insurable value of any equipment, for its loss or damage from any and all causes, including, but not limited to, overloading, misuse, fire, theft, flood, explosion, overturn, accident, and acts of God and Customer will pay all deductibles and or coinsurance requirements of the inland marine/builders risk policies provided by Customer and Customer will also provide the greater of 6 months or \$500,000.00 rental reimbursement coverage or similar coverages for Company's benefit for any loss or if the equipment is damaged, stolen, lost or destroyed. All policies are to be written by insurance companies acceptable to Company. For all liability insurance policies (including any excess/umbrella policies), Customer will name as an additional insured, Company and Company's officers, directors, shareholders, members, managers, partners and employees, all affiliated partnerships, joint ventures and corporations of Company and anyone whom Company is required by contract to name as an additional insured. Customer will use all of the following ISO endorsements to provide additional insured status and coverage to Company: CG 2001 04 13, CG 20 10

10 01, CG 20 37 10 01, CG 20 28 07 04, CG 20 34 03 97, CG 20 26 04 13, CG 25 03 03 97, and CG 24 04 05 09 (all of which may only be modified to the extent required to comply with applicable law). Additional Insured coverage will include, but not be limited to, coverage for any and all liability of Company arising out of any statute, regulation or duty imposed by law. Customer will provide punitive damage coverage for Company's benefit on all liability policies, unless prohibited by state law. Customer will name Company as a Primary Loss Payee on all insurance policies. Customer will provide all insurance certificates to Company when requested by Company and prior to start of work by Company. All of Company's policies, and the policies of anyone Company is required to insure will be excess over all of Customer's policies. All Customer's policies will be endorsed to require the insurer to give at least thirty (30) days advance notice to all insured's, including additional insured's, prior to cancellation or non-renewal. All Customer's policies must remove any exclusion for explosion, collapse and underground operations (XCU); o) all Customer's policies must remove the "employer's liability exclusion" for all additional insureds. All Customer's policies must include coverage for blanket contractual liability for the obligations assumed here-under and also for the liabilities assumed in the Indemnity section above. Customer can provide a project specific insurance policy for the above referenced commercial general liability insurance or may substitute a commercial general liability insurance policy with an owner's or contractor's protective insurance, project management protective liability insurance, an owner controlled insurance policy, or a contractor controlled insurance policy as long as the policies provide the same or better coverages for Company. Customer's agreements to indemnify and hold Company harmless from any liability, damage and loss are in addition to, and not an alternative to, these insurance provisions and the purchase of any of the above coverages will not operate to waive any of the above indemnity provisions. To the extent that Customer performs under this Agreement without obtaining the above coverages, such an occurrence will not operate, in any way, as a waiver of Company's right to maintain any breach of contract action against Customer. Customer hereby agrees to waive any and all rights of subrogation and any and all lien rights (including those arising from worker's compensation/employer's liability policies or other employee benefit programs, commercial general liability policies, or similar policies) which may accrue to it or its insurers, including, without limitation, rights of subrogation and lien rights. Customer understands that this waiver will bind its insurers of all levels and agrees to put these insurers on notice of this waiver and to have any necessary endorsements added to the insurance policies applicable to this Agreement.

6. LIMITATION OF LIABILITY. NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT, IN NO EVENT WILL COMPANY BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, INDIRECT, SPECIAL, LIQUIDATED, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF THE EQUIPMENT OPERATOR, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. COMPANY'S LIABILITY ON ANY CLAIM OR ANY KIND OF LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE PERFORMANCE OR BREACH THEREOF BY COMPANY SHALL IN NO CASE EXCEED THE RENTAL CHARGES RECEIVED BY COMPANY DURING THE RENTAL PERIOD DURING WHICH THE CAUSE OF ACTION AROSE. THE LIMITATIONS IN THIS PARAGRAPH SHALL APPLY TO ALL CLAIMS ARISING PURSUANT TO AGREEMENT, WARRANTY (EXPRESS OR IMPLIED), TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, OR PRODUCTS AND/OR STRICT LIABILITY) OR OTHERWISE CAUSED OR ALLEGED TO BE CAUSED DIRECTLY OR INDIRECTLY BY THE EQUIPMENT OR OPERATOR, OR BY ANY INADEQUACY THEREOF, OR BY ANY DEFECT THEREIN, OR BY ANY ACT OF OMISSION IN CONNECTION THEREWITH.

7. JOB SITE RESPONSIBILITIES. Customer is responsible for providing a pumpable concrete mix. Without limiting Customer's general indemnification obligations hereunder, Customer will indemnify Company and hold Company harmless from and against all Claims that may arise from (a) improperly batched, mixed, or delivered concrete or poorly graded materials which prohibit the concrete pumps from placing concrete in an acceptable manner, or (b) any admixtures that are detrimental to the proper pumping of concrete supplied. Company is not responsible for the condition or mix of the concrete or the suitability or fitness of the concrete for Customer's job or for any particular purpose of Customer. Customer will also provide (i) reasonable scheduling of concrete delivery, labor force for set-up of pumping system, handling of pumping system while placing and grout for priming system; (ii) a suitable place for on-site cleanup of system and pump and equipment wash-down; (iii) safe and reasonable ingress to and egress from the job site and access to the specific work area; (iv) labor for erection, dismantling, and cleanup of pumping system and if necessary; hoisting of lines above ground level; and (v) any necessary permits, easements, or licenses that may be required by state or local agencies for the performance of the concrete pumping service provided by Company. Customer assumes all responsibility for the removal of Equipment from job site if tow trucks, wreckers' trucks, or etc. are required due to weather, road, or

job site conditions. It is Customer's responsibility to notify Company in at least two (2) days in advance of any change of schedule or the estimated Rental Period.

8. CONDITIONS – GROUND/POWERLINES. Customer assumes all responsibility and is solely responsible for the "ground conditions" and the proper use of "supporting materials" during the transportation, storage and the placement of the Equipment for operation of the Equipment and will be the "controlling entity" or employer, each as described in C.F.R. 1926.1402(d). The Equipment must not be assembled or used unless ground conditions (i) are firm, drained, and graded to a sufficient extent so that, in conjunction (if necessary) with the use of supporting materials, the Equipment manufacturer's specifications for adequate support and degree of level of the Equipment are met; and (ii) otherwise meet the requirements of AASHTO H-20 / HS-20. Customer will ensure that ground preparations necessary to meet the requirements of this paragraph are provided, including, without limitation, the identification, communication and elimination of hazards in, around and beneath the Equipment set-up area, including below grade. If the work site is inadequate to provide clear passage or to support the operation of heavy equipment, or subsurface conditions necessitate reinforcement and/or relocation of facilities and/or services, all such work and the co-ordination of same required to permit the work to proceed in a timely manner will be the responsibility of Customer and at Customer's expense. Customer will perform or have performed all necessary inspections or testing to determine the nature of the ground or soil and its ability to support the Equipment while in operation or otherwise. If additional towing or pushing of the Equipment is required because of inadequate site conditions, additional costs incurred (including costs of repairing damage to the Equipment) will be billed at Company's cost plus fifteen (15%) percent. Customer assumes all responsibility to protect the Equipment and persons in or around the Equipment from the danger of power lines and agrees that all work will be done in accordance with all applicable safety regulations and/or standards. Customer will not expose the Equipment or any persons in or around such Equipment to the danger of energized power lines. Customer will identify and de-energize all power lines in the work area prior to the Equipment being operated in or around such power lines. In addition to the foregoing, Customer will keep the Equipment clear of such power lines at the distances required by OSHA, ANSI and any other safety regulations or standards. If de-energizing power lines is not feasible or permitted by the applicable utility, then Customer is responsible for the insulating of any power lines, the grounding of all Equipment and will be required to use safety measures or other equipment designed to prevent electrocution.

9. CHANGE IN CONDITIONS. Any changes to the condition of the site or work from the time of the proposal to the time when Company starts the work will be the responsibility of Customer. Customer will immediately notify Company by email of any changes not previously disclosed regarding the setup or site conditions. Changes to site conditions may result in an adjustment in the Rental Period and/or Equipment necessary to perform the work and associated charges.

10. LOCATION OF EQUIPMENT. Customer will not remove the Equipment from the site shown on the Order as the without prior written approval of the Company. Customer will inform the Company by email upon demand of the exact location of the Equipment while it is in Customer's possession.

11. DAMAGE TO OR DESTRUCTION OF EQUIPMENT. The Equipment is deemed to be in Customer's possession during the entire Rental Period, and Customer solely and entirely assumes all risk of loss of and damage to the Equipment during the Rental Period from any and all causes, including, but not limited to, loss and/or damage due to theft, vandalism, fire, accident, casualty and acts of God. No loss of or damage to the Equipment will reduce or impair any obligation of Customer under this Agreement, which will continue in full force and effect. In the event of loss or damage that is not beyond repair as authorized by the manufacturer, Customer will, at Customer's sole cost and expense, promptly restore the Equipment to substantially the same condition and repair as it was in at the commencement of the Rental Period, in which case this Agreement will remain in full force and effect and Customer will be entitled to use and operate the Equipment for the balance of the Rental Period (which, for the absence of confusion, will end upon the return of Equipment as restored to its original conditions). If the Equipment is damaged beyond repair or is lost or stolen (an "Event of Loss"), then Customer will promptly pay to Company an amount equal to the replacement value of the Equipment (as determined by Company in its reasonable discretion), in which event Company will have the option to either (a) replace the Equipment with Equipment that is substantially similar to the Equipment, in which case this Agreement will continue in full force and effect for the remainder of the Rental Period and all references in this Agreement to the Equipment will be deemed to refer to such replacement equipment; or (b) terminate this Agreement (and the Rental Period) effective upon Company's receipt of such payment from Customer. Company will give Customer written notice as to which of the foregoing options Company has elected within thirty (30) days after the date on which the Event of Loss occurred. If Company elects the option

described in (b) above, then Customer will be obligated to make any rental payments that become due and payable through the date of Customer's payment of the replacement value of the Equipment to Company. Customer will furnish to Company such proof of the Event of Loss as Company may reasonably require. Company may enter the premises where the Equipment is kept in order to inspect it and to arrange for its disposal. In the event Company receives any net proceeds from the disposal of any totaled Equipment, Company will pay to Customer an amount equal to the lesser of (i) the replacement value paid to Company by Customer; or (ii) the total amount of any net proceeds received by Company (less any deductible or other costs paid by Company) from the disposition of the Equipment, upon Company's receipt of such proceeds.

12. MAINTENANCE AND INSPECTION. Customer will maintain the Equipment in good, safe operating condition during the Rental Period and will bear all cost of whatever nature incurred while doing so. Customer will allow Company entry upon or access to any premises where the Equipment is stored or used, at all reasonable times, to locate and inspect the state and condition of the Equipment. Customer agrees to inspect the Equipment upon taking delivery. Customer's failure to notify Company in writing of any deficiencies in the Equipment promptly upon taking delivery or such other period of time as may be mutually agreed upon in writing is Customer's acknowledgement that the Equipment was, when delivered, in good, safe and serviceable condition in full compliance with the terms of this Agreement, in good condition and repair and is the type of Equipment that Customer has requested and fit for its intended use by Customer. For Rental Periods that extend beyond thirty (30) days ("Extended Rental Periods"), Customer will: (i) call into Company the hours that the Equipment has been used on a monthly basis so that Company can calculate any excess hours used on the Equipment; (ii) conduct all maintenance on the Equipment in accordance with the manufacturer's requirements including completion of all required inspection and will bear all costs of whatever nature incurred in doing so; (iii) supply Company with monthly maintenance reports. Customer acknowledges that it has been provided with the manufacturer's required maintenance and inspection schedules for the Equipment and that it is Customer's responsibility to comply with those schedules during any Extended Rental Period, at Customer's expense. Failure to comply with these requirements will result in Customer being charged for the applicable maintenance due at the time Customer returns the Equipment at the Company's normal rates. In the event Equipment is damaged or made inoperable, in any way during the Rental Period, Customer will notify the Company in writing, within two (2) business days of such occurrence, specifying the nature and extent of the damage. Without first obtaining Company's written consent, Customer will not incur any liability or expend any money for Company's account. The title to all parts, materials and supplies furnished to the Equipment becomes the property of Company. All accessories or attachments not listed in the Order or necessarily includable as part of the Equipment will be furnished by Customer at its own expense.

13. ACCIDENT INVESTIGATION. As part of Customer's obligations hereunder and as stated in Paragraph 3, Customer will bear the cost of any investigation initiated by Company, Company's insurance carriers or Company's third party adjusters (designated below as Company's "representatives") into any accident of any kind, when such accident occurs during the term of this Agreement, and directly or indirectly involving the Equipment or any leased Operator, whether or not such accident involves personal injury or death or damage to the Equipment, any Operator or any other person or property or any or all of the above. The decision to initiate any such investigation and the scope of any such investigation will be at the sole discretion of Company or Company's representatives. The cost of any such investigation to be paid by Customer includes, but is not limited to, attorneys' fees for site inspections, document review and interviews with witnesses of any kind, including cost of travel, fees of private investigators for site inspections, obtaining and reproducing agreements and documents and interviews of witnesses, including costs of travel, costs of obtaining and reproducing related agreements and documents, adjusters fees, costs for photography, expert fees including expert forensic fees, all costs of site inspections and destructive and/or non-destructive testing, as needed, and costs of dismantling, storing and maintaining property, equipment or other items as evidence. These costs will be invoiced to Customer along with rental fees and other costs incurred under this Agreement and will be payable according to the terms of this Agreement.

14. NO WARRANTIES; EQUIPMENT/OPERATORS "AS IS". COMPANY MAKES NO WARRANTIES, EXPRESS OR IMPLIED WITH RESPECT TO THE EQUIPMENT OR ANY LEASED OPERATORS PROVIDED BY COMPANY, INCLUDING, WITHOUT LIMITATIONS, WARRANTIES AS TO THE CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY, ITS DESIGN, ITS CAPACITY, ITS PERFORMANCE, ITS CONSTRUCTION OR WORKMANSHIP, OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. COMPANY FURTHER DISCLAIMS ANY LIABILITY WHATSOEVER FOR LOSS, DAMAGE, OR INJURY TO CUSTOMER OR THIRD PARTIES AS A RESULT OF ANY DEFECTS, LATENT OR OTHERWISE, IN THE EQUIPMENT. AS TO COMPANY, CUSTOMER HAS MADE THE DECISION TO LEASE THE EQUIPMENT AND OPERATOR BASED ON CUSTOMER'S REQUIREMENT'S FOR ITS PROJECT.

COMPANY MADE THIS EQUIPMENT AND LEASED OPERATOR AVAILABLE FROM A POOL OF AVAILABLE PERSONNEL AND MACHINES FOR CUSTOMER'S USE AND THE DECISION TO USE THIS EQUIPMENT AND OPERATOR IS SOLELY CUSTOMER'S DECISION. CUSTOMER LEASES THE EQUIPMENT AND OPERATORS "AS IS". COMPANY SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOSS, DELAY, OR DAMAGE RESULTING FROM DEFECTS IN THE EQUIPMENT OR ANY ACTS OR OMISSIONS OF THE LEASED OPERATOR WHILE UNDER CUSTOMER'S CONTROL. NOTWITHSTANDING THE FOREGOING, COMPANY SHALL REPLACE THE EQUIPMENT WITH SIMILAR EQUIPMENT IF THE EQUIPMENT FAILS TO OPERATE IN ACCORDANCE WITH THE MANUFACTURERS SPECIFICATIONS AND/OR OPERATING INSTRUCTIONS. SUCH REPLACEMENT SHALL BE MADE AS SOON AS REASONABLY POSSIBLE AFTER CUSTOMER RETURNS THE NON-CONFORMING EQUIPMENT.

15. DELAYS STOPPAGES AND BACKCHARGES. No backcharges will be charged against Company for delays or stoppage that result from (a) Customer's breach of, or noncompliance with, this Agreement; (b) unpumpable mixes; (c) mechanical breakdown or failure of the Equipment that is caused by difficult or unpumpable mixes; (d) for the first (1) one hour of any other mechanical breakdown or failure of the Equipment; (e) late arrival for a scheduled afternoon pour; (f) damage to asphalt, curbs, trees, landscaping, utility lines, septic systems or any other property within the site's property line; (g) strikes, lockouts, acts of God, adverse weather or other causes beyond the reasonable control of Company; (h) damage to property beyond curb line, or (i) loss of concrete resulting from addition of water. Backcharges for concrete finisher overtime labor costs, if otherwise allowable under this paragraph, will not exceed the actual time of the delay or stoppage of the Equipment, less the first one (1) hour of such breakdown or failure (excluded above). Backcharges for loss of concrete, if otherwise allowable, will accrue only for that amount of concrete lost that exceeds five percent (5%) of the total volume of concrete pumped in the one (1) day period during which such loss occurred. In no event will backcharges accruing exceed the total rental price chargeable by Company for that one (1) day period. Backcharges and claims for damages resulting from delay due to the fault of the Company will be deemed waived by Customer unless claim is made in writing to Company within forty-eight (48) hours from the beginning of the delay.

16. SUIT LIMITATION. Any action, demand, lawsuit, arbitration or any other claim by Customer against Company arising out of or related to this Agreement must be commenced within one (1) year from the date on which any such right, claim, or cause of action will have first accrued.

17. OPERATOR / EMPLOYEE. If an Operator is provided with the equipment, Customer will be responsible for payment of the operator's wages and benefits during the Rental Period, which will be included as part of the rental charges, even though such wages and benefits may be administered by the Company. The term "employee" or "operator" will include all operators, oilers, riggers, millwrights, helpers, technicians, or any other person that is assembling, disassembling, mobilizing, demobilizing and performing maintenance work or repair work on the Equipment, or providing any other work on the Equipment.

18. DEFAULT AND REMEDIES.

(a) Used in these General Terms, an "Event of Default" will occur if: (i) Customer fails to make any payment, as and when required under this Agreement; (ii) Customer breaches or fails to perform at the time and in the manner herein specified any term, covenant or condition contained in this Agreement and such breach or failure continues for five (5) days after written notice thereof to Customer; (iii) Customer files or has filed against it a petition in bankruptcy, or a custodian, receiver or trustee is appointed for Customer or for a substantial part of its assets, or Customer becomes insolvent or unable to pay its debts as they become due, or any substantial part of Customer's property becomes subject to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency; or (iv) Customer is acquired by or merges with any other entity, unless this Agreement is assumed in writing by the new entity and such assumption is agreed to by Company.

(b) Upon an Event of Default, then Company will have the right, without notice, demand or action of any kind by Company, all of which are hereby waived by Customer, to exercise any of the following remedies: (i) take possession of the Equipment (damages occasioned by such taking of possession being expressly waived by Customer) or otherwise require Customer to assemble the Equipment and to make it available to Company at any place designated by Company, and thereupon Customer's right to the possession of the Equipment will terminate, and Customer will remain and be liable for the payment of all rental charges for the Rental Period (or, if longer, the Estimated Rental Period) and all other obligations imposed upon Customer hereunder, all of which will become immediately due and payable; (ii) sue for and recover all rental charges, then accrued or thereafter accruing, with respect to any or all items of the Equipment and the leased Operators; (iii) terminate Customer's rights hereunder; or (iv) pursue any other remedy at law or in equity.

(c) No right or remedy conferred upon or reserved to Company by this Agreement is exclusive of any other right or remedy granted herein or provided by law; all rights and remedies of Company conferred upon Company by this Agreement or by law are cumulative and in addition to every other right and remedy available to Company.

(d) In the event of any default or failure specified above, Customer will be liable for all costs and expenses expended or incurred by Company in the enforcement of its rights hereunder (including reasonable attorneys' fees and court or Arbitration Costs).

(e) If any of the above Events of Default occur to any guarantor or any other party liable for payment or performance of Customer's obligations under this Agreement, such event will also be considered an Event of Default under this Agreement.

(f) Company has the right to choose among the remedies available to it and to exercise any or all of them at any time after a default by Customer.

(g) A waiver of one default by Company does not apply to any future or other default.

19. TITLE TO EQUIPMENT. The Equipment will at all time remain the property of Company, and Customer will do nothing to encumber or interfere with those rights and will take all actions necessary to protect those rights. Customer will not acquire any interest in or rights to the equipment, other than the rights of use set forth in this Agreement.

20. DEMURRAGE. If as a result of Customer's actions and unless permission is granted by the Company, if the Equipment is not returned during or at the end of the estimated Rental Period set forth on the job ticket, then for every hour, or portion thereof, from the end of the estimated Rental Period to the time when the Equipment is returned to the Company as required herein, Customer will pay a rental rate equal to three (3) times (x) the standard hourly rental rate for such equipment.

21. SUSPENSION PERIOD. If Customer has leased the Equipment and any leased Operators for an Extended Rental period and notifies Company in writing that Customer will not need the Equipment for such period(s) of time as are specified in such notice (the "Idle Periods"), and Company desires to rent the Equipment to a third party during some or all of the Idle Periods, then Company will have the right to suspend this Agreement by notifying Customer in writing (no oral approval of Suspension Period is allowed) of those portions of the Idle Periods during which this Agreement will be suspended (each, a "Suspension Period"; together, the "Suspension Periods"). During each Suspension Period: (a) this Agreement will remain in full force and effect and all of Customer's obligations under this Agreement will remain in full force and effect, except for Customer's obligation to pay rent during the Suspension Period or Periods; (b) Company will have the right to rent the Equipment and leased Operators to one or more other third parties; and (c) Customer will not be entitled to use the Equipment or the Operators during the Suspension Period or Periods. At the end of each Suspension Period, Company will once again make the Equipment and leased Operators available to Customer in substantially the same condition and repair as it was in at the start of such Suspension Period, normal wear and tear excepted.

22. RENTAL CHARGES. If a periodic rental rate is charged by Company, rental charges will be billed to Customer for each chargeable period (or portion thereof) within the Rental Period. If a fixed term rental rate is charged by Customer, rental charges are billed to Customer for the full fixed term (reflected on the Order) even if the Equipment is returned before the end of the term. Each piece of Equipment is charged based upon the Company's quoted or published prices. No discount will be given for any Equipment, or accessory, that Customer claims was not used. Customer will be responsible for any sales, use, excise, value added, utility, personal property or other taxes and any license fees, permits and/or assessments relating to Customer's use or possession of the equipment. Customer will pay such taxes and other charges to Company in accordance with invoices submitted by Company.

23. RENTAL PAYMENTS; NO SET-OFF. All invoices submitted by Company will be due and payable by Customer within thirty (30) days from the date of invoice or on or before the tenth (10th) day of the month following the month in which the work was performed, whichever is earlier. Customer will pay to Company an interest penalty of the highest rate allowed under applicable law, or 1.5% per month, whichever is greater, on the total balance of any and all invoices, or any portion of any and all invoices, that remain unpaid beyond the due date of such invoice. Company may, upon reasonable notice, require Customer to pay rentals in advance if Customer falls more than (30) days behind in making any payment at any time. All charges for use of the Equipment and Operators must be paid as billed by the Company in accordance with the "prompt pay" statute of the state where the Equipment is being used. All notices in accordance with the prompt pay statute must be made in accordance with the notice provisions of this Agreement. Customer acknowledges that a fundamental principle of this Agreement is that it will pay the sums due under this Agreement as and when required. Accordingly, Customer

unconditionally and irrevocably waives any and all rights to withhold from, set-off against, reduce or delay any amount owed to Company, for any reason or by any amount whatsoever, including by any amount claimed to be owed by Company to Customer.

24. SECURITY DEPOSIT. Any security deposit paid by Customer to Company is paid to guarantee Customer's full and faithful performance of all terms, conditions and provisions of this Agreement, including rental payments. When Customer performs all such terms, conditions and provisions, an equal sum will be repaid without interest to Customer.

25. MODIFICATIONS TO GENERAL TERMS. Company reserves the right to change these General Terms at any time. Notice of any such changes will be provided to Customer by posting said changes on Company's website and/or providing notice to Customer by email or prepaid mail. The updated General Terms will become effective immediately upon posting to the website or upon notice to Customer, whichever is earlier. By placing an Order with Company after such modifications have been posted or noticed, Customer accepts and agrees to be bound by such modified Terms with respect to such Order.

26. COMPLIANCE WITH LAW; SPECIFIC FEDERAL LAWS. Customer will, at all times, (a) comply with all applicable federal, state, provincial and local laws and regulations relating to this Agreement; and (b) have in place and maintain any and all licenses, permits, and other authorizations required by federal, state and local laws. Customer certifies that: (i) it is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and (ii) it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity, or nation. Finally, Customer will, at all times, perform its obligation under this Agreement in compliance with all applicable financial sanction laws, rules and regulations, including, but not limited to, all applicable laws, rules and regulations regarding bribery or money laundering. Customer further agrees that any and all transactions or funds transfers occurring under this Agreement will be subject to scrutiny for compliance with all such laws, rules and regulations and that any and all transactions or funds transfers may be embargoed or otherwise restricted until compliance with these laws, rules and regulations can be verified.

27. INTERPRETATION. This Agreement will be interpreted as an understanding of parties on equal footing and without resort to any rule of construction resolving ambiguity against the drafter.

28. INDEPENDENT SERVICE PROVIDER. This Agreement does not create or evidence a partnership or joint venture and Customer and its agents, servants and employees, will at all times, be an independent service provider, and employees of Customer will in no event be considered employees of Company, nor will they be eligible for any employee benefits or other benefits from Company.

29. SEVERABILITY; SURVIVAL. To the fullest extent permitted by applicable law, provisions of this Agreement will be interpreted to be valid and enforceable under applicable law; provided, however, that if any provision is held invalid or unenforceable, such provision will be deemed deleted from the Agreement and replaced by a valid and enforceable provision which so far as possible achieves the parties' intent in agreeing to the original provision. The Agreement's remaining provisions will stay in effect. All of the representations, warranties and indemnities contained in this Agreement will survive the expiration, suspension or termination of this Agreement.

30. ATTORNEY'S FEES. Customer will pay or reimburse to Company all costs and expenses, including attorneys' fees, incurred by Company in exercising any of its rights or remedies or enforcing any of the terms or conditions found in this Agreement.

31. NO ASSIGNMENT. This Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns, except that Customer will not be permitted to assign this Agreement or delegate any rights or responsibilities hereunder without the express written consent of the Company.

32. WAIVERS. No delay or failure to exercise any right or remedy accruing to Company or any breach or default of Customer under this Agreement will impair any such right or remedy of Company or be construed as a waiver of any such breach or default, or an acquiescence therein, or a waiver of or acquiescence in any breach or default thereafter occurring; nor will waiver of a single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of Company of any breach or default by

Customer under this Agreement, or any waiver on the part of Company of any provision or condition of this Agreement, must be in writing and will be effective only to the extent specifically set forth in such writing.

33. TRADE SECRETS. Each party will keep the Confidential Information (defined below) of the other party confidential and will not use any of that Confidential Information for any purpose other than the performance of this Agreement. "Confidential Information" of a party is any, financial information or other confidential or proprietary information in any way relating to that party's services, including all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing. Without limiting the generality of the foregoing, Company's Confidential Information includes all quote, bid, drawing, operational sequence, lift plan, site plan or job and project specific details ("Submission"), together with the terms of this Agreement. A party may, without violating this paragraph, make such disclosures (i) to its directors, officers, employees, attorneys, and other agents as may be necessary to permit that party to perform its obligations and to exercise its rights hereunder, and (ii) as it reasonably deems are required by law, though a party will use reasonable efforts to notify the other party in advance of any such disclosure required by law. The parties' respective obligations under this paragraph will survive the termination of this Agreement. The terms of this paragraph are in addition to, and not in lieu, of each party's rights under any applicable trade secret, laws, including, without limitation, the Defense of Trade Secret Act of 2016 and any applicable state trade secret law.

34. FORCE MAJEURE. Except as otherwise expressly set forth herein, in the event a party will be delayed or hindered in, or prevented from, the performance of any act required of it hereunder by reason of strike, inability to procure materials, failure of power, telecommunications or connectivity failure, restrictive governmental laws or regulations, riot, insurrection, war, act of God, or other event outside the reasonable control of that party (each such cause or event being hereinafter referred to as a "Force Majeure"), then performance of such acts will be excused for the period of the delay and the period for performance of any such act will be extended for a period equivalent to the period of such delay. Any time a party is experiencing a Force Majeure that is expected to result in a significant failure or delay, the party will endeavor to give notice to the other party describing the Force Majeure and the nature of the failure or delay and giving an estimate as to how long the delay will last. A party claiming an excusable delay or failure under this paragraph will use reasonable efforts to alleviate or overcome the Force Majeure as soon as practicable.

35. THIRD PARTY BENEFICIARY. Nothing in this Agreement, expressed or implied, is intended to confer upon any person or entity, other than the parties and their legal successors and permitted assigns, any rights, benefits, or obligations.

36. NOTICE. All notices to be given pursuant to this Agreement will be provided to the respective party at the addresses contained in this Agreement will be deemed to have been properly given when either (a) personally delivered, or (b) mailed by registered or certified mail, postage prepaid with return receipt requested, or (c) delivered by private courier, or (d) email, electronic receipt requested. A copy of any such notice, although not constituting official notice, will be provided to the respective party by electronic mail. Notice by electronic mail will become official notice under this Agreement if a copy of such email is promptly transmitted by deposit with the U.S. mail, first-class.

37. HEADINGS. The section or section headings in this Agreement are inserted only as a matter of convenience and for reference and in no way, define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement or its interpretation.

38. EXECUTION/COUNTERPARTS. This Agreement (and any part thereof) may be executed and delivered electronically and in counterparts, each of which will be an original, but all of which will constitute one and the same, document. The terms of this Agreement will not be altered in any manner except by written instrument signed by Company and Customer and will be binding upon and inure to the benefit of their permitted successors and assigns.

39. AUTHORIZED SIGNATURE. In the event this Agreement has been executed by an individual on behalf of a corporation or other business entity, the person whose signature is affixed hereto and the entity for which the individual has signed this Agreement, represent to Company that the individual signing has full authority to execute this Agreement on behalf of said corporation or other business entity.

40. RIGHT TO CURE. If Customer fails to pay or perform any of its obligations under this Agreement, then Company may itself pay or perform such obligations and the amount of any payment plus Company's reasonable expenses in connection with such payment or performance, together with any interest due hereunder, will be deemed additional Rent, payable by Customer on demand.

41. DISPUTES.

DISPUTE RESOLUTION AGREEMENT

Section 1. Dispute Resolution

(a) All disputes between the Company and Customer arising out of or relating to this Agreement, the work to be performed by Company or Customer, a breach of this Agreement, or otherwise related to the Equipment or leased Operators (each, a "Dispute") will be decided in accordance with the provisions of this paragraph 41. Such disputes include, but are not limited to, any claim Customer or Company may have related in whole or in part concerning the conduct of any other party or Company and/or their employees or agents. Notwithstanding any term to the contrary in this Agreement, (i) Company reserves the right to pursue legal and equitable remedies against Customer for nonpayment of any rental or other charges due to Company hereunder (each, a "Payment Dispute") in the courts described in Section 4(a), below, without first submitting such claims to the mediation and arbitration procedures set forth in Sections 2 and 3; and (ii) Company will have the right, and in addition to all other remedies available to it at law, in equity or under this Agreement, to affirmative or negative injunctive relief from a court of competent jurisdiction in the event Customer violates or threatens to violate the terms of Paragraph 33. Customer acknowledges that a violation of Paragraph 33 would cause irreparable harm and that all other remedies are inadequate.

(b) Subject to any applicable termination right set forth herein, Company and Customer agree to continue performance of all work, and payments on all non-disputed amounts despite the existence of any Dispute. The existence of a Dispute will not be sufficient cause or justification for any failure to otherwise comply with this Agreement.

Section 2. Mediation

(a) **Mediation.** Prior to pursuing arbitration or litigation on any Dispute (other than a Payment Dispute), the parties will each appoint an executive corporate officer to meet to negotiate the claim/dispute through an in-person settlement meeting ("Mediation"). An Insurance representative for each party will attend the Mediation in order to bind the insurer to any settlement. Corporate officers attending will have full settlement authority to resolve the claim/dispute. This Mediation will be a condition precedent to the filing of any arbitration and will be conducted in accordance with Section 2(b). Prior to engaging in any mediation, all parties will provide notice of any dispute to their respective insurers.

(b) **Submission of Itemized Claims.** Within Thirty (30) business days of the Company or Customer filing and serving a demand for Mediation, the party filing the Mediation demand ("Claimant") will provide the other party ("Respondent") with a written, itemized statement of its claim, that will include copies of all documents supporting its liability statement and damages along with citations to specific provisions of the Agreement that support Claimant's position ("Claimant's Itemized Statement of Claim"). The Claimant will make all requests for documents from the Respondent when the demand for Mediation is filed. The Respondent will have 15 days to respond and turn over the requested documents. Claimant's Itemized Statement of Claim will be served via Federal Express or equivalent overnight delivery service that provides proof of delivery and will be deemed served as of the date of Respondent's receipt from Federal Express records or equivalent overnight delivery service of the Itemized Statement of Claim. Within Thirty (30) business days after Respondent receives Claimant's Itemized Statement of Claim, Respondent will provide the Claimant with its answer, affirmative defenses and counterclaim, if any, which will include a written, itemized statement in support of its defense and/or counterclaim, along with copies of all documents supporting its damages and citations to specific provisions of any underlying contract or agreement, whether written or oral ("Respondent's Itemized Statement of Claim"). The Respondent will make all requests for documents from the Claimant when the Respondent's Itemized Statement of Claim is filed. The Claimant will have 15 days to respond and turn over the requested documents. Respondent's Itemized Statement of Claim will be served via Federal Express or equivalent overnight delivery service that provides proof of delivery and will be deemed served as of the date of Claimant's receipt from Federal Express records or equivalent overnight delivery service of the Itemized Statement of Claim. If any party fails to turn over any reasonably requested documents, or either party fails to participate in the Mediation process in good faith, the arbitrator may make such a finding and take such finding into account when determining liability and damages, in any later arbitration of these claims. Each party will provide copies of all Statements

of Claim and relevant supporting documents to their respective insurers. The parties will meet and mediate all claims as soon as possible thereafter. Notwithstanding the foregoing, the parties will use best reasonable efforts to complete the Mediation process, including the exchange of information and documents, within 90 days of the filing of a demand for Mediation.

(c) Venue for Mediation. All Disputes subject to Mediation pursuant to Section 2, will be mediated in Douglas County, Georgia, or as otherwise agreed by Company and Customer.

(d) Offers of Settlement. Within thirty (30) days of receiving Respondent's Itemized Statement of Claim, or if Respondent does not serve one, within thirty (30) days from when Respondent's Itemized Statement of Claim was due, Claimant will serve Respondent with a written settlement offer that will include both Claimant's Itemized Statement of Claim and Respondent's Itemized Statement of Claim, if any. Claimant's settlement offer will be served via Federal Express or equivalent overnight delivery service that provides proof of delivery and will be deemed received upon Respondent's receipt of Claimant's settlement offer. Claimant's settlement offer will state the amount it will accept from or pay to Respondent to settle all claims asserted in the arbitration. Within thirty (30) business days of Respondent's receipt of Claimant's settlement offer, Respondent will serve a written settlement offer to Claimant that will include both Claimant's Itemized Statement of Claim and Respondent's Itemized Statement of Claim, if any. Respondent's settlement offer will be served via Federal Express or equivalent overnight delivery service that provides proof of delivery and will be deemed served upon Claimant's receipt of Respondent's settlement offer. Respondent's settlement offer will state the amount it will accept from or pay to Claimant to settle all claims asserted in the arbitration. Claimant's filing of an amended demand for arbitration or Respondent's filing of an amended counterclaim will in no way alter the timing requirements set forth herein for purposes of determining the prevailing party. If Respondent does not submit a written settlement offer to Claimant as provided herein, then Respondent's settlement offer for purpose of determining the prevailing party will be considered the greater of: (i) the amount set forth in Respondent's Itemized Statement of Claim, (ii) the amount requested in Respondent's initial counterclaim, (iii) the amount requested by Respondent at the final arbitration hearing, or (iv) \$0.00.

Section 3. Arbitration

(a) Scope and Venue of Arbitration. All Disputes (other than Payment Disputes) that are not resolved pursuant to Section 2, will be decided by a final, binding, non-appealable arbitration, to take place in the county in which the related job or project is located, or as otherwise agreed. The arbitration will be in accordance with the Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association ("AAA") then existing subject, to the requirements and limitations set forth herein. The arbitration will be further subject to the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (the "FAA").

(b) Arbitrator's Selection and Authority. Any matters to be arbitrated under this Agreement will be decided by a single arbitrator selected by agreement of the parties. The appointed arbitrator will be an impartial person with extensive experience and who has an expert understanding of the industry. If within seven (7) calendar days of either party filing for arbitration, the parties have not agreed on an arbitrator, then the appointment of an arbitrator will be referred to the AAA office in or nearest to Douglas County, Georgia. The AAA will appoint a single arbitrator who is an impartial local person with extensive experience and who has an expert understanding of the industry to serve in this matter. The arbitrator will have full and complete authority to decide any and all claims that have been properly noticed and preserved in accordance with this Agreement. Discovery in any arbitration hereunder must be done in accordance with the Federal Rules on Civil Procedure. Any judgment entered by the arbitrator will be issued by a written report setting forth detailed findings of fact and conclusions of law, and such judgment will be final and binding, subject to the parties' rights of appeal pursuant to the FAA. The arbitrator is required to enforce the terms of this Agreement, including but not limited to, the determination of the prevailing party for purposes of awarding attorney's fees and costs. The arbitrator will not be authorized to award any punitive damages and will only be permitted to award consequential damages if the parties have not waived consequential damages by contract and only to the extent permitted under the express terms of this Agreement. Should either party assert that a claim(s) submitted to arbitration has not been properly noticed and/or has been waived or released, then the Arbitrator will first decide any such issues by way of a declaratory judgment action decided by solely by the arbitrator, with both parties waiving any right to a trial by jury. Any arbitration between the parties for non-declaratory action issues will be stayed pending any such declaratory judgment action so that the Arbitrator can first decide what claims should proceed forward in arbitration. If the Arbitrator finds that a claim(s) was not properly noticed and preserved and/or was released, then the arbitrator will dismiss that claim(s) and will not decide such claim(s). The arbitration will only proceed after a final decision on any declaratory judgment action brought hereunder and will only include those claims found to have been

property noticed, preserved and not released. All parties consent to such jurisdiction.

(c) Prevailing Party in Arbitration. The prevailing party in any arbitration will be entitled to an award of attorney's fees and costs. The prevailing party in any arbitration will be the party whose last written settlement offer, as set forth in Section 2 above, is closer to the initial arbitration award, prior to considering costs (including AAA and arbitrator costs), interest, attorney fees and/or expert fees. If the difference between the initial arbitration award and the parties' last settlement offers are equal, then neither party will be the prevailing party for purposes of an award of attorneys' fees and costs.

(d) Nondisclosure of Settlement Offers to the Arbitration. Settlement offers will only be disclosed to the arbitrator after the initial arbitration award has been entered and will only be used to determine the prevailing party for purposes of the award of attorney's fees and costs.

(e) Transfer of Venue. Should either party file any action in court against the other party arising out of a dispute as defined in this Agreement, said Party agrees to transfer the action to the Arbitrator to make any and all decisions concerning any dispute including the authority stated in Section 3, including the authority to decide if the action is a dispute covered by this Agreement. If the Arbitrator decides that the dispute should be decided in accordance with this Agreement, the party that filed the action will pay all costs incurred by the other party, including attorneys' fees, incurred in dismissing and/or transferring the venue of such matter to the Arbitrator.

Section 4. Litigation

(a) Venue. With respect to any dispute not subject to the terms of Sections 2 and 3 of this Paragraph 41, or any appeal from an arbitration award rendered pursuant to Section 3, the parties hereby submit to the exclusive personal jurisdiction and venue of the Superior Court of Douglas County, Georgia or the United States District Court for the Northern District of Georgia with respect to such purchases and agree to waive any defenses to venue and jurisdiction including forum non conveniens.

(b) Waiver of Right to Jury Trial. COMPANY AND CUSTOMER FURTHER AGREE THAT SHOULD ANY LITIGATION OR ARBITRATION ARISE DIRECTLY OR INDIRECTLY, THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL, AND THE PARTIES HEREBY STIPULATE THAT ANY SUCH TRIAL SHALL OCCUR WITHOUT A JURY.

(c) This paragraph 41 (including all sections) will survive the termination of this Agreement, or any related or underlying contract and/or completion of the related work or project.