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GENERAL TERMS AND CONDITIONS

Allegiant Generator Services NA LLC

The Service Agreement, Quote or other agreement pursuant to which Allegiant Generator Services NA LLC (or any of its affiliates) (“Contractor”) to which these general terms and conditions (these “Terms and Conditions”) are attached (the “Service Contract” and, together with these Terms and Conditions, the “Agreement”) shall constitute the entire agreement of the parties, and shall control the terms of any contracts relating to the sale of Services by Contractor to any third party (“Client”). “Services” shall mean all services, material, equipment, parts and products, if any, described in the Services Contract. This offer of services expressly limits any acceptance to the terms and conditions of this Agreement only, and shall supersede and replace any preprinted terms and conditions on a Client’s purchase order or other documents, oral or written communications, course of dealings or usages of trade. No additions to or variations from the terms and conditions of this Agreement, whether contained in a purchase order, confirmation, shipping release, or elsewhere shall be binding upon Contractor unless expressly agreed to in writing by Contractor, and Contractor hereby objects to all such additional or different terms. Client’s execution and return to Contractor of Contractor’s Services Contract, or any written or verbal direction from Client to Contractor to proceed with furnishing the Services and referencing a quote number and date, or Client’s acceptance of any Services to be provided hereunder, whichever occurs first, shall constitute Client’s acceptance of this Agreement.

For purposes of these Terms and Conditions, each of Client and Contractor may be referred to individually as a “Party” or collectively as the “Parties”.

1. Contractor represents and warrants to Client that it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement.
2. Contractor shall not be liable for a breach of the warranty set forth in Section 1 unless Customer gives written notice of the defective Services, reasonably described, to Contractor within 10 business days of the time when Customer discovers or ought to have discovered that the Services were defective.
3. Upon receiving a timely notice of defective Services in accordance with Section 2 Contractor shall, in its sole discretion, either:
 - repair or re-perform such Services (or the defective part); or
 - credit or refund the price of such Services at the pro rata contract rate.

4. THE REMEDIES SET FORTH IN SECTION 3 SHALL BE THE CLIENT'S SOLE AND EXCLUSIVE REMEDY AND CONTRACTOR'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 1.
5. **EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 1 ABOVE, CONTRACTOR MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; OR (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**
6. Notwithstanding the termination or expiration of this Agreement for any reason, each Party shall remain liable for any and all liabilities, obligations, claims, damages, penalties, costs, or expenses that are incurred or arise out of or in connection with any acts or omissions occurring prior to such termination or expiration. This includes, without limitation, any liabilities related to the payment for Services rendered and any other obligations or liabilities that, by their nature, should survive termination or expiration of this Agreement.
7. Except as otherwise provided in this Agreement, all monetary amounts referred to in this Agreement are in US Dollars.

Compensation

8. All compensation or other payments required with respect to any Services Contract ("Compensation") will be payable on a net-30 basis. Interest on any unpaid amount shall accrue from the due date until the amount is paid in full, at a rate per annum equal to the lesser of (a) 10% or (b) the maximum rate allowed by applicable law.
9. The Compensation as stated in this Agreement does not include sales tax, or other applicable duties as may be required by law. Any sales tax and duties required by law will be charged to the Client in addition to the Compensation.

Ownership of Materials and Intellectual Property; Confidential Information

10. All intellectual property and related materials (the "Intellectual Property") including any related work in progress that is developed or produced under this Agreement, will be the sole property of the Client. The use of the Intellectual Property by the Client will not be restricted by Contractor in any manner.
11. Upon the termination of this Agreement, the Contractor will return to the Client any property, documentation, records, or confidential information which is the property of the Client; provided, Contractor may keep a copy of any such records to the extent kept in Contractor's ordinary course of business for archival and record keeping purposes only.

Capacity/Independent Contractor

12. In providing the Services under this Agreement it is expressly agreed that the Contractor is acting as an independent contractor and not as an employee. The Contractor and the Client acknowledge that this Agreement does not create any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties and is exclusively a contract for service. Neither Party shall have authority to contract for or bind the other Party in any manner whatsoever between them.

Notice

13. Any notice provided or permitted to be given under this Agreement shall be in writing, and may be served by facsimile or other electronic means of delivery, including email, to the address shown for each Party in the preamble to the Services Agreement or as otherwise agreed in writing between the Parties. Each Party shall have the right, upon giving five days prior notice to the other in the manner hereinabove provided, to change its address for purposes of notice.

Limitation of Liability

14. Contractor shall assume no liability for damage(s) to the generator or building electrical, mechanical or structural systems arising from Client's or any third party's misuse, negligence or alterations.
15. Contractor shall have no obligation to repair damage caused by Client's or any third party's accident(s) or failure to provide a suitable installation as specified in the installation manual(s) furnished with the generator system or other Equipment.
16. Contractor shall assume no liability for damage(s) caused in part or in whole as a result of civil strife, vandalism, catastrophe, Act of God, improper use of the system by the Client or any third party or by other external causes to the system.

17. Contractor shall not in any event or under any circumstances arising from this Agreement be liable to the Client for any acts, conditions, or circumstances wherein Client or any third party is negligent, whether or not caused by the joint, concurrent, or partial negligence of the Client, or third party.
18. IN NO EVENT SHALL CONTRACTOR BE LIABLE TO CLIENT OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
19. IN NO EVENT SHALL CONTRACTOR'S AGGREGATE LIABILITY OF ANY KIND OR NATURE OR OTHER OBLIGATION TO PAY CLIENT OR ANY THIRD PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO SERVICE PROVIDER PURSUANT TO THIS AGREEMENT IN THE 12 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

Force Majeure

20. The Contractor shall not be liable or responsible to Client, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Contractor including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either Party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage; provided that, if the event in question continues for a continuous period in excess of 30 days, Customer shall be entitled to give notice in writing to Contractor to terminate this Agreement.

Legal Expenses

21. In the event that legal action is brought to enforce or interpret any term of this Agreement, the prevailing Party will be entitled to recover, in addition to any other damages or award, all reasonable legal costs and fees associated with the action.

Modification of Agreement

22. Any amendment or modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement will only be binding if evidenced in writing signed by each Party.

Entire Agreement

23. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, documents or other instruments with respect to the matters covered hereby.

Assignment; No Third Party Beneficiaries

24. No Party may assign this Agreement or any of its rights, duties or obligations hereunder without the prior written consent of the other Party; provided, however, that Contractor may assign this Agreement to an Affiliate with the necessary qualifications to perform the Services in accordance with the terms of this Agreement. Any purported assignment in violation of this Section shall be null and void *ab initio*. This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Titles/Headings

25. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement.

Governing Law; Dispute Resolution

26. This Agreement is governed by and will be construed in accordance with laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction) that would cause or permit the application of the laws of any jurisdiction other than the State of Texas.

27. Before initiating any formal dispute resolution process as set forth in Section 35 below, the Parties agree to attempt to resolve any dispute arising out of or relating to this Agreement through good faith negotiations between high level officers of each Party with authority to resolve such dispute. Upon the occurrence of any such dispute, the Party raising the dispute shall notify the other Party in writing, describing the nature of the dispute and the proposed resolution. The Parties shall then have 60 days from the date of such notice to engage in negotiations with the aim of resolving the dispute amicably. If the Parties are unable to resolve the dispute through negotiations within this 60-day period, either Party may then proceed to initiate the formal dispute resolution process as outlined below.
28. Any controversy, claim or dispute between the Parties arising out or related to this Agreement, or any alleged breach, termination or invalidity of this Agreement (each, a “Dispute”) not resolved in accordance with Section 33 may be submitted by either Party for adjudication by courts in Harris County, Texas. Each of the Parties (a) irrevocably submits to the exclusive jurisdiction of each such court in any such Dispute, (b) waives any objection it may now or hereafter have to venue or to convenience of forum, (c) agrees that all such Disputes shall be heard and determined only in such courts, and (d) agrees not to bring any Dispute in any other court.
29. If Client is a governmental entity, board, agency, authority, municipality, county, or other political subdivision of any state or the United States, the following provisions apply to the extent applicable under the laws of the jurisdiction governing this Agreement:
- a. **Texas Statutory Waiver.** The parties acknowledge and agree that this Agreement constitutes a written contract for goods and/or services within the meaning of Subchapter I, Chapter 271, Texas Local Government Code (§§ 271.151–271.160), and that, by entering into this Agreement, Client waives sovereign immunity to suit to the extent provided by Texas Local Government Code § 271.152.
 - b. **New Mexico Acknowledgment of Governmental Status.** The parties acknowledge that Client is a governmental entity under the laws of the State of New Mexico and, as such, is or may be subject to the doctrine of sovereign or governmental immunity. Client’s agreement to enter into this Agreement constitutes a waiver of immunity from suit with respect to claims arising out of this Agreement.
30. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

Severability

31. If a provision of this Agreement that does not affect the essential nature of, or consideration for, the arrangement between the Parties reflected hereby is ruled to be invalid or unenforceable, such declaration shall not affect the validity or enforceability of the remaining provisions of this Agreement, which shall continue in full force and effect. In such event, however, the Parties shall negotiate in good faith to replace such invalid or unenforceable provision with a valid and enforceable provision that places each Party in substantially the same position it would have been in had such original provision been valid and enforceable.

Counterparts; Electronic Signature

32. This Agreement may be executed in any number of counterparts and by the different Parties on separate counterparts, each of that, when so executed and delivered (including by facsimile), will be an original, but all such counterparts will together constitute but one and the same instrument. The words “execution,” “signed,” “signature,” and words of like import in this Agreement or in any other certificate, agreement or document related to this Agreement, shall include images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, “pdf”, “tif” or “jpg”) and other electronic signatures (including, without limitation, DocuSign and AdobeSign) and the same shall be deemed to be original signatures for all purposes. The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the Texas Uniform Electronic Transactions Act, the New York State Electronic Signatures and Records Act and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code.