

SUPPLIER AGREEMENT - GOODS AND SERVICES

Agreement #: _____
Effective Date: _____
Expiration Date: _____

BUYER: NRG Systems (and all NRG Systems subsidiaries and affiliates, hereinafter "**Buyer**" or "**NRG Systems**").
110 Riggs Road
Hinesburg, VT 05461
USA

SUPPLIER: SUPPLIER NAME (hereinafter "**Supplier**").
Address Info

Buyer may purchase and Supplier shall provide the Services and sell the Items as described and at prices specified in the applicable Purchase Order ("PO") and in accordance with the Terms and Conditions of this Agreement. All Purchase Orders issued to Supplier by Buyer during the term of this Agreement shall be governed only by the Terms and Conditions of this Agreement notwithstanding any preprinted terms and conditions on Supplier's acknowledgment or Buyer's Purchase Order. Any additional or different terms in Supplier's documents are hereby deemed to be material alterations and notice of objection to and rejection of them is hereby given. When Buyer is a subsidiary or affiliate of NRG Systems the obligations of the parties run between such subsidiary and affiliate and the Supplier, and not between NRG Systems and the Supplier.

NRG SYSTEMS

Signature: _____
Printed Name: _____
Title: _____
Date: _____

SUPPLIER: _____

Signature: _____
Printed Name: _____
Title: _____
Date: _____

TERMS AND CONDITIONS OF PURCHASE AGREEMENT - GOODS AND SERVICES

These Purchase Agreement Terms and Conditions (the "Terms and Conditions") shall control the purchase of any Products or Services (defined below) by NRG Systems or any of its affiliates, including but not limited to direct or indirect parents and subsidiaries (the "Buyer") from the party selling the applicable Products or Services (the "Supplier"). References to "Products" include items sold by Supplier to Buyer pursuant to the Terms and Conditions or incorporated in Services Buyer purchases from Supplier. References to "Services" include any services performed by Supplier for Buyer in connection with the sale of Products by Supplier hereunder.

1. APPLICABILITY Any Products or Services which Buyer purchases from Supplier by electronic, post, paper or any other form of transmission, are purchased subject to these Terms and Conditions. If these Terms and Conditions are construed to be an offer, this offer expressly limits acceptance by the Supplier to the terms of this offer and notice of objection to any different or additional terms is hereby given. If these Terms and Conditions are construed to be an acceptance of an offer, this acceptance is expressly conditioned upon the Supplier's assent to any different or additional terms contained in these Terms and Conditions. If Supplier already has an executed purchase agreement currently in effect with Buyer or enters into the same in the future, then the terms of such signed purchase agreement (as the same may be amended from time to time) shall prevail in the event of any conflict between these Terms and Conditions and such purchase agreement. If Supplier does not already have or enter into an executed purchase agreement with Buyer, then these Terms and Conditions shall constitute the complete agreement with respect to the Products or Services.

2. DEFINITIONS

- A. "Hazardous Materials" are or contain dangerous goods, chemicals, contaminants, substances, pollutants, or any other materials that are defined as hazardous by relevant local, state, national, or international law, regulations, and standards.
- B. "Items" means the goods that Supplier is to provide to Buyer as set forth on the PO. Any Item that is custom made for Buyer shall be indicated by an asterisk (*) on the PO.
- C. "PO" is Buyer's document setting forth specific Services to be rendered and/or specific line Items ordered, and Release information.
- D. "Release" means Buyer's authorization for Supplier to provide the Services and to ship a definite quantity of Items to a specified schedule. The Release is contained in the PO sent to Supplier.
- E. "Service(s)" means the work to be performed as set forth and in compliance with the standards set forth in the PO.
- F. "Lead-time" means the agreed number of calendar weeks or calendar days from the date a Release is issued for an Item to the date the Item is to be received by the Supplier, and shipped to Buyer's site.

3. TERM OF AGREEMENT

- A. The term of this Agreement shall begin on the Effective Date and continue to the Expiration Date.
- B. At Buyer's option, Items may be scheduled for delivery up to six (6) months following expiration of this Agreement.

4. PRICING

- A. Prices and Service rates for Items or Services provided under this Agreement are set forth on the PO. Supplier represents and warrants that it is selling at the lowest prices and upon the most favorable terms (including, without limitation, volume, quality and/or payment terms) that it offers any third party buyer for goods or services of the same or similar quality and/or quantity to the Products or Services. If Supplier makes an offer to sell any such goods or services to a third party buyer at a lower price or upon one or more terms that are more favorable than the price or terms then applicable under these Terms and Conditions, Supplier shall notify Buyer of such fact within fourteen (14) days and shall prepare an amendment to these Terms and Conditions that shall apply an equivalent reduction or modification for Buyer's review and approval. In the event Buyer agrees to such amendment in writing, such amendment shall apply to all Products or Services purchased thereafter by Buyer.
- B. If at any time a third party makes a competitive offer to sell products or services pursuant to one or more terms (including price, volume, quality and/or payment terms) that are more favorable to Buyer than these Terms and Conditions (the "Favorable Terms"), then Supplier shall meet, or notify Buyer that it will not meet, the Favorable Terms within fourteen (14) days after receipt of Buyer's notice thereof. Supplier's failure to meet the Favorable Terms within such fourteen (14) day period shall be deemed a decision not to meet the Favorable Terms regardless of whether Supplier specifically notifies Buyer thereof and shall constitute a breach of a material term of these Terms and Conditions. If Buyer is obligated under these Terms and Conditions to buy certain quantities of Products or Services from Supplier and Supplier does not meet the Favorable Terms as provided in the preceding sentence, Buyer shall be released from its obligations with respect to any quantities of such Products or Services available from a third party on the Favorable Terms.
- C. Buyer may return up to thirty-three percent (33%) of its inventory of non-custom Items purchased from Supplier during the previous ninety (90) days in unopened, original, individual Item packaging for a credit against any outstanding or future Supplier invoices.
- D. (i) Unless prohibited by law, Supplier shall separately indicate on its invoices any taxes imposed on the sale or delivery of Products or Services. Buyer shall reimburse Supplier for any sales, use, and similar taxes (excluding taxes based on or measured by the net income, net worth or gross receipts of Supplier or any duties or other import fees) actually paid by Supplier which are properly imposed upon Supplier as a result of the sale of Products or Services. With notice to Supplier, Buyer may pay such taxes directly to the taxing authority where allowed by law. Supplier shall promptly remit all taxes paid by Buyer to the appropriate taxing authority and shall be solely responsible for any late fees or other charges incurred as a result from any delay thereof. Upon Buyer's request, Supplier shall provide written evidence that Supplier is properly licensed to collect the taxes paid by Buyer.
(ii) To the extent that this Agreement includes transfers of licenses for software to be used in Web-based E-Commerce and/or E-Business solutions, or Web-related service fees, including but not limited to hosting fees, data and/or storage fees, and application services, and such services are determined to be taxable or to become taxable at some future point in time, Supplier will collect such taxes as determined to be due from Buyer, or Buyer's resuppliers if applicable, and will remit same to the appropriate taxing jurisdictions. In the case of taxes imposed on the gross revenues resulting from the provision of said services, Supplier will remit such taxes to the taxing jurisdiction before any deduction for Buyer's share of any business service fees. Supplier will separately invoice and state separately thereon each type of service and applicable taxes provided under the Agreement.
- E. Additional costs that are not described on the PO, will not be reimbursed without Buyer's prior written approval.
- F. Buyer reserves the right to have Supplier's records inspected and audited to ensure compliance with this Agreement. At Buyer's option or upon Supplier's written demand, such audit will be performed by an independent third party at Buyer's expense. However, if Supplier is found not to be complying with this Agreement in any way, Supplier shall reimburse Buyer for all costs associated with the audit, along with any discrepancies discovered, within thirty (30) days after completion of the audit. The results of such audit shall be kept confidential by the auditor and, if conducted by a third party, only Supplier's failures to abide by the obligations of this Agreement shall be reported to Buyer.

5. INVOICING AND PAYMENT

- A. Original invoices or packing lists shall be submitted and shall include: Purchase Agreement number from the Purchase Order, Purchase Order number, line Item number, Release number, part number, complete bill to address, description of Items, quantities, unit price, extended totals, and any applicable tax or other charges. All costs forwarded to Buyer for reimbursement of expenses agreed under the terms of this Agreement shall be net of any reclaimable Value Added Taxes ("VAT") incurred on such expenses. Buyer's payment shall not constitute acceptance.

- B. Supplier shall be responsible for and shall hold Buyer harmless for any and all payments to its vendors or subcontractors utilized in the performance of Services.
- C. Supplier agrees to invoice Buyer no later than one hundred and eighty (180) days after completion of Services or shipment of Items. Buyer will not be obligated to make payment against any invoices submitted after such period.
- D. Seller agrees to provide a fully-costed Bill of Materials to Buyer on an annual basis or as requested.

6. SET-OFF

Buyer may set off any amount owing at any time from Supplier to Buyer or any of its affiliates against any amount payable at any time by Buyer under these Terms and Conditions.

7. TERMINATION

- A. Buyer or Supplier may terminate these Terms and Conditions upon thirty (30) days' prior written notice if the other party breaches any material term or files for bankruptcy; provided, however, that during such notice period, the party in default may cure its default and thereby abate the termination. In the event Supplier has not complied in any respect with Sections 4, 5 or 6 above, Buyer shall have the right to immediately terminate these Terms and Conditions. After receipt of a notice of termination, the Supplier shall immediately: (i) stop work as directed in the notice; (ii) place no further subcontracts or purchase orders for materials, services or facilities, except as necessary to complete the continued portion of these Terms and Conditions; and (iii) terminate all subcontracts to the extent that they relate to the work terminated.
- B. Buyer may terminate these Terms and Conditions at any time and without liability for convenience by providing written notice of such termination to Supplier.

8. TERMINATION FOR CONVENIENCE

- A. Buyer may terminate this Agreement or any Purchase Order or Release issued, or any part thereof, at any time for its sole convenience by giving written notice of termination to Supplier. Upon Supplier's receipt of such notice, Supplier shall, unless otherwise specified in such notice, immediately stop all work hereunder, give prompt written notice to and cause all of its suppliers or subcontractors to cease all related work, and, upon Buyer's request, return all materials provided to Supplier by Buyer under this Agreement.
- B. There shall be no charges for termination of orders for standard Items or for Services not yet provided. Buyer will be responsible for payment of authorized Services and Items already provided by Supplier but not yet invoiced. Paragraphs C through E of this Section 8 shall govern Buyer's payment obligation for custom Items. Custom Items are Items manufactured to Buyer's specifications solely for Buyer and offered or sold to no other customer. Notwithstanding anything to the contrary, Supplier shall not be compensated in any way for any work done after receipt of Buyer's notice, nor for any costs incurred by Supplier's vendors or subcontractors after Supplier receives the notice, nor for any costs Supplier could reasonably have avoided.
- C. Any claim for termination charges for custom Items must be submitted to Buyer in writing within thirty (30) days after receipt of Buyer's termination notice along with a summary of all mitigation efforts.
- D. Supplier's claim may include the net cost of custom work in process scheduled to be delivered within fifteen (15) days and that must be scrapped due to the termination. Supplier shall, wherever possible, place such custom work in process in its inventory and sell it to other customers. In no event shall such claim exceed the total price for the Items terminated. Upon payment of Supplier's claim, Buyer shall be entitled to all work and materials paid for and may opt to receive that work or materials or request Supplier to dispose of them.
- E. Before assuming any payment obligation under this Section, Buyer may inspect Supplier's work in process and audit all relevant documents.
- F. Notwithstanding anything else in this Agreement, failure to meet the delivery date(s) in the Purchase Order shall be considered a material breach of contract and shall allow Buyer to terminate the entire order for the Item including any subsequent Releases in the Purchase Order without any liability whether the Purchase Order was for standard or custom Items.

9. CONTINGENCIES

- A.
- B. Extraordinary Transportation for Late Deliveries: If it should reasonably be expected that a shipment of Product(s) will not be delivered on the agreed upon delivery date due to reasons not caused directly or indirectly by Buyer, then Seller shall, at its expense and upon Buyer's request, use best efforts to deliver Product(s) at the earliest possible date. If it is expected that the Product(s) will not be delivered on the agreed upon delivery date due to reasons caused by Buyer, including, but not limited to, reasons relating to consigned or Buyer directed material, then Buyer shall bear the expense of expediting delivery.
- C. Supplier shall use its reasonable efforts to minimize cancellation charges by returning inventory and material for credit, canceling material on order and applying material to other Supplier business requirements (when possible) and minimizing all work-in-process and finished goods to support the final production schedule.

10. DELIVERY, RELEASES, AND SCHEDULING

- A. Any forecasts provided by Buyer are for planning purposes only and do not constitute a PO or other commitment by Buyer.
- B. Supplier shall notify Buyer in writing within two (2) business days of receipt of Buyer's Purchase Order if Supplier is unable to make any scheduled delivery and shall state the reasons therefor. The absence of such notice constitutes acceptance of the Purchase Order and commitment to the Release terms.
- C. Supplier shall deliver Items per the PO schedule and Buyer may return non-conforming shipments at Supplier's risk and expense.
- D. Supplier shall promptly perform Services as scheduled or shall promptly notify Buyer if unable to perform any scheduled Services and shall state the reasons.
- E. Buyer may reschedule any PO in whole or in part prior to the PO date at no additional charge.
- F. Buyer may place any portion of a PO on hold by notice that shall take effect immediately upon receipt. Releases placed on hold will be rescheduled or terminated in accordance with Section 5 within a reasonable time.
- G. Buyer shall have no obligation with respect to the purchase of Items or Services under this Agreement until such Items or Services are specified in an issued PO that contains specific dates for specific Items or Services.
- H. If for any reason Supplier discontinues the manufacture of any Item during the term of this Agreement or within one (1) year after the final delivery under this Agreement, Supplier shall give Buyer at least one (1) year prior written notice of such Item discontinuance if no other alternative material is commercially available in required annual quantities, or one hundred and eighty (180) days provided an alternative material is commercially available in required annual quantities, during which time Buyer shall have the option to place a final PO for such Items for delivery to Buyer within an agreed upon period. If any warranty return claims are made for such discontinued Items, then such returns will be subject to the warranty provisions in Section 9.
- I. To assist Buyer, in the event Buyer assesses a risk to: the supply chain; quality; secure supply; or safety of Items procured from Supplier hereunder, upon Buyer's request, Supplier shall disclose, make available to Buyer, or provide consent for Buyer to access information ("Disclosure information") related to all components used in the manufacture or usage of Items (includes Items offered for sale to Buyer). Buyer shall be provided access, with a two (2) week minimum notice, to the manufacturing facilities utilized throughout the supply chain. Disclosure information includes, but is not limited

to, all relevant product, process, equipment, and end-of-line parameters (non-normalized data) used throughout the entire supply chain to produce or utilize Items.

11. INSPECTION, ACCEPTANCE, AND WARRANTY

- A. Buyer may inspect and test all Items at reasonable times before, during, and after manufacture. If any inspection or test is made on Supplier's premises, Supplier shall provide reasonable facilities and assistance for the safety and convenience of Buyer's inspectors in such manner as shall not unreasonably hinder or delay Supplier's performance. All Items and Services shall be received subject to Buyer's inspection, testing, approval, and acceptance at Buyer's premises notwithstanding any inspection or testing at Supplier's premises or any prior payment for such Items or Services. Items and Services rejected by Buyer as not conforming to this Agreement or Item specifications, whether provided by Buyer or furnished with the Item, may be returned to Supplier at Supplier's risk and expense and, at Buyer's request, shall immediately be repaired or replaced.
- B. Supplier makes the following warranties regarding Items and Services furnished hereunder, which warranties shall survive any delivery, inspection, acceptance, payment, or resale of the Items:
- (i) Items will not infringe any party's intellectual property rights;
 - (ii) Supplier has the necessary right, title, and interest to provide said Items and Services to Buyer, and the Items will be free of liens and encumbrances;
 - (iii) Items are new, and of the grade and quality specified;
 - (iv) Items and Services are free from defects in workmanship and material, conform to all samples, drawings, descriptions, and specifications furnished or published by Supplier and to any other agreed-to specifications;
 - (v) Items shall conform to the manufacturing quality provisions set forth in the PO;
 - (vi) Services provided shall be performed in accordance with good workmanlike standards and shall meet the descriptions, specifications, and performance standards provided on the PO;
- C. If Supplier breaches any of the foregoing warranties, or Items or Services are otherwise defective or non-conforming, during a period of three (3) years after Buyer's acceptance of Items or Services, Supplier shall, at Buyer's option, promptly repair, replace, or refund the amount paid for such Items and Services. Supplier shall bear the cost of shipping and shall bear the risk of loss of all defective or non-conforming Items while in transit.

12. PRODUCT SPECIFICATIONS/ IDENTIFICATION/ERRATA

- A. Supplier shall not modify the specifications for Items or Services without Buyer's written consent. Supplier shall notify Buyer at least one hundred twenty (120) days in advance of any changes in the manufacturing process.
- B. Supplier shall cooperate with Buyer to provide configuration control and traceability systems for Items and Services supplied hereunder.
- C. Supplier shall provide Buyer with an errata list for each Item and shall promptly notify Buyer in writing of any new errata with respect to the Items.

13. PACKING AND SHIPMENT

- A. All Items shall be prepared for shipment in a manner that: (i) follows good commercial practice; (ii) is acceptable to common carriers for shipment at the lowest rate; and (iii) is adequate to ensure safe arrival and (iv) protects items from environmental conditions that could degrade the physical properties and visual appearance. Supplier shall mark all containers with necessary lifting, handling, and shipping information, Purchase Order number, date of shipment, and the names of the Buyer and Supplier. Buyer shall notify Supplier of the method of shipment and expected delivery date. If no instructions are given, Supplier shall select the most cost effective carrier, given the time constraints known to Supplier. Supplier shall ship only the quantity of Items specified in the Release. Buyer may return at Supplier's expense any Items in excess of the quantity stated in the Release and items damaged during shipment if shipped using Supplier's shipment method. Supplier will be issued a non conforming report for the damaged items. Supplier must submit a corrective action report within 10 business days after being contacted.
- B. As directed by Buyer, freight shall be either managed by Supplier or Buyer in accordance with the Incoterm 2010 specified by on the Buyer's PO.

14. OWNERSHIP AND BAILMENT RESPONSIBILITIES

Any specifications, drawings, schematics, technical information, data, tools, dies, patterns, masks, gauges, test equipment, and other materials furnished or paid for by Buyer shall: (i) be kept confidential; (ii) remain or become Buyer's property; (iii) be used by Supplier exclusively for Buyer's orders; (iv) be clearly marked as Buyer's property and segregated when not in use; (v) be kept in good working condition at Supplier's expense; and (vi) be shipped to Buyer promptly on demand.

15. CONFIDENTIALITY AND PUBLICITY

- During the course of this Agreement, either party may have or may be provided access to the other's confidential information and materials. Additionally, Supplier may be engaged to develop new information for Buyer, or may develop such information during the performance of Services, which information will become, upon creation, Buyer's confidential information unless otherwise agreed in writing. Provided information and materials are marked in a manner reasonably intended to make the recipient aware, or the recipient is sent written notice within forty-eight (48) hours of disclosure, that the information and materials are "Confidential", each party agrees to maintain such information in accordance with the terms of this Agreement and any applicable agreed to Non-disclosure Agreement (NDA) between Buyer and Supplier. At a minimum each party agrees to maintain such information in confidence and limit disclosure on a need to know basis, to take all reasonable precautions to prevent unauthorized disclosure, until the information becomes rightfully available to the public through no fault of the non-disclosing party. Supplier's employees who access Buyer's facilities may be required to sign a separate access agreement prior to admittance to Buyer's facilities Supplier shall not use any of the confidential information created for Buyer other than for Buyer.
- B. The parties agree that neither will disclose the existence of this Agreement, nor any of its details or the existence of the relationship created by this Agreement, to any third party without the specific, written consent of the other. If disclosure of this Agreement or any of the terms hereof is required by applicable law, rule, or regulation, or is compelled by a court or governmental agency, authority, or body, such as annual reports or S1 Filings: (i) the parties shall use all legitimate and legal means available to minimize the disclosure to third parties of the content of the Agreement, including without limitation seeking a confidential treatment request or protective order; (ii) the party compelled to make disclosure shall inform the other party at least ten (10) business days in advance of the disclosure (i.e., not a Saturday, Sunday, or a day on which banks are not open for business in the geographic area in which the non-disclosing party's principal office is located); and (iii) the party compelled to make disclosure shall give the other party a reasonable opportunity to review and comment upon the disclosure, and any request for confidential treatment or a protective order pertaining thereto, prior to making such disclosure. Neither party may use the other party's name or trademarks in any type of advertisement materials, web sites, press releases, interviews, articles, brochures, business cards, project reference or client listings, without the other's written consent.
- C. The obligations stated in this Section shall survive the expiration or termination of this Agreement.

16. INTELLECTUAL PROPERTY INDEMNIFICATION

- A. Supplier shall indemnify and hold Buyer and its customers harmless from any costs, expenses (including reasonable attorneys' fees), losses, damages, or liabilities incurred because of actual or alleged infringement of any patent, copyright, trade secret, trademark, maskwork, or other intellectual property right arising out of the use or sale by Buyer or Buyer's customers of Items or Buyer's products manufactured using the Item(s) or containing the Item(s), or Services, irrespective of whether Buyer furnishes any specifications to Supplier, except as otherwise provided in this paragraph. Buyer shall notify Supplier of such claim or demand and shall permit Supplier to participate in the defense or settlement thereof. If an injunction issues as a result of any

- claim or action, Supplier agrees at its expense and Buyer's option to either: (i) procure for Buyer and Buyer's customers the right to continue using Items; (ii) replace them with non-infringing Items; (iii) modify them so they become non-infringing; or (iv) refund to Buyer the amount paid for any Items returned to Supplier or destroyed. Regardless of which of the foregoing remedies is effected, Supplier shall pay to Buyer rework expenses and incremental costs incurred by Buyer to procure alternative products required to fill orders placed by Buyer and accepted by Supplier as of the effective date of the injunction. This indemnification shall not apply to the extent custom Items are manufactured to Buyer's detailed specifications and such infringement would not have occurred but for complying with such detailed specifications.
- B. Buyer shall defend, indemnify, and hold Supplier harmless from any costs or expenses arising from a rightful claim of infringement by a third party, where Buyer furnishes and requires Supplier to use detailed specifications for the process of manufacturing the Item(s), and such infringement claim would not have occurred but for complying with such detailed specifications. Notwithstanding the foregoing, Buyer shall have no liability to Supplier hereunder, if Supplier knows, or through the exercise of reasonable due diligence should have known, that the required manufacturing specification(s) infringe or potentially infringe another party's intellectual property rights.
- C. The foregoing states the entire set of obligations and remedies flowing between Buyer and Supplier arising from any intellectual property claim by a third party.

17. HAZARDOUS MATERIALS

- A. If Items or Services provided hereunder include Hazardous Materials, Supplier represents and warrants that Supplier and its personnel providing Services to Buyer understand the nature of and hazards associated with the design and/or Service of Items including handling, transportation, and use of such Hazardous Materials, as applicable to Supplier. Prior to causing Hazardous Materials to be on Buyer's property, Supplier shall obtain written approval from Buyer's Site Environmental/Health/ Safety organization. Supplier will be fully responsible for and indemnify Buyer from any liability resulting from the actions of Supplier or its contractors in connection with: (i) providing such Hazardous Materials to Buyer; and/or (ii) the use of such Hazardous Materials in providing Services to Buyer.
- B. Supplier will in a timely manner provide Buyer with material safety data sheets and any other documentation reasonably necessary to enable Buyer to comply with applicable laws and regulations. Supplier is responsible to provide updated material safety data sheets.
- C. Supplier hereby certifies that Items supplied to Buyer comply with all applicable requirements of Buyer's Environmental Product Content Specification for Suppliers.
- D. As a provider of globally sold products and services, Buyer and its subsidiaries (individually or collectively referred to as "Buyer") are subject to a large number of national and international regulations with respect to environmental protection. Buyer therefore requires that Supplier declare whether the products delivered by Supplier to Buyer contain any substances that are restricted due to toxicity in some way by national law or international law regulations such as - but not limited to - RoHS or REACH. Specifically, please expressly declare in writing to Buyer whether any such toxic substance is contained in the final end product that Supplier provides to Buyer, or if a toxic substance is used to the extent that its presence during the creation can be reasonably detected on the final end product. A non-exhaustive list of such restricted toxic substances are mercury, lead, cadmium, hexavalent chromium, polybrominated biphenyls, and polybrominated diphenyl ether.

18. CUSTOMS & TRADE

- A. Unless otherwise agreed by Buyer in writing, Buyer shall not be a party to the importation of Products. All purchases under these Terms and Conditions shall be consummated subsequent to importation, prices shall be inclusive of all duties and other costs of customs clearance and Supplier shall not cause or permit Buyer's name to be shown as "importer of record" on any customs declaration, unless otherwise expressly agreed to in writing by Buyer. In any case where Buyer agrees to be the importer of record, Supplier shall provide all information needed to effect customs entry into each country into which the Products are to be imported.
- B. Supplier shall provide such documentation and other assistance as Buyer may request to allow Buyer to claim drawback of duties and taxes on Products or articles manufactured from Products provided under these Terms and Conditions.
- C. Supplier shall accurately indicate the country of origin of the Products provided under these Terms and Conditions on the customs invoice and other applicable documentation. If applicable, Supplier shall provide certificates of origin relating to the Products within the meaning of the rules of origin of the NAFTA preferential duty provisions and execute such other documents as may be necessary for Buyer to claim duty preference under any applicable programs.

19. COMPLIANCE WITH LAWS AND RULES

- A. Supplier shall comply with all national, state, and local laws and regulations governing the manufacture, transportation, import, export, and/or sale of Items and/or the performance of Services in the course of this Agreement. In the United States, these may include, but are not limited to, Department of Commerce including U. S. Export Administration regulations, Securities Exchange Commission, Environmental Protection Agency, and Department of Transportation regulations applicable to Hazardous Materials. Neither Supplier nor any of its subsidiaries will export/re-export any technical data, process, product, or service, directly or indirectly (including the release of controlled technology to foreign nationals from controlled countries), to any country for which the United States government or any agency thereof requires an export license or other government approval without first obtaining such license. In addition, Supplier agrees not to provide foreign nationals from controlled countries as employees or contractors for work on any Buyer site. For a current list of "Controlled Countries" refer to <http://www.bis.doc.gov>.
- B. Supplier agrees to fully comply with Buyer's Code of Conduct policy as set forth at www.NRGsystems.com. Additionally, Supplier agrees to abide by all Buyer's rules and regulations while on Buyer's premises or performing Services including, but not limited to, safety, health and Hazardous Material management rules, and rules prohibiting misconduct on Buyer's premises. Supplier will perform only those Services identified on the PO and will work only in areas designated for such Services. Supplier shall take all reasonable precautions to ensure safe working procedures and conditions for performance on Buyer's premises and shall keep Buyer's site neat and free from debris.
- C. Supplier represents and agrees that it is in compliance with Executive Order 11246 and implementing Equal Employment Opportunity regulations, the Vietnam Era Veterans' Readjustment Assistance Act as amended by the Veterans Employment Opportunities Act of 1998 (to include: Vietnam-era Veterans and other Veterans who served on active duty during a war or campaign or expedition for which a campaign badge has been authorized), and the Immigration Act of 1987, unless exempted or inapplicable.
- D. Supplier shall comply with all applicable laws regarding non-discrimination in terms and conditions of employment, payment of minimum wage and legally mandated employee benefits and compliance with mandated work hours. Supplier shall comply with all applicable laws regarding employment of underage or child labor and shall not employ children under the age of 16.
- E. In support of Buyer's compliance with §1502 of the 2010 Dodd-Frank Act (amending the Securities and Exchange Act of 1934 <http://www.sec.gov/News/Article/Detail/Article/1365171562058>) to address the matter of sourcing Conflict Minerals. Supplier shall promptly comply with Buyer's written requests regarding the origins of any materials that Supplier provides to Buyer.

20. SERVICES/LIENS; SITE RULES; INSURANCE

- A. Supplier shall obtain waivers and releases of all liens which may be imposed by any of its subcontractors against the Products or Buyer's premises or the improvements thereon. Supplier shall defend, indemnify, and hold harmless Buyer with respect to any such liens.
- B. Supplier shall conform strictly to all of Buyer's site rules and regulations when performing Services on Buyer's premises. Supplier shall obtain a copy of Buyer's site rules.
- C. Prior to performing any Services on Buyer's premises, Supplier shall obtain, and thereafter maintain at all times, the following minimum insurance coverage:

(i) Worker's compensation insurance as required under the applicable laws of the jurisdiction in which the Services are to be performed; (ii) Employer's Liability insurance as required under the applicable laws of the jurisdiction in which the Services are to be performed, subject to a limit of \$1,000,000; (iii) Comprehensive General Liability insurance with a single limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate for bodily injury and property damages; (iv) Automobile insurance for owned or hired vehicles covering bodily injury, death and property damage, with a single limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate; and (v) Umbrella Coverage with aggregate limits of \$5,000,000. All required insurance shall be with companies licensed in the jurisdiction in which the Services are performed and acceptable to Buyer. No insurance shall be deemed to be in effect until satisfactory certificates thereof are delivered to Buyer, containing provisions requiring the insurance carrier to notify Buyer at least thirty (30) days prior to any expiration or termination of, or material change to, the policy. In addition, all such policies shall name Buyer as an additional insured and contain a waiver of subrogation against Buyer. Supplier shall also require insurance from all of its subcontractors with the same coverage and limits as set forth in this Section 20.

21. INDEMNIFICATION

Supplier shall fully defend, indemnify, hold harmless and reimburse Buyer, its officers, directors, shareholders, employees, agents, customers and assigns from and against all claims, suits, actions, proceedings, damages, losses and expenses, including attorneys' fees, arising out of, related to, or resulting from: (a) any breach of any representation, warranty, certification, covenant or agreement made by Supplier in these Terms and Conditions; (b) any negligence or willful misconduct of Supplier or its agents or subcontractors in connection with its performance under these Terms and Conditions; (c) any litigation, proceeding or claim by any third party relating to the obligations of Supplier under these Terms and Conditions; (d) any personal injury (including death) or any damage to or loss or destruction of property attributable to Supplier's performance under the Terms and Conditions; and (e) Supplier's use, control, ownership, or operation of its business and facilities, except to the extent caused by the negligence of Buyer. Supplier agrees to include this clause in any permitted assignments or subcontracts issued hereunder.

22. LIMITATION OF LIABILITY

IN NO EVENT SHALL BUYER (INCLUDING ITS OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS AND SUPPLIERS OF ANY TIER), BE LIABLE IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL (INCLUDING LOST PROFITS OR REVENUE) DAMAGES WHATSOEVER.

23. BUYER'S PROPERTY

Unless Buyer otherwise agrees in writing, all tools, equipment or other materials furnished to Supplier by Buyer are the personal property of Buyer. Whenever practical, Supplier shall adequately identify Buyer's property and safely store it separately and apart from Supplier's property. Supplier shall not substitute any property for Buyer's property and shall use such property only in fulfilling its obligations under the Terms and Conditions. While in Supplier's custody or control, Buyer's property shall be held at Supplier's risk, kept insured by Supplier at Supplier's expense, and subject to removal at Buyer's request.

24. FORCE MAJEURE

- A. Delay in performance or non-performance of any obligation of Supplier or Buyer under these Terms and Conditions shall be excused to the extent such failure or non-performance is caused by Force Majeure. "Force Majeure" means any cause preventing performance of an obligation under these Terms and Conditions which is beyond the reasonable control of the Supplier or Buyer, and which, by the exercise of due diligence, could not be overcome, including without limitation, fire, flood, sabotage, shipwreck, war (whether declared or not), terrorism, embargo, explosion, strike or other labor trouble, accident, riot, pandemic, epidemic, acts of a governmental authority, and acts of God. Notwithstanding the foregoing, in no event shall Supplier's ability to sell Products or Services at a better price or Supplier's economic hardship in buying raw materials necessary to manufacture Products at a commercially reasonable price constitute Force Majeure.
- B. A party affected by Force Majeure shall: (i) promptly provide notice to the other party, explaining the full particulars and the expected duration of the Force Majeure and (ii) use its best efforts to remedy the interruption or delay if it is reasonably capable of being remedied. In the event of Force Majeure, deliveries or acceptance of deliveries of Products or Services which have been suspended shall not be required to be made up on the resumption of performance and, to the extent not otherwise permitted under these Terms and Conditions, Buyer shall have the right to purchase products and services from other sources during the period of Force Majeure. If a Force Majeure extends for more than sixty (60) days, these Terms and Conditions may be terminated upon written notice by the party not declaring Force Majeure without any liability on its part. Any amounts of products or services purchased by Buyer from a party other than Supplier during a period in which Supplier has claimed a Force Majeure shall count toward any requirements contract that Buyer has with Supplier, if any.
- C. If a Force Majeure compels Supplier to allocate deliveries of Products or Services, Supplier shall make such allocation in a manner that ensures Buyer at least the same proportion of the Supplier's total output as was purchased by Buyer prior to the Force Majeure. Supplier shall use best efforts to source Products or other items, at Supplier's expense, from its own or its affiliates' global operations or the market in order to meet Buyer's required delivery dates.

25. ACCESS AND AUDIT

In order to assess Supplier's work quality and compliance with these Terms and Conditions, Supplier shall permit Buyer access to (i) all locations where work is performed in connection with the Products or Services provided pursuant these Terms and Conditions and (ii) Supplier's books and records relating to Products or Services provided pursuant to these Terms and Conditions.

26. RECORD RETENTION

Supplier will maintain complete and accurate records of the Services performed under this Agreement for a period of seven (7) years after the completion of these Services. Records relating to the performance of this Agreement shall be made available to Buyer upon reasonable notice.

27. INDEPENDENT CONTRACTOR

In performing Services under this Agreement, Supplier is an independent contractor and its personnel and other representatives shall not act as nor be agents or employees of Buyer. As an independent contractor, Supplier will be solely responsible for determining the means and methods for performing the required Services. Supplier shall have complete charge and responsibility for personnel employed by Supplier; however, Buyer reserves the right to instruct Supplier to remove from Buyer's premises immediately any of Supplier's personnel who are in breach of Section 16 or 20 of this Agreement. Such removal shall not relieve Supplier of its obligation to provide Services under this Agreement.

28. SECURITY

Supplier confirms that employees of Supplier performing work at Buyer's facilities have no record of criminal convictions involving drugs, assaultive or combative behavior, or theft within the last five years. Supplier understands that such employees may be subject to criminal history investigations by Buyer at Buyer's expense and will be denied access to Buyer's facilities if any such criminal convictions are discovered. Supplier also agrees to comply with Buyer's Alcohol and Drug-free Workplace Directive, which is available upon request.

29. MERGER, MODIFICATION, WAIVER, AND REMEDIES

- A. This Agreement contains the entire understanding between Buyer and Supplier with respect to the subject matter hereof and merges and supersedes all prior and contemporaneous agreements, dealings and negotiations. No modification, alteration, or amendment shall be effective unless made in writing, dated and signed by duly authorized representatives of both parties.
- B. No waiver of any breach hereof shall be held to be a waiver of any other or subsequent breach.
- C. Buyer's rights and remedies herein are in addition to any other rights and remedies provided by law or in equity.
- D. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect the validity of the remaining provisions unless Buyer determines in its discretion that the court's determination causes this Agreement to fail in any of its essential purposes.

30. ASSIGNMENT

Supplier may not assign or subcontract its obligations under this Agreement or any portion thereof (by operation of law or otherwise) without the prior written consent of Buyer, and if Supplier does so, the assignment or subcontract shall be void. Notwithstanding any such assignment or subcontract, Supplier shall remain jointly and severally liable for any breach of these Terms and Conditions by any such assignee or subcontractor. Buyer may assign these Terms and Conditions, in whole or in part, to any affiliate or to any third party at any time. These Terms and Conditions shall inure to the benefit of and be binding upon Buyer and Supplier and their respective successors and permitted assigns.

31. INCORPORATION; ENTIRE AGREEMENT; ETC.

These Terms and Conditions shall apply and be deemed incorporated into all purchase orders placed by Buyer with Supplier, whether or not these Terms and Conditions are expressly referenced therein. These Terms and Conditions constitute the entire agreement between Buyer and Supplier and supersede any and all prior representations, agreements or understandings, whether oral or written, relative to the Products and Services delivered hereunder. No course of dealing or usage of trade shall be relevant to supplement or explain any of these Terms or Conditions. No modification of these Terms and Conditions shall be effective unless made in writing and executed by Buyer. In the absence of Supplier's written acceptance of these Terms and Conditions, the shipment by Supplier of any Products to Buyer or performance of any Services for Buyer by Supplier shall constitute acceptance of these Terms and Conditions. Supplier's execution of these Terms and Conditions (or acceptance of these Terms and Conditions by shipment of Products or performance of Services) is duly authorized by all necessary corporate action on its part. These Terms and Conditions constitute a valid and binding agreement enforceable in accordance with the terms contained herein.

32. APPLICABLE LAW

- A. This Agreement shall be governed by the laws of the State of Vermont, including its provision of the Uniform Commercial Code, except as otherwise set forth herein. The parties hereby agree that the original English version shall be the sole legal and binding version.
- B. Buyer and Supplier: (i) agree that all actions and proceedings relating directly or indirectly to these Terms and Conditions shall be litigated in state or federal courts located in Washington County, Vermont; (ii) consent to the jurisdiction and venue of any such court and consent to service of process in any such action or proceeding by personal delivery or any other method permitted by law; and (iii) waive any and all rights it may have to object to the jurisdiction of any such court, or to transfer or change the venue of any such action or proceeding. Each party further waives the right to trial by jury in any action or proceeding based upon, arising out of, or in any way relating to, these Terms and Conditions.

33. HEADINGS

The headings provided in this Agreement are for convenience only and shall not be used in interpreting or construing this Agreement.

34. SPECIFIC PERFORMANCE

Notwithstanding anything else contained in this Agreement, the parties hereto agree that failure to perform certain obligations undertaken in connection with this Agreement would cause irreparable damage, and that monetary damages would not provide an adequate remedy in such event. The parties further agree that failure to complete performance of the Services called for in this Agreement, or on any project released under this Agreement, or failure to deliver or effect delivery of Services and/or materials as contracted, or failure to deliver against accepted Purchase Orders, or to deliver confirmed supply or pricing, are such obligations. Accordingly, it is agreed that, in addition to any other remedy to which the non breaching party may be entitled, at law or in equity, the non breaching party shall be entitled to injunctive relief to prevent breaches of the provisions of this Agreement, and an order of specific performance to compel performance of such obligations in any action instituted in any court of the United States or any state thereof having subject matter jurisdiction.

35. NEW DEVELOPMENTS

- A. Supplier represents and warrants that Supplier has no outstanding agreement or obligation that is in conflict with any of the provisions of this Agreement, or that would adversely affect Supplier's performance hereunder or Buyer's exclusive right to Developments (defined below), and Supplier agrees that Supplier shall not enter into any such conflicting agreement during the term of this Agreement.
- B. Supplier agrees that all works of authorship, inventions, improvements, developments, and discoveries conceived, made, or discovered by Supplier, solely or in collaboration with others including Buyer, in the course of its performance of Services or the development of deliverables for Buyer hereunder as well as all patents, copyrights, trade secrets, trademarks, and other intellectual property rights therein and thereto (collectively, "Developments"), are Works Made for Hire and are the sole and exclusive property of Buyer. Supplier agrees to assign (or cause to be assigned) and does hereby assign fully to Buyer all such Developments.
- C. Supplier agrees to assist Buyer, or its designee, at Buyer's expense, in every proper way, to secure Buyer's rights in the Developments, including the disclosure to Buyer of all pertinent information and data with respect thereto and the execution of all applications, specifications, oaths, assignments, and all other instruments that Buyer may deem necessary in order to apply for and obtain such rights and in order to assign and convey to Buyer, its successors, assigns, and nominees the sole and exclusive rights, title, and interest in and to such Developments, including (without limitation) Buyer's Certificate of Originality, and Buyer's Assignment of Intellectual Property (available upon request). Supplier further agrees that Supplier's obligation to execute or cause to be executed, when it is in Supplier's power to do so, any such application, specification, oath, assignment, or other instrument shall continue after the termination of this Agreement. Supplier further agrees to assist Buyer in enforcing all patents, trademarks, copyrights, trade secrets, or other ownership rights to protect Buyer's exclusive interest in Developments.
- D. Buyer acknowledges and agrees that Supplier shall retain sole and exclusive ownership of and/or unrestricted right to license, any invention, improvement, development, concept, discovery, or other proprietary information owned by Supplier or in which Supplier has an interest ("Supplier IP"). Notwithstanding the foregoing, Supplier agrees that if in the course of performing the Services, Supplier incorporates any Supplier IP into any Development developed hereunder, Buyer is hereby granted and shall have a nonexclusive, royalty free, perpetual, irrevocable, worldwide license, including the right to sublicense, under any such Supplier IP, to make, have made, use, import, prepare derivative works of, reproduce, have reproduced, perform, display, offer to sell, sell, or otherwise distribute such invention, improvement, development, concept, discovery, or other proprietary information as part of or in connection with such Development.
- E. Supplier represents, warrants, and agrees that it will not incorporate any third party intellectual property into any Development or deliverable provided hereunder without notifying and obtaining the prior written approval of Buyer.

- F. Supplier hereby waives any and all moral rights, including the right to identification of authorship or limitation on subsequent modification that Supplier (or its employees) has or may have in any invention, materials, or other deliverables assigned to Buyer hereunder.
- G. Supplier warrants that: (1) all of its employees or contractors who perform work for it hereunder will have entered into written agreements with Supplier that ensure that the work they do is subject to the terms and conditions of this Section 26; and (2) it will not incorporate any Developments into deliverables to be provided to Buyer that contain intellectual property not assignable or licensable to Buyer as provided in this Section 35.
- H. Supplier shall not modify the production process(es), or move the production line(s) without notification and consent of Buyer. Buyer requires 180 days' prior written notice to requalify a first article produced via the new process or on the new production line prior to change or relocation of existing production process(es)/line(s).

36. NOTICES

Unless otherwise agreed in writing by the parties, all notices to NRG Systems regarding this Agreement shall be sent to Buyer's Director of Global Operations and to the Buyer's Purchasing Representative, all at the address on the signature page of this Agreement.

37. PRIVACY

- A. If Buyer transmits any personal information to Supplier, Supplier warrants that Supplier shall not transfer such personal information to any third party or use it for any purpose other than as described in this Agreement.
- B. If Supplier obtains personal information in the course of performance of Services for Buyer, Supplier warrants that Supplier shall not transfer such personal information to any third party or use it for any purpose other than as described in this Agreement.
- C. If Supplier collects personal information on behalf of Buyer, and Buyer has given notice to Supplier that Buyer will use such personal information in order to contact the data subject, Supplier shall submit personal information to Buyer only if the data subject has opted-in to receive information, either from Buyer, or from other companies or persons in general.
- D. Supplier shall permanently delete all personal information within thirty (30) days after the personal information is no longer being actively used in fulfilling Supplier's obligations to Buyer under this Agreement.

38. ELECTRONIC TRANSACTIONS

Subject to the terms and conditions of this section, the parties agree to accept electronic records and electronic signatures (as such terms are defined in the U.S. Electronic Signatures in Global and National Commerce Act) relating to transactions contemplated by this Agreement.

39. REPORTING REQUIREMENTS

Seller agrees to furnish standard reporting to Buyer inclusive of Open Purchase Order reporting, On-time Delivery Reporting, Inventory vs Forecast reporting aging and Excess and Obsolete inventory reporting. Excess inventory is defined as inventory above forecast and obsolete inventory is defined as inventory without demand. And finally aging reporting for both serialized inventory as well as non serialized inventory.

40. DISPUTE RESOLUTION

All disputes arising directly under the express terms of this Agreement or the grounds for termination thereof shall be resolved as follows: The senior management of both parties shall meet to attempt to resolve such disputes. If the disputes cannot be resolved by the senior management, either party may make a written demand for formal dispute resolution and specify therein the scope of the dispute. Within thirty (30) days after such written notification, the parties agree to meet for one (1) day with an impartial mediator and consider dispute resolution alternatives other than litigation, including referral to the National Patent Board. If an alternative method of dispute resolution is not agreed upon within thirty (30) days after the one day mediation, either party may begin litigation proceedings.

41. SEVERABILITY

The provisions of these Terms and Conditions shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions of these Terms and Conditions.

42. SURVIVAL

The provisions of Sections: 1, 3, 5, 6, 8, 11, 12, 13, 14, 15, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and Paragraphs 4C and 4D shall survive the termination or expiration of this Agreement. In addition, any right or legal obligation of a party contained in any Addendum or Amendment, that by its express term or nature would reasonably extend for a period beyond the term of the Agreement, shall also survive the termination of the Agreement for such extended period.