NATIONAL POWER, LLC

SiteVision Monitoring Services Terms and Conditions

These Terms and Conditions of Sale (these "**Terms**") govern the sale and purchase of the SiteVision Monitoring services (the "**SiteVision Services**") of National Power, LLC (the "**Company**") and are binding on each purchaser of SiteVision Services ("**Customer**"), whether or not they are included in a document entitled "Order Form", or any other written document (in electronic or paper form) or other expression of agreement (e.g., checking a box, email authorization), Company proposal, offer, quote, purchase order, acceptance or service agreement for SiteVision Services (each, an "**Order Form**"). The sale of SiteVision Services by the Company to Customer is expressly conditioned upon Customer's agreement to these Terms, which shall control over any additional, different, inconsistent or contrary provision in Customer's request for proposal, specifications, purchase order or other purchase/sales forms or other communication by the Customer. The Company hereby rejects any and all such additional, different, inconsistent or contrary provisions. Customer's purchase of the SiteVision Services constitutes Customer's acceptance of these Terms.

The Order Form and these Terms constitute the entire agreement and understanding between the Company and Customer relating to the SiteVision Services (the "**Agreement**"), supersede all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect thereto and apply to the exclusion of any other terms that Customer seeks to impose or incorporate, or which are implied by trade, custom, practice, or course of dealing, and cannot be amended, modified, supplemented or waived except in a writing signed by both the Company and the Customer.

      1.   **Definitions**. In addition to the terms defined above or elsewhere herein, the following terms shall have the following respective meanings in these Terms:

      (a)   "**Affiliate**", with respect to any Party, means any entity as to which such Party directly or indirectly owns or controls more than fifty percent (50%) of the management rights or voting interests.

      (b)   "**Authorized Users**" means Customer's employees, consultants and contractors who are identified as such in the Order Form and authorized by Customer to access and use the Software under the rights granted to Customer pursuant to the Agreement. Each Authorized User must be identified by a unique email address and user name, and two or more persons may not use the Software as the same Authorized User. If the Authorized User is not an employee of Customer, use of the Software will be allowed only if the Authorized User is under confidentiality obligations with Customer at least as restrictive as those in the Agreement and is accessing or using the Software solely to support Customer's and/or Customer Affiliates' business purposes.

      (c)   "**Company IP**" means the Software, the Documentation, and any and all copyrights, trademark rights, patent rights, database rights, and other intellectual property or other rights in and to the Software and Documentation, any improvements, design contributions, or derivative works thereto, and any knowledge or processes related thereto and/or provided hereunder.

      (d)   "**Customer Data**" means any and all information, data, materials and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or an Authorized User through the Software. Customer Data does not include any component of the Software or material provided by or on behalf of the Company.

      (e)   "**Documentation**" means the Company's user manuals, handbooks, guides, materials, data and other technical and functional documentation relating to the Software provided by the Company to Customer, whether in electronic or written format.

      (f)   "**Effective Date**" means the "Effective Date" set forth in the Order Form.

      (g)   "**Legal Requirements**" means all federal, state, local and foreign laws, rules, regulations, requirements and conventions applicable to the subject matter thereof.

      (h)   "**Party**" means either the Company or Customer, as applicable, and "**Parties**" means both the Company and Customer.

      (i)   "**Person**" means any individual, corporation (whether or not for profit), limited liability company, partnership (limited or general), trust, governmental or regulatory body or authority, or any other form of business, enterprise or organization.

      (j)   "**Software**" means the Generator Monitoring Software solution incorporated in the SiteVision Services.

      (k)   "**Third-Party Products**" means any third-party products, services, software, products, applications, integrations, and other features or offerings provided with or incorporated into the Software.

      2.   **Access and Use**.

      (a)   **Provision of Access**. Subject to and conditioned on Customer's payment of Fees and compliance with all other Terms, the Company hereby grants Customer a limited, non-exclusive, non-sublicenseable, and non-transferable right and license to access and use the Software during the Term, solely for use by Authorized Users in accordance with the Documentation and the terms and conditions hereof and solely for Customer's internal business purposes. The Company shall provide to Customer the necessary passwords and network links or connections to allow Customer to access the Software. The total number of Authorized

Users will not exceed the number set forth in the Order Form, except as expressly agreed to in writing by the Parties and subject to any appropriate adjustment of the Fees payable hereunder. Customer shall ensure that its Affiliates and all Authorized Users using the Software comply with all of Customer's obligations under the Agreement, and Customer is responsible for their acts and omissions relating to the Agreement as though they were those of Customer.

(b) **Customer Cooperation**. Customer agrees to cooperate with the Company as necessary or appropriate in order to effect the sale and purchase of the SiteVision Services as contemplated by the Order Form, including without limitation (i) providing the Company with such access to Customer's premises and computer systems on which the Software is intended to be installed and operate (the "**Operating Environment**"), and ensuring that the Operating Environment is set up and in working order, as is necessary or appropriate for the Company to install and implement the Software and to perform the SiteVision Services; (ii) participating with suitably qualified and authorized personnel in all meetings that the Company reasonably deems necessary or appropriate for the Company to install and implement the Software and perform the SiteVision Services; and (iii) providing all other access, cooperation and assistance the Company reasonably requests to enable the Company to perform the SiteVision Services.

(c) **Customer Responsibilities**. Customer is responsible and liable for all uses of the Software and Documentation resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of these Terms. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of these Terms if taken by Customer shall be deemed a breach of these Terms by Customer. Customer shall use its reasonable efforts ensure that all Authorized Users are aware these Terms provisions as applicable to such Authorized User's use of the Software, and shall cause Authorized Users to comply with such provisions. Customer (i) has sole responsibility for the accuracy, quality, integrity, legality, reliability and appropriateness of all Customer Data; (ii) is responsible for properly maintaining the functional operation of all hardware, internal network and software that interacts with the Software; (iii) is responsible for connectivity to the Internet; (iv) shall utilize commercially reasonable efforts to prevent unauthorized access to, or use of the Software; and shall timely notify the Company of any such unauthorized use; and (v) shall comply with all applicable Legal Requirements in its use of the Software.

(d) **Use Restrictions**. Customer and the Authorized Users shall use the Software solely for lawful purposes regarding Customer's internal business. Customer shall not, and shall not permit its Authorized Users or others under its control to, to directly or indirectly do any of the following with respect to the Software: (i) use the Software for any purposes beyond the scope of the access granted in these Terms; (ii) use the Software, or allow access to it, in a manner that circumvents contractual usage restrictions or that exceeds Customer's authorized use set forth in these Terms, including the Order Form; (iii) copy, modify, or create derivative works of the Software or Documentation, in whole or in part; (iv) rent, lease, lend, sell, license, sub-license, assign, distribute, time share, publish, transfer or otherwise commercially exploit or make available the Software or Documentation available for access by third parties except as otherwise expressly provided in the Agreement; (v) reverse engineer, disassemble, decompile, decode, adapt, copy or otherwise attempt to derive or gain access to any source code or other trade secrets or create any derivative works from or about the Software, or create any derivative works from or about any of the Software, in whole or in part; (vi) remove any proprietary notices from the Software or Documentation; (vii) access or use the Software or Documentation for the purpose of: (A) developing or operating products or services intended to be offered to third parties in competition with the Software, or (B) allowing access to the Software by a direct competitor of the Company; (viii) interfere with or disrupt the integrity or performance of the Software or the data contained therein; (ix) attempt to gain unauthorized access to the Software or its related systems or networks; (x) use the Software or Documentation in any manner or for any purpose that infringes, misappropriates or otherwise violates any intellectual property right or other right of any person, effects or facilitates the storage or transmission of libelous, tortious, violative of third-party privacy rights, encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise unlawful material including, but not limited to, material that is harassing, threatening, or obscene, or that otherwise violates any applicable federal, state, local or foreign law, rule, regulation or requirement; or (xi) use the Software to create, use, send, store or run viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents, or other programs, or circumvent or disclose the user authentication or security of the Software or any host, network, or account related thereto or use any aspect of the Software components other than those specifically identified the Order Form.

(e) **Reservation of Rights**. The Company reserves all rights not expressly granted to Customer in these Terms. Except for the limited rights and licenses expressly granted under these Terms, nothing in the Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Software, Documentation or Company IP.

(f) **Suspension of Software**. Notwithstanding anything to the contrary in these Terms, the Company may temporarily suspend Customer's and any Authorized User's access to any portion or all of the Software if: (A) the Company reasonably determines that there is a threat or attack on any of the Software or Company IP; (B) Customer's or any Authorized User's use of the Software disrupts or poses a security risk to the Software or Company IP or to any other customer or vendor of the Company; (C) Customer, or any Authorized User, is using the Software for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; (E) the Company's provision of the Software to Customer or any Authorized User is prohibited by applicable law; (F) any vendor of the Company has suspended or terminated the Company's access to or use of any third-party services or products required to enable Customer to access the Software; (iii) in accordance with Section 4(a)(iii) (*Fees*) of these Terms (any such suspension a "**Software Suspension**"). The Company shall use commercially reasonable efforts to provide written notice of any Service Suspension to

Customer and to provide updates regarding resumption of access to the Software following any Service Suspension. The Company shall use commercially reasonable efforts to resume providing access to the Software as soon as reasonably possible after the event giving rise to the Service Suspension is cured. The Company shall have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

      (g)   **Third-Party Products**. The Company may from time to time make Third-Party Products available to Customer. Such Third-Party Products are subject to their own terms and conditions and the applicable flow-through provisions provided by the Third-Party Product vendors referred to in the Proposal. If Customer does not agree to abide by the applicable terms for any such Third-Party Products, then Customer should not install or use such Third-Party Products.

      3.   **Security and Customer Data**.

      (a)   **Security.** The Company shall use commercially reasonable industry standard security technologies in providing the Software. The Company has implemented and shall maintain appropriate technical and organizational measures, including information security policies and safeguards, designed to preserve the security, integrity, and confidentiality of Customer Data.

      (b)   **Customer Data.** Customer is responsible for Customer Data (including Customer personal data) as entered into, supplied or used by Customer and its Authorized Users in the Software. Further, Customer is solely responsible for determining the suitability of the Software for Customer's business and complying with any applicable data privacy and protection Legal Requirements applicable to Customer Data and Customer's use of the Software. Customer grants to the Company the non-exclusive right to process Customer Data (including personal data) for the sole purpose of and only to the extent necessary for the Company: (a) to provide the Software; (b) to verify Customer's compliance with the restrictions set forth in Section 2.2(d) (*Use Restrictions*) of these Terms if the Company has a reasonable belief of Customer's non-compliance; and (c) as otherwise set forth in these Terms.

      (c)   **Usage Data.** The Company may collect and use data, information, or insights generated or derived from the use of the Software ("**Usage Data**") for its business purposes, including industry analysis, benchmarking, analytics, marketing, and developing, training and improving its products and services. Before doing so, shall deidentify and anonymize all Usage Data in such manner that does not allow for the identification of Customer Data, or Customer's Confidential Information, and will disclose such Usage Data in aggregate form only.

      4.   **Fees, Taxes and Records**.

      (a)   **Fees**. Customer shall pay the Company the fees ("**Fees**") as set in the Order Form without offset or deduction. Customer shall make all payments hereunder in US dollars on or before the due date set forth in the Order Form. All fees are nonrefundable once paid. If Customer fails to make any payment when due, in addition to all other remedies that may be available to the Company: (i) the Company may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Legal Requirements; (ii) Customer shall reimburse the Company for all reasonable costs incurred by the Company in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and (iii) if such failure continues for ten (10) days or more, the Company may suspend Customer's and its Authorized Users' access to the Software until all past due amounts and interest thereon are paid in full, without incurring any obligation or liability to Customer or any other Person by reason of such prohibition of access to the Software.

      (b)   **Taxes**. All Fees and other amounts payable by Customer are exclusive of all sales, use, excise and other similar taxes, duties, levies, imposts, fines or similar governmental assessments, including sales and use taxes, value-added taxes, goods and services taxes, excise, business, service, and similar transactional taxes imposed by any federal, state, local or foreign governmental or regulatory authority and all interest and penalties thereon (collectively, "**Taxes**"). Without limiting the foregoing, Customer shall be responsible for and bear all Taxes associated with its purchase of, payment for, access to or use of the Software. If Customer claims tax exempt status for amounts due under the Agreement, it shall provide the Company with a valid tax exemption certificate (authorized by the applicable governmental authority) to avoid application of Taxes to Customer's invoice. Each Party is responsible for and shall bear Taxes imposed on its net income.

      5.   **Confidential Information**.

      (a)   From time to time during the Term, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information: (i) was or becomes generally known to the public through no fault or breach of the Agreement by the receiving Party; (ii) known to the receiving Party at the time of disclosure without restriction on use or disclosure; (iii) rightfully obtained by the receiving Party from a third party that was not under a duty of confidentiality and not subject to any restriction on use or disclosure of such information; or (iv) was independently developed by the receiving Party without use of or reference to the disclosing Party's Confidential Information.

(b)   The receiving Party shall not disclose the disclosing Party's Confidential Information to any Person, except to the receiving Party's employees and other representatives who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights relating to the SiteVision Services, including to make required court filings.

(c)   Upon the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed.

(d)   The receiving Party acknowledges that, as between the Parties, all Confidential Information it receives from the disclosing Party, including all copies thereof in Recipient's possession or control, in any media, is proprietary to and exclusively owned by the disclosing Party. Nothing in the Agreement grants the receiving Party any right, title or interest in or to any of the disclosing Party's Confidential Information. The receiving Party's incorporation of the disclosing Party's Confidential Information into any of its own materials will not render Confidential Information non-confidential.

(e)   Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of the Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable Legal Requirements.

(f)   The receiving Party acknowledges that any actual or threatened breach of this Section 5 may cause irreparable, non-monetary injury to the disclosing Party, the extent of which may be difficult to ascertain. Accordingly, the disclosing Party is entitled to seek injunctive relief in addition to all remedies available to the disclosing Party at law and/or in equity, to prevent or mitigate any breaches of the Agreement or damages that may otherwise result from those breaches.

6.   **Ownership and Feedback**.

(a)   **Software, Documentation and Company IP**.   Customer acknowledges and agrees that the Company owns all right, title and interest, including all intellectual property rights, in and to the Software, Documentation and Company IP, subject only to the rights of the applicable third-party providers in and to the Third-Party Products.

(b)   **Hardware and Equipment**.   Customer acknowledges and agrees that the Company owns all right, title and interest, including all intellectual property rights, in and to the hardware and equipment subject only to the rights of the applicable third-party providers in and to the Third-Party Products. In addition, Customer acknowledges that the equipment will be attached to its generator systems, and will provide Company with access to the equipment.

(c)   **Customer Data**. The Company acknowledges that, as between the Company and Customer, Customer owns all right, title and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to the Company a non-exclusive, royalty-free, worldwide license to process, transmit, store, reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for the Company to provide the Software to Customer.

(d)   **Feedback**. If Customer or any of its employees, consultants, contractors and/or agents provides, by any means, any suggestions, proposals, ideas, recommendations, or other feedback regarding improvements to Software and related resources, including without limitation, new features or functionality relating thereto (collectively, "**Feedback**"), Customer grants to the Company and its Affiliates a royalty-free, fully paid, sub-licensable, transferable (notwithstanding Section 12(i) (*Assignment*) of these Terms), non-exclusive, irrevocable, perpetual, worldwide right and license to make, use, sell, offer for sale, import and otherwise exploit Feedback (including by incorporation of such feedback into the Software) without restriction, obligation or liability. Customer shall ensure that: (i) Feedback does not include any Customer Data; and (ii) Customer has obtained requisite authorization from any Authorized User or other third party to grant the license described herein. For the avoidance of doubt, Feedback does not constitute the Confidential Information of Customer.

7.   **Limited Software Warranty; Exclusions and Disclaimers**.

(a)   **Limited Software Warranty.** the Company warrants to Customer that: (i) during the Term, the Software, when used as authorized under the Agreement, will perform substantially in conformance with the Documentation; and (ii) at the time of delivery the Software does not contain any virus or other malicious code that would cause the Software to become inoperable or incapable of being used in accordance with the Documentation (the "**Limited Software Warranty**"). Notwithstanding the foregoing, the Company does not warrant, and the Limited Software Warranty does not include or cover, any Third-Party Products.

(b)   **Exclusions from Software Warranty**. The Limited Software Warranty does not apply and becomes null and void if Customer breaches any material provision of the Agreement, or if Customer, any Authorized User, or any other Person provided access to the Software by Customer or any Authorized User, whether or not in violation of the Agreement: (i) installs or uses the Software on or in connection with any hardware or software not specified in the Documentation or expressly authorized by the

Company in writing; (ii) modifies or damages the Software; or (iii) misuses the Software, including any use of the Software other than as specified in the Documentation or expressly authorized by the Company in writing.

(c) **Exclusive Remedy**. If any Software fails to comply with the Limited Software Warranty during the applicable time, and such failure is not excluded under Section 7(b) (*Exclusions from Software Warranty*) of these Terms, then the Company shall, subject to Customer's promptly notifying the Company in writing of such failure, at the Company's sole option, either: (i) repair or replace the Software, provided that Customer provides the Company with all information the Company requests to resolve the reported failure, including sufficient information to enable the Company to recreate such failure; or (ii) a prorated refund to Customer for any prepaid fees received by the Company for the Software as to the unused portion of the Term, subject to Customer's ceasing all use of and, if requested by the Company, returning to the Company all copies of the Software. If the Company repairs or replaces the Software, the warranty will continue to run from the Effective Date and not from Customer's receipt of the repair or replacement. The remedies set forth in this Section 7(c) are Customer's sole and exclusive remedy and the Company's sole and exclusive liability and obligation under the Limited Software Warranty.

(d) **Mutual Warranties.** Each Party represents and warrants that: (i) the Order Form has been duly executed and delivered and constitutes a valid and binding agreement enforceable against it in accordance with the terms of the Agreement; (ii) no authorization or approval from any third party is required in connection with its execution and performance of the Order Form and these Terms; and (iii) it is duly organized and validly existing under the laws of the state of its incorporation or formation and has full power and authority to enter into the Order Form and to perform its duties, obligations and covenants thereunder and under these Terms.

(e) **NO OTHER WARRANTIES. EXCEPT FOR THE LIMITED SOFTWARE WARRANTY, THE SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS" AND THE COMPANY HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. THE COMPANY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. THE COMPANY MAKES NO WARRANTY OF ANY KIND THAT THE SOFTWARE AND DOCUMENTATION, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. THE COMPANY STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY PRODUCTS.**

8. **Indemnification**.

(a) **Company Indemnification**.

(i) The Company shall indemnify, defend and hold harmless Customer from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("**Losses**") incurred by Customer to the extent directly resulting from any third-party claim, suit, action or proceeding ("**Third-Party Claim**") that the Software, or any use of the Software in accordance with these Terms, infringes or misappropriates such third party's US intellectual property rights, provided that Customer promptly notifies the Company in writing of the Third-Party Claim, cooperates with the Company in the defense of the Third-Party Claim, and allows the Company sole authority to control the defense and settlement of such Third-Party Claim.

(ii) If such a Third-Party Claim is made or appears possible, Customer agrees to permit the Company, at the Company's sole discretion, to (A) modify or replace the Software, or component or part thereof, to make it non-infringing, or (B) obtain the right for Customer to continue use. If the Company determines that neither alternative is reasonably available, the Company may terminate the Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer.

(iii) This Section 8(a) will not apply to the extent that the alleged infringement or misappropriation arises from: (A) use of the Software in combination with data, software, hardware, equipment, goods, services or technology not provided by the Company or authorized by the Company in writing, including any Third-Party Software; (B) modifications to the Software not described in the Documentation or made or expressly authorized by the Company; (C) Customer Data; or (D) Third-Party Products.

(b) **Customer Indemnification**. Customer shall indemnify, hold harmless, and, at the Company's option, defend the Company and its Affiliates, and their respective officers, managers, members, employees, contractors, consultants and other representatives from and against any Losses resulting from any Third-Party Claim that the Customer Data, or any use of the Customer Data in accordance with the Agreement, infringes or misappropriates such third party's U.S. intellectual property rights and any Third-Party Claims based on Customer's or any Authorized User's (i) negligence or willful misconduct, (ii) use of the Software in a manner not authorized by the Agreement, (iii) use of the Software in combination with data, software, hardware, equipment, or technology not provided by the Company or authorized by the Company in writing, (iv) modifications to the Software not made by the Company, or (v) use of any version other than the most current version of the Software or Documentation delivered to Customer, provided that Customer shall not settle any Third-Party Claim against the Company unless the Company consents to such settlement,

and further provided that the Company shall have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

(c) **Sole Remedy for Infringement. THIS SECTION 8 SETS FORTH CUSTOMER'S SOLE REMEDY AND THE COMPANY'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SOFTWARE INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.**

9. **Limitations of Liability**.

(a) **Exclusion of Consequential Damages. IN NO EVENT WILL THE COMPANY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE SOFTWARE OR THE DOCUMENTATION UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER THE COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE.**

(b) **Maximum Liability. IN NO EVENT WILL THE COMPANY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE AMOUNT OF FEES PAID TO THE COMPANY OVER THE TWELVE-MONTH PERIOD PRECEDING THE INITIAL EVENT GIVING RISE TO THE CLAIM, PROVIDED THAT THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO (A) THE COMPANY'S EXPRESS OBLIGATIONS UNDER SECTION 8 (*INDEMNIFICATION*); (B) THE COMPANY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER THIS AGREEMENT; OR (C) DAMAGES RESULTING FROM THE COMPANY'S WILLFUL MISCONDUCT OR VIOLATION OF APPLICABLE LEGAL REQUIREMENTS.**

10. **SiteVision Services Term and Termination**.

(a) **SiteVision Services Term**. The initial term of the Agreement begins on the Effective Date and, unless expressly specified otherwise in the Order Form, shall continue in effect for five (5) years after the Effective Date (the "**Initial Term**"). The Initial Term shall automatically renew for successive additional one (1)-year terms unless earlier terminated pursuant to the express provisions of the Agreement or unless either Party gives the other Party written notice of non-renewal at least sixty (60) days prior to the expiration of then-current term (each, a "**Renewal Term**" and together with the Initial Term, the "**SiteVison Services Term**"). The Company must provide notice to Customer of any increase in Fees at least sixty (60) days prior to the expiration of either the Initial Term or any Renewal Term.

(b) **Termination**. In addition to any other express termination right set forth in these Terms:

(i) the Company may terminate the SiteVision Services Term, effective upon written notice to Customer, if Customer: (A) fails to pay any amount when due hereunder, and such failure continues more than ten (10) days after the Company's delivery of written notice thereof; or (B) breaches any of its obligations under Section 2(d) (*Use Restrictions*) or Section 5 (*Confidentiality*) of these Terms;

(ii) either Party may terminate the SiteVision Services Term, effective upon written notice to the other Party, if the other Party materially breaches or defaults under the Agreement, and such breach or default: (A) is incapable of being cured; or (B) if capable of being cured, remains uncured 30 days after the non-breaching Party provides the breaching Party with written notice of such breach; or

(iii) either Party may terminate the SiteVision Services Term, effective immediately upon written notice to the other Party, if the other Party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

(c) **Effect of Expiration or Termination**. Upon expiration or termination of the SiteVision Services Term for any reason, (a) Customer shall pay to the Company any and all Fees and other amounts that have accrued before, and remain unpaid as of, the effective date of the expiration or termination; (b) Customer shall immediately discontinue use of the Software and any and all licenses and use rights granted to Customer with respect to the Software and Company IP will immediately terminate; (c) the Company shall make available a non-proprietary, industry standard digital file of the Customer Data in exchange for then current fee for such service; (d) any and all liabilities of either Party to the other Party that have accrued before the effective date of the expiration

or termination shall survive; and (e) the Parties' rights and obligations under this Section 10(c) and under Sections 1, 4, 5, 6, 7, 8, 9, 11, 12 and 13 of these Terms will survive any termination or expiration of the SiteVision Services Term. After thirty (30) calendar days following expiration or termination of and the SiteVision Services Term, the Company shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, delete all Customer Data in its system or otherwise in its possession or under its control.

11. **Modification of Terms.** The Company reserves the right to amend, supplement or otherwise modify these Terms from time to time by either (a) posting an updated version of these Terms on its website, or (b) sending information regarding the modification to Customer. CUSTOMER IS RESPONSIBLE FOR REGULARLY REVIEWING THE COMPANY'S WEBSITE TO OBTAIN TIMELY NOTICE OF ANY AMENDMENTS TO THESE TERMS. CUSTOMER SHALL BE DEEMED TO HAVE ACCEPTED SUCH AMENDMENTS BY CONTINUING TO USE THE SITEVISION SERVICES FOR MORE THAN 20 DAYS AFTER SUCH AMENDMENTS HAVE BEEN POSTED OR INFORMATION REGARDING SUCH AMENDMENTS HAS BEEN SENT TO CUSTOMER. Customer agrees that the Company shall not be liable to Customer or to any third party for any modification of these Terms.

12. **General Provisions**.

(a) **Relationship.** The Parties are independent contractors. The Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties. Except as set forth in the Agreement, nothing in the Agreement, expressed or implied is intended to give rise to any third-party beneficiaries.

(b) **Notices**. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed to the Parties at the addresses set forth on the Order Form (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section 13(b)). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in the Agreement, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section 13(b).

(c) **Force Majeure**. In no event shall the Company be liable to Customer, or be deemed to have breached the Agreement, for any failure or delay in performing its obligations under the Agreement, if and to the extent such failure or delay is caused by any act, occurrence, circumstance or condition beyond the Company's reasonable control, including but not limited to acts of God, flood, fire, earthquake, pandemic, epidemic, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, telecommunications outage, or passage of law or any action taken by a governmental or public authority, including imposing a shutdown or an embargo.

(d) **Amendment and Modification; Waiver**. No amendment to or modification of the Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in the Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from the Agreement will operate or be construed as a waiver thereof, and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(e) **Severability**. If any provision of the Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect the validity, legality and enforceability of such provision in any other jurisdiction or any other provision of the Agreement. Upon a determination that any provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify the Agreement so as to effect its original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(f) **Trade Restrictions**. The Software, Documentation, and the provision and any derivatives thereof are subject to the export control and sanctions Legal Requirements of the United States and other countries that may prohibit or restrict access by certain persons or from certain countries or territories ("**Trade Restrictions**"). Each Party shall comply with all applicable Trade Restrictions in performance of the Agreement. For the avoidance of doubt, nothing in the Agreement is intended to induce or require either Party to act in any manner which is penalized or prohibited under any applicable Legal Requirements. Customer shall comply with all applicable Legal Requirements, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), that prohibit or restrict the export or re-export of the Software or any Customer Data outside the United States. Each of the Documentation and the software components that constitute the Software is a "commercial item" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. Accordingly, if Customer is an agency of the US Government or any contractor therefor, Customer only receives those rights with respect to the Software and Documentation as are granted to all other end users, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government users and their contractors.

(g) **Governing Law; Submission to Jurisdiction**. The Agreement, and all rights, claims and disputes hereunder, shall be governed by and construed in accordance with the internal laws of the State of North Carolina without giving

effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of North Carolina. Any legal suit, action, or proceeding arising out of or related to the Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of North Carolina, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

(h) **Assignment**. Neither Party may assign its rights or obligations under the Agreement without the prior written consent of the other Party; provided, however, that the Company may assign its rights and obligations under the Agreement to an Affiliate as part of a reorganization, or to a purchaser of its business entity or substantially all of its assets or business to which rights and obligations pertain without the consent of Customer. Subject to the foregoing, each and every covenant, term, provision and agreement contained in the Agreement shall be binding upon and inure to the benefit of the Parties' successors and permitted assigns. Any assignment attempted in contravention of this Section 13(h) will be void.

(i) **Equitable Relief**. Each Party acknowledges and agrees that (i) a breach, default or violation, or threat thereof, by such Party of any of its obligations under Section 5 (*Confidentiality*) of these Terms or, in the case of Customer, under Section 2(d) (*Use Restrictions*) of these Terms, would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy, and (ii) in the event of such breach, default or violation, or threat thereof, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

Revised: June 6, 2024