



**CONTRACT FOR THE PROVISION OF PRODUCTS AND/OR SERVICES**

**THIS CONTRACT FOR THE PROVISION OF PRODUCTS AND/OR SERVICES** (this “Contract”) is entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_, by and between **HICO America Sales & Technology, Inc.** (hereinafter “HICO”), Three Penn Center West, Suite 300, Pittsburgh, Pennsylvania 15276 and \_\_\_\_\_ (hereinafter “Buyer”), \_\_\_\_\_.

HICO, and its affiliates, are in the business of designing, manufacturing, and installing power system products, and Buyer desires to purchase specific equipment, products and/or related services from HICO as set forth herein (collectively, the “Work”).

**NOW, THEREFORE**, in consideration of the mutual agreements and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, and intending to be legally bound, it is mutually agreed and covenanted by and between the parties to this Contract, under seal, as follows:

1. **Scope of the Work.** HICO hereby agrees to supply the following:

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2. **Commencement and Completion of Work; Testing Procedures.** HICO shall commence and perform its obligations hereunder in accordance with the Contract Documents. HICO shall complete the Work on or before \_\_\_\_\_, 20\_\_, subject to HICO’s Standard Terms and Conditions, including, without limitation, with respect to any required adjustments or modifications. HICO and Buyer agree that the following testing procedures, including with respect to any factory acceptance testing or field acceptance testing, shall apply to the Work under this Contract:

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3. **Compensation.** Buyer shall pay the amount of \$\_\_\_\_\_ (\_\_\_\_\_) to HICO for its performance of the Work, subject to HICO’s Standard Terms and Conditions, including, without limitation, with respect to any required adjustments or modifications.
  
4. **Payment Terms.** HICO shall submit invoices to Buyer in an approved format and such invoices will reference this Contract. Buyer shall remit payment Net \_\_\_\_ days. All payments by Buyer shall be in accordance with HICO’s Standard Terms and Conditions, except as otherwise expressly set forth in this Contract.
  
5. **Contract Documents.** The provision of the Work hereunder by HICO to Buyer shall be subject to the following documents that shall be attached hereto and shall be deemed to be incorporated herein by reference (collectively referred to herein as the “*Contract Documents*”), provided, however, in the event of any inconsistency between any provision or term in any of the other Contract Documents and in this Contract, the provision or term in this Contract shall govern:

**Exhibit A:** HICO’s Standard Terms and Conditions

**Exhibit B:** HICO’s Operation and Maintenance Manual (the “*HICO OM Manual*”)  
 Dated: \_\_\_\_\_

**Exhibit C:** Specifications for the Work (the “*Specifications*”)  
 Titled: \_\_\_\_\_  
 Dated: \_\_\_\_\_

<u>Exhibit Designation</u>	<u>Description of Additional Contract Documents</u>

6. **Authorized Representatives.** Whenever approval or authorization from, or communication, notice, or submission to either the Buyer or HICO is required, such communication, notice, or submission shall be directed to the Authorized Representative (as defined below) of either Buyer or HICO, as the case may be, and approval or authorization for Buyer or HICO shall only be issued by such party’s Authorized Representative. In the case of HICO, for commercial or financial matters related to this Contract, notification shall be first to HICO’s Sales Manager as its Primary Authorized Representative; for



technical (engineering, installation, performance, etc.) matters related to this Contract, notification shall be first to HICO's Project Manager for the applicable project as its Primary Authorized Representative; if neither Primary Authorized Representative can be notified after diligent effort, then notification shall be directed to HICO's Sales Representative for the applicable project as HICO's Secondary Authorized Representative. However, in an emergency situation when the designated Authorized Representative(s) is/are not available for Buyer or HICO, the other party may direct its communications or submission to other appropriate personnel of Buyer or HICO, as the case may be, and may receive approval or authorization from such person. The respective parties' Authorized Representatives are as follows, or such other person as either Buyer or HICO may subsequently designate in writing delivered to the other party:

Address:	[Add Buyer's Name] [Add Buyer's Address]	HICO America Sales & Technology, Inc. Three Penn Center West Suite 300 Pittsburgh, PA 15276
Primary Authorized Representative:	Name: _____ Title: _____	_____ Sales Manager - for commercial/financial matters
Telephone:		
Mobile:		
Fax:		
E-mail		
Primary Authorized Representative (if any):	Name: _____ Title: _____ Mobile: _____ Email: _____	Name: _____ Project Manager - for technical matters  Mobile: _____ Email: _____
Secondary Authorized Representative (if any):	Name: _____ Title: _____ Mobile: _____ Email: _____	Name: _____ Sales Representative  Mobile: _____ Email: _____



7. **Site Preparation.** Buyer shall be responsible for preparing a site suitable for the installation and operation of the Work in accordance with the Specifications (hereinafter "*Installation Site*") and identified as follows:

Location/Project Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Site Owner Name: \_\_\_\_\_  
Site Contact Person: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Mobile: \_\_\_\_\_  
E-mail: \_\_\_\_\_

8. **General.**

- (a). **Entire Contract.** This Contract, including HICO's Standard Terms and Conditions and all other Contract Documents enumerated and incorporated by reference herein, are intended as the complete and exclusive statement of the agreement and contract between Buyer and HICO with respect to the subject matter hereof, and supersede all prior agreements and negotiations related thereto.
- (b). **Modifications/Change Orders.** No revision or modification of this Contract shall be effective unless in writing and executed by an Authorized Representative of both parties. No change in Work, schedule, or Contract terms shall bind the parties until HICO and Buyer execute and acknowledge a change order setting forth the terms and conditions of any such change or amendment, including, but not limited to, any adjustment to the Contract price.
- (c). **Conflicts in Contract Documents/Order of Precedence.** In the event of any ambiguity or conflict among the provisions of this Contract, HICO's Standard Terms and Conditions, and any other Contract Documents enumerated and incorporated by reference herein, the provisions of this Contract shall apply, unless expressly agreed to in writing by HICO and Buyer. The terms and conditions of this Contract are intended to govern this transaction, and any conflicting terms and conditions, or additional terms and conditions, in any buyer, customer, supplier or vendor prepared document shall not apply. HICO EXPRESSLY OBJECTS TO AND REJECTS ANY CONDITIONS OR TERMS OF PURCHASE OR SALE, WHETHER CONTAINED IN BUYER'S PURCHASE ORDER, BID DOCUMENTS OR IN ANY OTHER WRITING, THAT ARE DIFFERENT FROM, INCONSISTENT WITH, OR ADDITIONAL TO THE TERMS AND CONDITIONS SET FORTH IN THIS CONTRACT OR IN HICO'S



STANDARD TERMS AND CONDITIONS, EXCEPT AS OTHERWISE EXPRESSLY AGREED TO IN WRITING BY HICO.

- (d). **Liens and Bond Claims.** HICO does not waive its right to file a lien or bond claim for monies owed but not paid for conforming Work. Buyer represents and warrants to HICO that it has not waived its, or its subcontractors' or suppliers', rights to file a lien or bond claim for monies owed but not paid for conforming work in any agreement, contract or otherwise with any third party, including, without limitation, any owner, or other entity or party within the same control group with such owner, of the project into which the Work will be incorporated or installed.
- (e). **Waiver of Certain Damages.** Neither party shall be liable to the other party for any liquidated, indirect, incidental, consequential, or anticipatory damages, including home office or site overhead, in any way arising out of this Contract. HICO shall not be held liable for any loss or damage arising from late delivery due to any cause beyond HICO's reasonable control.
- (f). **Certain Permits, Licenses, Custom Duties and Taxes.** Buyer will be responsible for and pay for, and will indemnify and hold HICO harmless from, any applicable sales, use, value added, transaction, excise, or similar taxes (individually a "Tax" and collectively, "Taxes") and any federal, state, local or other governmental fees or charges (including, but not limited to, environmental or similar fees), inspection or testing fees (individually a "Fee" and collectively, "Fees"), imposed on, in respect of, or otherwise associated with the Work. Buyer must claim any exemption from such Taxes and/or Fees at time of executing and delivering this Contract and provide HICO with the necessary supporting documentation acceptable to the authority imposing the Tax and/or Fee.
- (g). **Choice of Law, Jurisdiction and Venue.** This Contract shall be governed by the laws of the Commonwealth of Pennsylvania (excepting any conflict of laws or provisions which would serve to defeat application of Pennsylvania substantive law). EACH OF THE PARTIES TO THIS CONTRACT HEREBY IRREVOCABLY AND UNCONDITIONALLY: (I) CONSENTS TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF EITHER THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, COMMONWEALTH OF PENNSYLVANIA OR THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA FOR ANY PROCEEDING ARISING IN CONNECTION WITH THIS CONTRACT AND EACH SUCH PARTY AGREES NOT TO COMMENCE ANY SUCH PROCEEDING EXCEPT IN SUCH COURTS AND (II) WAIVES ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUCH PROCEEDING IN EITHER THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, COMMONWEALTH OF PENNSYLVANIA OR THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA .
- (h). **Non-Waiver.** The failure of HICO to insist upon strict adherence to any term of this Contract on one or more occasions shall neither be considered a waiver nor deprive HICO of any right thereafter to insist upon strict adherence to that term or any other term of this Contract. Any waiver must be in writing and signed by the party to be charged therewith.



- (i). **Compliance with HICO OM Manual.** Notwithstanding anything else to the contrary contained herein or in any of the other Contract Documents, HICO's liability with respect to any of its covenants, indemnifications, obligations, representations or warranties set forth herein or in any of the other Contract Documents or otherwise, shall be specifically contingent upon, and subject to, the complete and full compliance by Buyer, its employees, agents or representatives, or any third party and such third party's employees, agents or representatives with the provisions, terms and conditions set forth in the HICO OM Manual, as in effect from time to time, a copy of which Buyer acknowledges receipt of as part of the Contract Documents.
  
- (i). **Counterparts.** This Contract may be executed in counterparts, all of which together shall constitute one and the same instrument, and may be delivered by facsimile transmission or other comparable means. This Contract shall be deemed entered into on the date of execution by the last signatory required hereby.
  
- (j). **Binding Effect.** The provisions hereof shall be binding upon and shall inure to the benefit of Buyer and HICO, their respective successors, and permitted assigns.



**IN WITNESS WHEREOF**, Buyer and HICO have signed this Contract as of the day and year first written above, and the person executing this Contract on behalf of each party represents and warrants that this Contract has been authorized by all necessary parties, is validly executed by an authorized officer or agent, and is binding upon and enforceable against such party in accordance with its terms.

**HICO:**

HICO AMERICA SALES & TECHNOLOGY, INC.

By: \_\_\_\_\_  
(signature of authorized representative)

Name: \_\_\_\_\_  
(print name above)

Title: \_\_\_\_\_

**BUYER:**

\_\_\_\_\_  
(Print name of Buyer above)

By: \_\_\_\_\_  
(signature of authorized representative)

Name: \_\_\_\_\_  
(print name above)

Title: \_\_\_\_\_



**EXHIBIT A**  
**TO**  
**CONTRACT FOR THE PROVISION OF PRODUCTS AND/OR SERVICES**  
**HICO AMERICA SALES AND TECHNOLOGY, INC.**  
**STANDARD TERMS AND CONDITIONS OF SALE**

- 1. Governing Terms:** The terms and conditions of sale set forth herein (hereinafter referred to as the “*Terms and Conditions*”), or in any Contract for the Provision of Products and/or Services, or other agreement, contract, purchase order or other writing in which these Terms and Conditions are expressly referenced (referred to herein as the “*Contract*”), including any specifications and drawings attached hereto or thereto, and HICO’s Operation and Maintenance Manual as may be amended and in effect from time to time (referred to herein as the “*HICO OM Manual*”), shall constitute the entire agreement (all such documents and materials collectively referred to herein as, the “*Contract Documents*”) between HICO America Sales and Technology, Inc., a Pennsylvania corporation, and/or its subsidiaries (“*HICO*”) and the purchaser (“*Buyer*”) of certain equipment, products and/or services (hereinafter collectively referred to as “*Work*”) from HICO; and the provision and/or sale of such Work by HICO to Buyer is subject to and conditioned upon acceptance of these Terms and Conditions. Any additional, different or inconsistent terms or conditions proposed by Buyer, including those contained in Buyer’s purchase order, bid documents or in any other writing, including, but not limited to, data sheets, application notes or purchase order acknowledgements, are objected to by, and will not be binding upon, HICO unless specifically assented to in writing by HICO. Buyer accepts these Terms and Conditions by making a purchase from or placing an order with HICO for any Work. The United Nations Conventions on Contracts for the International Sale of Goods shall not apply to the sale or provision of any Work by HICO to Buyer.
- 2. Terms of Payment:** All payments for Work shall be due in full and in legal tender of the United States of America (unless otherwise indicated by HICO on the invoice) within thirty (30) days from the date of invoice. HICO may change or withdraw any credit amounts or payment terms at any time for any reason. Payment of each of HICO’s invoices, whether or not such invoice covers Buyer’s entire order, shall be made in accordance with the terms of the invoice. If Buyer fails to perform the terms of payment of any invoice or if the financial condition of Buyer shall become impaired or unsatisfactory to HICO, or if necessitated by any act, or requirement of any governmental authority, HICO in its sole discretion, reserves the right to suspend or cancel performance of any or all of Buyer’s orders, in which event Buyer shall fully compensate HICO for any commitments, obligations, expenditures, expenses and costs that HICO may have incurred in connection with the orders. HICO’s suspension of performance may result in rescheduling delays. Suspension or termination in accordance with this clause shall not affect HICO’s right to pursue any other available remedies. A delinquency charge of 1-1/2% interest per month overdue will be charged on past due accounts but in no event will the delinquency charge be greater than the maximum rate permitted by law. Buyer shall pay all fees and expenses (including attorneys’ fees) incurred by HICO in the enforcement of HICO’s rights hereunder. Buyer may not hold back or set-off any amounts owed to HICO for any reason. Buyer shall defend, indemnify and hold HICO harmless from any and all liability, claims, losses, damages, costs and expenses (including

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attorney's fees and costs) arising from Buyer's breach of any of the Contract Documents, including, without limitation, the Contract and these Terms and Conditions.

3. **Taxes and Other Charges:** Buyer will be responsible for and pay for, and will indemnify and hold HICO harmless from, any applicable sales, use, value added, transaction, excise, or similar taxes (individually a "Tax" and collectively, "Taxes") and any federal, state, local or other governmental fees or charges (including, but not limited to, environmental or similar fees), inspection or testing fees (individually a "Fee" and collectively, "Fees"), imposed on, in respect of, or otherwise associated with the Work. If Buyer claims an exemption from such Taxes and/or Fees, it must do so at the time of purchase and provide HICO with the necessary supporting documentation acceptable to the authority imposing the Tax and/or Fee.

4. **Title and Delivery; Transportation:**

(a) **Title and Delivery.** Shipments inside the United States shall be delivered F.O.B. the installation site designated by the Buyer, unless otherwise agreed upon in writing by Buyer and HICO, at which time legal title to the Work shall transfer to Buyer notwithstanding that final payment for the Work by Buyer may be due and owing to HICO. Buyer, at its sole expense, shall fully insure Work against all loss or damage and such insurance shall remain in place until HICO has been paid in full thereof. All Work must be inspected upon receipt and claims must immediately be filed with the carrier and HICO when there is evidence of shipping damage, either concealed or external. The cost of any special packing or special handling caused by Buyer's requirements or requests shall be added to the amount of the price in the Contract. Buyer shall be responsible for all Taxes and Fees. HICO shall not be liable for any damage, losses or expenses incurred by Buyer if HICO fails to meet the estimated delivery dates.

(b) **Additional Transportation Terms and Conditions:** (i) **General.** All transportation of products related to the Work will be conducted within the heavy haul regulations and laws of the applicable issuing state. Any price increases resulting from (i) actions by governmental entities, as described in Section 5 hereof, (ii) weather or (iii) any other Force Majeure (as defined herein) event shall be to the account of and the responsibility of Buyer.

(ii) **Access.** To ensure a successful and on-time delivery for the project at which the Work is to be incorporated or installed, Buyer will need to provide HICO with clear and stable access to, from, and within, the applicable project jobsite, including, without limitation, access to any roadways that are within such project jobsite property. The access afforded to HICO must allow for transportation of the Work to the foundation upon which the Work is to be installed, and Buyer shall be responsible for identifying any unusual project jobsite conditions, such as hidden services, underground structures, etc., which could be damaged during the delivery and/or installation of the Work. The access afforded to HICO shall be able to accommodate offload of the Work by either crane or jack and slide and the chosen offload method is at the discretion of HICO upon completion of a project jobsite survey. Buyer acknowledges and agrees that it shall have the obligation and responsibility to remove any obstructions at the project jobsite. Buyer acknowledges that the project jobsite and related roadways must be capable of handling the axle loading force of, and shall accommodate for the turning radius and dimensions of, the transportation trailer that is transporting the Work. Excessively steep

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roadways or project jobsites that require additional equipment to traverse the grade will be subject to additional cost and charges to Buyer. Buyer will provide suitable and sufficient compaction of the project jobsite and foundation area prior to the delivery of the Work as determined reasonably necessary by HICO. If HICO or its agents or representatives, including any transportation carrier, determines that any additional equipment and/or material is needed or required to reduce or eliminate the loading on the soil, foundation, containment fabric, and/or containment structure at the project jobsite with respect to the delivery and installation of the Work, such additional equipment and/or material would be subject to additional cost and charges to Buyer.

5. **Pricing:** All prices are subject to these Terms and Conditions as well as any additional terms and conditions that may appear in the Contract. In the case of a conflict between these Terms and Conditions and those appearing in the Contract, the latter shall control. If the price of fuels, metals, raw materials, storage, transportation, additional testing, oil and/or insulation, equipment, or any other aspect or component of any part of the Work or other production costs increase, HICO may increase the price on deferred deliveries by the increase in such costs. Stenographic or clerical errors are subject to correction. Unless otherwise stated in writing by HICO, all prices shall be exclusive of Taxes (including, without limitation, any tax levied on or assessed to HICO after product delivery) and Fees. Any such Taxes, Fees or other charges and fees will, at HICO's option, be added to the price, paid directly by the Buyer, or reimbursed by Buyer if paid by HICO. For the avoidance of doubt, any action by any North American federal, state, local or other governmental entity (the countries USA, Canada and Mexico are referred to herein as "North American"), which results in any increase of the price hereunder or under any Purchase Order, including, but not limited to tariffs levied on any Work by North American countries, shall be at the sole cost, expense and obligation of Buyer and the price shall be increased by HICO accordingly; provided, further, that HICO shall have no liability for such change in price.
6. **Performance:** Completion, delivery, and shipment dates provided by HICO are estimates only, and HICO does not guarantee completion, delivery or shipment on or by such dates. HICO will make reasonable efforts to observe its dates indicated for delivery or other performance. However, HICO shall not be liable in any way because of any delay in performance hereunder due to unforeseen circumstances or to causes, beyond its control, including, without limitation, strike, lockout, embargo, riot, war, act of terrorism, fire, act of God, accident, failure or breakdown of components necessary to order completion, subcontractor, supplier or Buyer caused delays, inability to obtain labor, materials or manufacturing facilities, or compliance with any law, regulation or order (each referred to as a "*Force Majeure*"). Performance shall be deemed suspended during and extended for such time as any such Force Majeure event delays its execution. When any such Force Majeure event has been remedied or otherwise concluded, HICO will make and Buyer agrees to accept performance hereunder. HICO reserves the right, in its sole discretion, to determine manufacturing location, allocate inventories and current productions and substitute suitable materials, when, in its opinion, such allocation or substitution is necessary or legally required due to any such Force Majeure event. As used herein, HICO's "*performance*" shall include, without limitation, fabrication, assembly, testing, shipment, delivery and warranty repair or replacement as applicable. UNDER NO CIRCUMSTANCES SHALL HICO BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR LIQUIDATED DAMAGES, LOSSES, OR EXPENSE (WHETHER OR NOT BASED ON NEGLIGENCE) ARISING DIRECTLY OR INDIRECTLY FROM ANY FORCE MAJEURE EVENT, DELAYS OR FAILURE TO GIVE NOTICE OF DELAY.

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7. **Change Orders.** By executing and acknowledging a written Change Order to HICO, the parties may, at any time modify the Contract Documents, without invalidating the same. If any such Change Order would result in an increase of HICO's cost or time for performing the Work under the Contract Documents, an equitable adjustment shall be made in the compensation due to HICO, including profit and overhead, and/or time for performance under the Contract Documents. Such Change Orders shall be in writing and signed by the authorized representatives of the parties, and shall set forth the terms and conditions of any such modification, including, but not limited to, any adjustment to the Contract price and/or schedule. No modification of the Work, Schedule, or Contract terms shall bind the parties until HICO and Buyer execute and deliver a Change Order. No unilateral directive by Buyer shall have the effect of modifying the parties' obligations pursuant to the Contract Documents. Upon request of the Buyer, HICO, at its sole discretion, may alter its performance in response to such request and shall be entitled to an equitable adjustment in the compensation due, including profit and overhead, and/or the time for performance under the Contract Documents.

8. **Reviews.**

(a) **Prior to Manufacture.** Buyer shall have the option to review, upon at least fourteen (14) days advance written request from Buyer to HICO, the Design Work during the design period to verify HICO's progress and compliance with the Contract Documents. It is understood that all designs, layout and detail drawings, or other similar data and items (collectively, the "*Design Work*"), reasonably necessary for Buyer's verification and review will be made available at these times. Upon at least twenty (20) days advance written request by Buyer, HICO will use commercially reasonable efforts to make its design engineers responsible for the design of any particular component of the Work available to Buyer, during normal business hours in the time zone of the location in which such design engineers operate and work, for consultation regarding the Design Work. Any time limits or milestones under the Contract Documents, shall not commence or start to run until Buyer has provided its written acceptance of the final Design Work to an authorized representative of HICO. Buyer shall be responsible for Buyer's costs and expenses associated with any such site visit, review, consultation, and/or verification.

(b) **During Manufacture.** During the period when HICO actively is manufacturing any equipment that is part of the Work, upon at least fourteen (14) days advance written request from Buyer to HICO, Buyer shall have a limited right of access, during normal business hours in the time zone of the location in which such manufacturing is being performed and by a designated number of personnel acceptable to HICO, to the applicable facility of HICO or its affiliate as may be reasonably necessary to allow Buyer to review HICO's progress, and verify that such Work is being manufactured according to the Specifications. Buyer shall be responsible for Buyer's costs and expenses associated with any such site visit, review, and/or verification.

9. **Quality Control.** HICO and Buyer shall follow the quality control procedures and processes with respect to the manufacture and operation of the Work as more fully set forth in the Contract Documents.

10. **Acceptance and Performance Testing.**

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(a) **Factory Acceptance Test.** Prior to shipment from its manufacturing facility, HICO shall conduct a test pursuant to the procedure outlined in the test criteria set forth in the Contract Documents (the “*Factory Acceptance Test*”). The purpose of the Factory Acceptance Test shall be primarily to identify any mechanical interferences between machine members, improper adjustments made during assembly and generally to determine that the Work is in good working order. Buyer shall have the option to have a reasonable number of its personnel and/or representatives that are acceptable to HICO to observe the Factory Acceptance Test upon at least ten (10) days advance written notice to HICO. It is understood that any material defects in materials and workmanship which may be identified as a result of the Factory Acceptance Test will be corrected by HICO prior to delivery or shipment of the Work unless specifically directed to the contrary in writing by Buyer.

(b) **Field Acceptance Test.** As applicable in accordance with the Contract Documents, a field acceptance test as more fully set forth in the Contract Documents (the “*Field Acceptance Test*”) will be conducted as follows:

(1) in the event that HICO assembles and installs the Work at the Buyer’s Installation Site and conducts the Field Acceptance Test, then HICO shall deliver to Buyer a written report containing the Field Acceptance Test results that confirm compliance of the Work with the Specifications, or detail any circumstances in which the Work does not comply with the Specifications;

(2) in the event that HICO assembles and installs the Work at the Buyer’s Installation Site, but the Buyer conducts the Field Acceptance Test, then Buyer shall deliver to HICO a written report containing the Field Acceptance Test results that confirm compliance of the Work with the Specifications, or detail any circumstances in which the Work does not comply with the Specifications; or

(3) in the event that Buyer assembles and installs the Work at the Buyer’s Installation Site and conducts the Field Acceptance Test, then Buyer shall deliver to HICO a written report containing the Field Acceptance Test results that confirm compliance of the Work with the Specifications, or detail any circumstances in which the Work does not comply with the Specifications; or

If HICO, under the Contract Documents, is to perform the installation of the Work, Buyer shall provide HICO with twenty-one (21) days’ advance written notice of the date that Buyer desires HICO to begin the installation. In the event that Buyer conducts the Field Acceptance Test, Buyer shall provide HICO with at least ten (10) days advance written notice (the “*Buyer Notice*”) of the proposed date of commencement of the Field Acceptance Test, and HICO shall have the option to have a reasonable number of its personnel and/or representatives that are reasonably acceptable to Buyer observe any Field Acceptance Test upon advance written notice from HICO to Buyer at least two (2) days prior to the applicable commencement date set forth in the Buyer Notice.

(c) **Criteria for Acceptance.** On the date that the Work has successfully completed the Field Acceptance Test (the “*Acceptance Date*”) pursuant to Section 10(b)(1) or Section 10 (b)(2) above, Buyer shall certify to HICO, in writing, of Buyer’s acceptance of the Work.

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**11. Training.** HICO shall only be responsible for providing a representative at the Installation Site for a period of five (5) days following the Acceptance Date to answer specific questions or provide training support as specifically and reasonably requested by Buyer and its personnel with respect to the Work during such period, unless otherwise specifically set forth in the Contract Documents. Buyer shall provide HICO with twenty-one (21) days' advance written notice of the date when HICO's training support described above is to begin.

**12. LIMITED WARRANTIES:**

(a) **POWER TRANSFORMER WARRANTY:** HICO warrants only to the direct and original named Buyer under the Contract Documents that any power transformer that is part of the Work has been designed in accordance with the applicable Specifications of such original Buyer, and any such power transformer will be free from defects in material and workmanship for a period of **five (5) years** from delivery. If within such five (5) year period the delivered power transformer that is part of the Work is proved to HICO's satisfaction to be defective, such power transformer shall be repaired or replaced, at HICO's option, F.O.B. its factory or designated repair facility, provided such power transformer has been stored, installed, operated, and maintained in accordance with HICO's recommendations, including, without limitation, the HICO OM Manual and the latest industry standard practices; provided that the HICO OM Manual shall take precedence and supersede any latest industry standard practice to the extent that any provision within the HICO OM Manual is more stringent than, or imposes a greater degree of care or responsibility than, any latest industry standard practice. HICO's obligation hereunder shall be limited to repair or replacement and shall be conditioned upon HICO's authorized representatives receiving written notice of any alleged defect within seven (7) days after its initial discovery by Buyer or its agents, personnel or representatives. During the first (1<sup>st</sup>) year, this warranty covers any freight within the continental United States by common carrier in full. This warranty excludes coverage of any costs associated with gaining access to the power transformer, disassembly, reassembly, oil handling (storing, removing, filling, etc.), the loading of any power transformer onto a common carrier, or the off-loading of any power transformer from a common carrier, with the costs of any of the foregoing being the obligation and responsibility of Buyer. During the remainder of the warranty period, transportation costs are excluded from this warranty and shall be the obligation and responsibility of Buyer. This warranty shall not apply to any power transformer equipment that (i) is subjected to any negligence, accident, vandalism, or modification by Buyer or any third party, or any agent, personnel or representative of the foregoing, or (ii) is not maintained in compliance with HICO's recommendations, including, without limitation, the HICO OM Manual and the latest industry standard practices. Under no circumstances will HICO be responsible for damage in excess of the sale price to the original Buyer for the particular power transformer related goods and/or services for which damages are claimed. Any Work, or components or parts thereof, supplied by HICO but manufactured by others is warranted only to the extent of the original manufacturer's warranty. This warranty is exclusive and is in lieu of all other express or implied warranties, including, but not limited to, any implied warranty of merchantability or fitness for any particular purpose, and states HICO's entire and exclusive liability and the original Buyer's exclusive remedy. **HICO SHALL NOT BE LIABLE FOR ANY SPECIAL, COLLATERAL, INDIRECT, PUNITIVE, CONSEQUENTIAL, INCIDENTAL, OR EXEMPLARY DAMAGES WHATSOEVER IN ANY WAY ARISING OUT OF, OR CONNECTED TO, THE WORK.**

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(b) **CIRCUIT BREAKER WARRANTY:** HICO warrants only to the direct and original named Buyer under the Contract Documents that any circuit breaker that is part of the Work has been designed in accordance with the applicable Specifications of such original Buyer, and such circuit breaker will be free from defects in material and workmanship for a period of **three (3) years** from delivery. If within such three (3) year period the delivered circuit breaker is proved to HICO's satisfaction to be defective, such circuit breaker shall be repaired or replaced, at HICO's option, F.O.B. its factory or designated repair facility, provided such circuit breaker has been stored, installed, operated, and maintained in accordance with HICO's recommendations, including, without limitation, the HICO OM Manual and the latest industry standard practices; provided that the HICO OM Manual shall take precedence and supersede any latest industry standard practice to the extent that any provision within the HICO OM Manual is more stringent than, or imposes a greater degree of care or responsibility than, any latest industry standard practice. HICO's obligation hereunder shall be limited to repair or replacement and shall be conditioned upon HICO's authorized representatives receiving written notice of any alleged defect within seven (7) days after its initial discovery by Buyer or its agents, personnel or representatives. This warranty excludes coverage of any costs associated with gaining access to the circuit breaker, disassembly, reassembly, or transportation of the circuit breaker, or parts, from or to the place of installation, with the costs of any of the foregoing being the obligation and responsibility of Buyer. This warranty shall not apply to any circuit breaker that (i) is subjected to any negligence, accident, vandalism, or modification by Buyer or any third party, or any agent, personnel or representative of the foregoing, or (ii) is not maintained in compliance with HICO's recommendations, including, without limitation, the HICO OM Manual and the latest industry standard practices. Under no circumstances will HICO be responsible for damage in excess of the sale price to the original Buyer for the particular circuit breaker related goods and/or services for which damages are claimed. Any Work, or components or parts thereof, supplied by HICO but manufactured by others is warranted only to the extent of the original manufacturer's warranty. This warranty is exclusive and is in lieu of all other express or implied warranties, including, but not limited to, any implied warranty of merchantability or fitness for any particular purpose, and states HICO's entire and exclusive liability and Buyer's exclusive remedy. HICO SHALL NOT BE LIABLE FOR ANY SPECIAL, COLLATERAL, INDIRECT, PUNITIVE, CONSEQUENTIAL, INCIDENTAL, OR EXEMPLARY DAMAGES WHATSOEVER IN ANY WAY ARISING OUT OF, OR CONNECTED TO, THE WORK.

(c) **Warranties Only to Original Buyer.** All warranties of HICO with respect to any part of the Work, including, without limitation, the Power Transformer Warranty and the Circuit Breaker Warranty set forth in subsections 12(a) and 12(b) above respectively, shall only apply to the original Buyer of the Work under the Contract Documents and shall not be transferrable, whether by operation of law, assignment, change of control, sale of assets or stock, transfer or otherwise, to any subsequent assignee, buyer, transferee or any other third party whatsoever without the express written consent of HICO.

(d) **Compliance with HICO OM Manual.** Notwithstanding anything else to the contrary contained herein or in any of the Contract Documents, HICO's liability with respect to any of its covenants, indemnifications, representations or warranties set forth herein or in any of the other Contract Documents or otherwise, shall be specifically contingent upon, and subject to, the complete and full compliance by Buyer, its agents, employees, personnel and/or representatives, or any other third party that is operating or maintaining the

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Work, with the provisions, terms, and conditions set forth in the HICO OM Manual in effect from time to time, a copy of which Buyer acknowledges receipt of as part of the Contract Documents.

(e) **Spare Parts.**

(i) **Changes in Pricing.** Notwithstanding anything else to the contrary contained herein or in any of the Contract Documents, HICO and Buyer acknowledge and agree that (1) manufacturers other than HICO or any of its affiliates (each a “*Third Party Manufacturer*”), of any new or used spare parts with respect to the Work (each individually a “*Spare Part*” and collectively the “*Spare Parts*”) may from time to time, and without prior notice, make modifications to Spare Parts being offered for sale by HICO in connection with the Work; (2) HICO is not obligated to replace previously delivered Spare Parts with modified parts from any Third Party Manufacturer; (3) where a price of a Spare Part has increased after an order has been accepted due to either (A) the Third Party Manufacturer of a Spare Part changing the price of such Spare Part, or (B) the Third Party Manufacturer of a Spare Part changing or modifying the model of a Spare Part or discontinuing the model of a Spare Part, Buyer will be responsible for the increased price unless the price increase exceeds the price of the Spare Part(s) on the original order date by more than twenty (20%) percent, in which case Buyer may cancel the order and return the Spare Part(s) (if previously delivered); and (4) Buyer is responsible for shipping costs incurred in returning any Spare Part(s), if such Spare Part(s) has, or have, been delivered. For the avoidance of doubt, any action by any North American federal, state, local or other governmental entity, which results in any increase of the price hereunder or under any Purchase Order, including, but not limited to tariffs levied on any Spare Part(s) by North American countries, shall be at the sole cost, expense and obligation of Buyer and the price shall be increased by HICO accordingly; provided, further, that HICO shall have no liability for such change in price.

(ii) **Exclusive Limited Warranty.** HICO warrants that all Spare Parts manufactured by HICO or any of its affiliates (each a “*HICO Manufacturer*”) and sold pursuant to this agreement are free from defects in material and workmanship for the periods defined in this Spare Parts Exclusive Limited Warranty (this “*Spare Parts Limited Warranty*”). Each HICO Manufacturer is an intended third-party beneficiary of the provisions of this Spare Parts Limited Warranty. Each HICO Manufacturer’s obligation under this Spare Parts Limited Warranty shall be limited to repair or replacement and shall be conditioned upon HICO’s authorized representatives receiving written notice of any alleged defect within seven (7) days after its initial discovery by Buyer or its agents, personnel or representatives.

(iii) **Duration of Spare Parts Limited Warranty.** The obligations of HICO under this Spare Parts Limited Warranty become activated and effective as of the date of delivery of any Spare Part(s) to the Buyer, and this Spare Parts Limited Warranty shall remain in effect as follows: (A) for a period of \_\_\_\_\_ (\_\_\_) months from the date of shipment by HICO with respect to any Spare Parts that are manufactured by a HICO Manufacturer, or (B) with respect to any Spare Part(s) manufactured by a Third Party Manufacturer (collectively referred to as “*Non-Covered Parts*”) such duration as set forth in any applicable warranty provided by the Third Party Manufacturer of such Spare Part(s) to HICO.

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(iv) **Limitations on Spare Parts Limited Warranty.** This Spare Parts Limited Warranty shall not apply to any Spare Part that (A) is subjected to any negligence, accident, vandalism, or modification by Buyer or any third party, or any agent, personnel or representative of the foregoing, or (B) is not maintained in compliance with either the instructions or recommendations of the Third Party Manufacturer of such Spare Part, HICO's recommendations, including, without limitation, the HICO OM Manual, or the latest industry standard practices, whichever is applicable to such Spare Part(s). Under no circumstances will HICO be responsible for damage in excess of the sale price to the original Buyer for the particular Spare Part for which damages are claimed. Notwithstanding anything else to the contrary contained herein or in any of the Contract Documents, HICO makes no warranty as to any Non-Covered Parts. Any Non-Covered Parts may be covered by separate and independent warranties issued by their respective manufacturers, which warranties, if any, to the extent permitted by any such manufacturers, are hereby assigned by HICO to Buyer in conjunction with the execution and delivery of the Contract Documents, and the manufacturers of any Non-Covered Parts are solely responsible for the handling and performance of their applicable warranty processes with respect to any Non-Covered Parts. This Spare Parts Limited Warranty is for the coverage of a proven defect which existed at the date of the delivery of Spare Parts to the Buyer and which is detected and reported during the applicable Warranty period. HICO AND BUYER AGREE THAT THE SPARE PARTS SALE TO WHICH THIS SPARE PARTS LIMITED WARRANTY RELATES IS A COMMERCIAL TRANSACTION BETWEEN PARTIES THAT HAVE EQUIVALENT BARGAINING POWER WITH REGARD TO THIS TRANSACTION AND THAT THE SPARE PARTS ARE NOT CONSUMER GOODS. HICO SHALL NOT BE LIABLE FOR ANY LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF GOODWILL, OR ANY SPECIAL, COLLATERAL, INDIRECT, PUNITIVE, CONSEQUENTIAL, INCIDENTAL, OR EXEMPLARY DAMAGES WHATSOEVER IN ANY WAY ARISING OUT OF, OR CONNECTED TO THE WORK OR ANY SPARE PARTS. THE ABOVE WARRANTIES SHALL CONSTITUTE THE ONLY WARRANTY AND SOLE REMEDY OF BUYER AND THE SOLE LIABILITY OF HICO WITH RESPECT TO SPARE PARTS; THE WARRANTIES OF THIS SECTION 12(E) ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES, REPRESENTATIONS AND CONDITIONS, EXPRESS OR IMPLIED BY STATUTE, TRADE USAGE OR OTHERWISE ARE EXCLUDED AND SHALL NOT APPLY TO THE SPARE PARTS DELIVERED OR SERVICES PERFORMED RELATED THERETO, EXCEPT FOR WARRANTIES WHICH BY LAW CANNOT BE EXCLUDED OR LIMITED.

### 13. **Indemnification.**

(a). **Buyer Indemnification.** Buyer shall indemnify and hold HICO, its affiliates, owners, directors, officers, employees, and agents (collectively, "*HICO Indemnitees*") harmless from any loss, lawsuit, liability, damage, cost and expense (including reasonable attorneys' fees) which may arise out of or result from (i) claims by third persons against any of the HICO Indemnitees that any of the Work has caused damage to property or bodily injury (including death) to the extent that any such damage, injury, loss or death was directly or indirectly related to the maintenance, operation and use of any of the Work after acceptance by Buyer; or (ii) the acts or omissions of the Buyer, its agents or employees in connection with the Contract Documents; or (iii) any breach or default in the performance of the obligations of Buyer hereunder. Buyer's indemnification

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obligations hereunder shall not apply to the extent that any claim is caused by the negligence, misconduct or recklessness of HICO, its agents or employees in connection with the operation and use of the Work after acceptance by Buyer.

(b). **HICO Indemnification.** HICO shall indemnify and hold Buyer, its owners, directors, officers, employees, and agents (collectively, “*Buyer Indemnitees*”) harmless from any loss, lawsuit, liability, damage, cost and expense (including reasonable attorneys' fees) which may arise out of or result from claims by third persons (other than any Buyer assignee) against any of the Buyer Indemnitees for damage to property or bodily injury (including death) to the extent that any such damage, injury, loss, or death was directly or indirectly caused by (i) any material defects in any part of the Work supplied by HICO; (ii) the negligent acts or omissions of the HICO, its agents or employees in connection with the Contract Documents; or (iii) any material breach or material default in the performance of the obligations of HICO hereunder including any material breach of warranty to the extent that the Work has been maintained and operated in accordance with HICO’s written recommendations, including, without limitation, the HICO OM Manual; provided, however, that HICO shall have no liability for any losses to the proportionate extent resulting from Buyer’s performance or non-performance under this Contract or the negligence or willful misconduct of Buyer, its agents or employees.

**14. Limitation of Liability; Exclusion of Damages:**

(a) EXCEPT AS SET FORTH IN THE LIMITED WARRANTIES IN SECTION 12 ABOVE, THE WORK IS PROVIDED “AS IS,” “WHERE IS” AND “WITH ALL FAULTS.” NO OTHER EXPRESS WARRANTIES AND NO IMPLIED WARRANTIES OF ANY TYPE, WHETHER OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR OTHERWISE, OTHER THAN THOSE EXPRESSLY SET FORTH IN SECTION 12 ABOVE (WHICH ARE MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES) SHALL APPLY TO ANY PART OF THE WORK.

(b) IN NO EVENT SHALL HICO BE LIABLE FOR ANY SPECIAL, COLLATERAL, INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS CONTRACT OR ANY OF THE CONTRACT DOCUMENTS, ANY DEFECTS IN ANY PART OF THE WORK, ANY USE OR INABILITY TO USE ANY PART OF THE WORK, ANY FAILURE OF ANY PART OF THE WORK, OR OTHERWISE, REGARDLESS OF WHETHER HICO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION, LIABILITY FOR LOSS OF USE, LOSS OF WORK IN PROGRESS, DOWN TIME, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS, LOSS OF PRODUCTS OF BUYER OR OTHER USER OR ANY LIABILITY OF BUYER TO A THIRD PARTY ON ACCOUNT OF SUCH LOSS, OR FOR ANY LABOR OR OTHER EXPENSE, DAMAGE OR LOSS OCCASIONED BY SUCH WORK INCLUDING PERSONAL INJURY OR PROPERTY DAMAGE. NO CLAIM, SUIT OR ACTION SHALL BE BROUGHT

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AGAINST HICO MORE THAN ONE (1) YEAR AFTER THE RELATED CAUSE OF ACTION HAS ACCRUED.

(c) IN NO EVENT SHALL HICO'S AGGREGATE LIABILITY FROM ANY WARRANTY, INDEMNITY, OR OTHER OBLIGATION ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT, OR ANY USE OF ANY PART OF THE WORK HEREUNDER, EXCEED THE TOTAL AMOUNT PAID TO HICO FOR THE PARTICULAR PART OF THE WORK PROVIDED UNDER THE CONTRACT DOCUMENTS WITH RESPECT TO WHICH LOSSES OR DAMAGES ARE CLAIMED. THE EXISTENCE OF MORE THAN ONE CLAIM AGAINST ANY PART OF THE WORK PROVIDED TO BUYER UNDER THE CONTRACT DOCUMENTS SHALL NOT ENLARGE OR EXTEND THIS LIMIT.

(d) BUYER ACKNOWLEDGES AND AGREES THAT NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN ANY OF THE CONTRACT DOCUMENTS, HICO SHALL NOT HAVE ANY INDEMNIFICATION LIABILITY OR ANY OTHER LIABILITY WITH RESPECT TO ANY DAMAGES OR LOSSES OF ANY NATURE THAT ARE DIRECTLY OR INDIRECTLY RELATED IN ANY WAY TO THE FAILURE OF BUYER, ANY OF ITS EMPLOYEES, AGENTS OR REPRESENTATIVES, OR ANY OTHER THIRD PARTY OWNING, OPERATING OR MAINTAINING ANY ASPECT OR PART OF THE WORK TO FULLY COMPLY WITH (I) HICO'S RECOMMENDATIONS, INCLUDING, WITHOUT LIMITATION, THE PROVISIONS SET FORTH IN THE HICO OM MANUAL, AS MAY BE AMENDED AND IN EFFECT FROM TIME TO TIME OR (II) THE LATEST INDUSTRY STANDARD PRACTICES; PROVIDED THAT THE HICO OM MANUAL SHALL TAKE PRECEDENCE AND SUPERSEDE ANY LATEST INDUSTRY STANDARD PRACTICE TO THE EXTENT THAT ANY PROVISION WITHIN THE HICO OM MANUAL IS MORE STRINGENT THAN, OR IMPOSES A GREATER DEGREE OF CARE OR RESPONSIBILITY THAN, ANY LATEST INDUSTRY STANDARD PRACTICE.

(e) BUYER UNDERSTANDS AND AGREES THAT THE FOREGOING LIABILITY LIMITATIONS ARE ESSENTIAL ELEMENTS OF THE CONTRACT DOCUMENTS, REPRESENT A VALID AND REASONABLE ALLOCATION OF COMMERCIAL RISK BETWEEN THE PARTIES AND THAT IN THE ABSENCE OF SUCH LIMITATIONS THE MATERIAL AND ECONOMIC TERMS OF THE CONTRACT DOCUMENTS WOULD BE SUBSTANTIALLY DIFFERENT.

**15. Product Information Disclaimer:** Although HICO has used reasonable efforts to accurately illustrate and describe the Work in its catalogs, literature, and websites, such illustrations and descriptions are for the sole purpose of product identification and do not express or imply a warranty or affirmation of fact of any kind or a warranty or affirmation of fact that the Work will conform to their respective illustrations or descriptions. HICO reserves the right to correct publishing errors.

**16. Suspension of Work/ Termination.**

(a). **Suspension of Work by HICO.** HICO shall have the right to withhold performance or further performance of the Work under the Contract Documents in the event that Buyer defaults in payment or

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performance of any material duty or obligation under the Contract Documents that is not cured within ten (10) days from and after Buyer's receipt of written notice from HICO of such default. HICO shall also have the right to pursue any other rights or remedies available to HICO under applicable law.

**(b). Termination by Buyer.** Buyer shall not have the right to terminate the Contract Documents except to the extent that HICO materially fails or materially defaults in the performance of any material obligation or covenant under the Contract Documents and HICO does not either correct or substantially cure such material failure, material default, or material breach, or submits and commences to perform under and diligently pursue, a corrective action plan with respect to any such material failure, material default or material breach, within sixty (60) days from and after HICO's receipt of written notice from Buyer of such material failure, material default or material breach. In the event that Buyer terminates the Contract Documents for a material failure, material default or material breach by HICO that is not cured or a corrective action plan being diligently pursued by HICO in accordance with the preceding sentence, then, notwithstanding anything else to the contrary contained in the Contract Documents, Buyer shall promptly pay HICO for all Work rendered to the termination date and for any direct costs and overhead (but not including anticipated profits) incurred by HICO as a result of any such termination, which shall include reimbursement for all commitments, obligations or payments due and owing from HICO to any subcontractor, supplier or vendor with respect to the Work and the Contract Documents. In the event that Buyer terminates the Contract for any other reason other than the HICO's failure to cure or commence a corrective action plan with respect to any material failure, default or breach as provided in this Section 16(b), then, notwithstanding anything else to the contrary contained in the Contract Documents, Buyer shall promptly pay HICO for all Work under the Contract Documents, which payment shall include an amount for all direct costs, anticipated profits and overhead related to the Work, and reimbursement for all commitments, obligations or payments due and owing from HICO to any subcontractor, supplier or vendor with respect to the Work and the Contract Documents. Buyer expressly acknowledges that any equipment that comprises the Work is deemed to be considered as specially manufactured by HICO for Buyer for purposes of any treatment under any applicable provisions of the Uniform Commercial Code.

**17. Governing Law and Jurisdiction:** The Contract Documents shall be governed by and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, without reference to conflict of law principles. If for any reason a court of competent jurisdiction finds any provision of these Terms and Conditions or any of the Contract Documents unenforceable, that provision will be enforced to the maximum extent possible to effectuate the intent of the parties, and the remainder of these Terms and Conditions or the applicable Contract Documents will continue in full force and effect. Buyer agrees that exclusive jurisdiction for any dispute arising out of or relating to the Contract Documents lies with either the Court of Common Pleas of Allegheny County, Commonwealth of Pennsylvania or the United States District Court for the Western District of Pennsylvania, which Buyer agrees shall have personal jurisdiction over Buyer and Buyer agrees not to commence any such proceeding except in such courts. Notwithstanding the foregoing, any judgment may be enforced in any United States or foreign court, and HICO may seek injunctive relief in any United States or foreign court. Except in case of nonpayment, neither party may institute any action in any form arising out of these Terms and Conditions or the Contract Documents more than one (1) year after the cause of action has accrued. Neither these Terms and Conditions, nor the Contract Documents, shall be construed against the party preparing them, but shall be construed as if all parties jointly prepared such Terms and Conditions or Contract

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Documents, and any uncertainty or ambiguity shall not be interpreted against any one party. In the event that Buyer is located outside of the United States of America, HICO may elect to bring legal action in the country in which Buyer is located. BUYER, KNOWINGLY AND AFTER CONSULTATION WITH COUNSEL, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, WAIVES ALL RIGHT TO TRIAL BY JURY OF ANY CLAIM ARISING WITH RESPECT TO THE CONTRACT DOCUMENTS OR ANY MATTER RELATED IN ANY WAY THERETO.

- 18. Independent Contractors:** HICO and Buyer are independent contractors and not principal and agent. Nothing contained in these Terms and Conditions or in any of the Contract Documents shall be construed to create a partnership, dealership, reseller, agency, employment or joint venture relationship. Without limiting the generality of the foregoing, Buyer is not authorized to make, and shall not make, any representations on behalf of, or which are binding upon, HICO and shall take no actions on behalf of, or which are binding upon, HICO. The status of HICO and its personnel and any subcontractors is and will be that of independent contractors, and no such personnel or subcontractors will, at any time or for any purpose, be deemed employees or agents of Buyer.
- 19. Compliance with Laws:** Buyer represents, warrants, and covenants that it has not paid, offered or agreed to pay, authorized the giving of, or caused to be paid, directly or indirectly, money or anything of value to any foreign official (as defined in the U.S. Foreign Corrupt Practices Act, as amended), in connection with the purchase or resale of the Work ordered. Buyer represents and warrants that it is not on, or associated with any organization on: (i) the United States Department of Commerce's Bureau of Industry and Security's Denied Persons List or Unverified List; (ii) the United States Department of the Treasury's Office of Foreign Assets Control lists, Specially Designated Nationals, Specially Designated Global Terrorists, Specially Designated Narcotics Traffickers, Specially Designated Narcotic Traffickers-Kingpin, or Specially Designated Terrorists List; or (iii) the United States Department of State's Designated Foreign Terrorist Organizations, Embargoed Countries list, or Debarred Persons List. Buyer represents and warrants that it is not subject to a denial order issued by the United States Department of Commerce. Buyer shall comply with all relevant laws and regulations of governmental bodies or agencies, including but not limited to all applicable export control laws of the United States or other governing agencies and their successors. Buyer shall be responsible for obtaining any licenses or other official authorizations that may be required by the country of importation and/or under the Export Administration Act, Toxic Substances Control Act, or other applicable legislation or regulations including, but not limited to, the Department of Defense or Department of State regulations.
- 20. Intellectual Property Rights:** Buyer acknowledges that it has no right, title, or interest in the trade names, trademarks, copyrights, or domain names of HICO, and in any names related to any part of the Work, and covenants that it will take no action to register or otherwise interfere with such rights of HICO. Buyer agrees that it will not copy the Work sold to Buyer or its packaging, trade dress, catalogs, or websites. Engineering, consulting or development services provided by HICO to Buyer that result in any idea, invention, concept, discovery, work of authorship, patent, copyright, trademark, trade secret, know-how or other intellectual property are deemed instruments of service and shall be deemed the sole property of HICO. Buyer shall defend and hold HICO harmless against any expense, loss, costs or damages resulting from any claim of infringement

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of patents, trademarks or other intellectual property rights arising out of compliance by HICO with Buyer's designs, specifications, or instructions and any or all of the matters described above.

21. **Quality Assurance:** Quality assurance provisions applicable to the Work specified herein shall be in accordance with HICO's standard practices and procedures unless otherwise specified in the Contract Documents or other mutual written agreement between the parties.
22. **Title to Equipment and Tooling:** Any equipment and tooling which HICO constructs or acquires for use in production of goods or the Work ordered hereunder shall be and remain HICO's property and in HICO's sole possession and control. Any charges made by HICO therefore, shall be only for the use of such equipment and/or tooling and shall not confer on Buyer any rights of any kind with respect to such equipment or tooling.
23. **HICO Right of Set-Off:** HICO shall have the right at any time and without notice to set off any liability or obligation of Buyer to HICO against any liability or obligation of HICO to Buyer.
24. **Confidentiality.** Buyer agrees to hold in strictest confidence any information and material that is related to HICO's business or is designated by HICO as proprietary and confidential, herein or otherwise. It is understood that this confidentiality clause does not include information which: (i) is now or hereafter in the public domain through no fault of the party being provided the confidential information; (ii) prior to disclosure hereunder, is property within the rightful possession of the party being provided the confidential information; (iii) subsequent to disclosure hereunder, is lawfully received from a third party with no restriction on further disclosure; or (iv) is obligated to be produced under order of a court of competent jurisdiction, unless made the subject of a confidentiality agreement or protective order in connection with such proceeding, which the parties in all cases will attempt to obtain. Buyer hereby covenants that it shall not disclose such information to any third party without prior written authorization of HICO.
25. **Waiver.** Any waiver by either party of a breach of any provision of any of the Contract Documents shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of any of the Contract Documents. The failure of a party to insist upon strict adherence to any term of any of the Contract Documents on one or more occasions shall neither be considered a waiver nor deprive that party of any right thereafter to insist upon strict adherence to that term or any other term of any of the Contract Documents. Any waiver must be in writing and signed by the party to be charged therewith.
26. **No Oral Modifications.** No revision or modification of any of the Contract Documents shall be effective unless in writing and executed by authorized representative of both parties.
27. **Assignment.** Buyer may not assign its rights or obligations hereunder without the prior written consent of HICO.
28. **Liens and Bond Claims.** HICO does not waive its right to file a lien or bond claim for monies owed but not paid for conforming Work. Buyer represents and warrants to HICO that it has not waived its, or its subcontractors', rights to file a lien or bond claim for monies owed but not paid for conforming work in any agreement, contract or

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otherwise with any third party, including, without limitation, any owner, or other entity or party within the same control group with such owner, of the project into which the Work will be incorporated or installed.

- 29. Severability.** If any portion of any of the Contract Documents, including these Terms and Conditions, is held invalid, void or unenforceable, such portion, to the extent invalid, void or unenforceable, will be treated as severable and shall not affect the validity of the remaining portions of the Contract Documents or these Terms and Conditions, which shall be deemed revised so as to remain enforceable to the greatest extent possible consistent with such holding and the effect and intent of the invalid, void or unenforceable provision.
- 30. Headings.** The paragraph titles of these Terms and Conditions are for convenience only and shall not define or limit any of the provisions hereof.
- 31. Entire Agreement:** These Terms and Conditions, and the other Contract Documents, constitute the entire, complete, and exclusive agreement between the parties relating to the sale of the Work and supersedes all previous communications, representations, or agreements, either oral or written, with respect to the subject matter hereof. No prior representations or statements relating to the provision and sale of the Work made by any HICO representative, which are not stated herein, shall be binding on HICO. No addition to or modification of any provision of any of the Contract Documents shall be binding upon HICO unless made in writing and signed by a duly authorized officer of HICO. No course of dealing or trade usage or course of performance shall be relevant to explain or supplement any term in these Terms and Conditions or in any of the Contract Documents.

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**EXHIBIT B  
TO  
CONTRACT FOR THE PROVISION OF PRODUCTS AND/OR SERVICES  
HICO AMERICA SALES AND TECHNOLOGY, INC.**

**HICO Operation and Maintenance Manual**

The HICO Operation and Maintenance Manual is either attached hereto or has been separately delivered by HICO to Buyer as part of the Contract Documents.

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HICO Contract for the Provision of Products and/or Services (Rev. 5/15/2015)



**EXHIBIT C  
TO  
CONTRACT FOR THE PROVISION OF PRODUCTS AND/OR SERVICES  
HICO AMERICA SALES AND TECHNOLOGY, INC.**

**Description of Specifications for the Work**

The Specifications for the Work are either described below, attached hereto or have been separately delivered by Buyer to HICO as part of the Contract Documents.

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HICO Contract for the Provision of Products and/or Services (Rev. 5/15/2015)