

SUPPLIER MASTER TERMS AND CONDITIONS
(PHOENIX INFRASTRUCTURE, LLC)

THIS Supplier Master Terms and Conditions ("this SMTCA") is made as of the DAY of MONTH 2024, by and between **Phoenix Infrastructure, LLC**, a Delaware limited liability company ("OWNER"), and **ENTER FULL COMPANY NAME**, a ENTER STATE AND BUSINESS TYPE("SUPPLIER"). "Owner" and "Supplier" are also referred to herein individually as a "Party" and collectively as "Parties."

WITNESSETH:

WHEREAS, Owner desires to retain Supplier to provide certain materials or services to Owner, and Supplier desires to provide such materials or services to Owner, upon and subject to the terms and conditions contained in this SMTCA.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Supplier hereby agree as follows:

- 1. Purpose.** The sole purpose of the SMTCA is for the terms and conditions herein to govern the Work provided to Owner described in a quote, proposal, or statement of work either set forth in Appendix B or subsequently executed by the Parties. Execution of the SMTCAA does not constitute an approval by Owner to pay for any Work. Owner will pay for Work only upon the execution of a purchase order by those with appropriate authority and in the amounts specified in the quote, proposal, or statement of work. Capitalized terms used herein but not defined within the body of this SMTCAA shall have the meanings ascribed to them in Section 23(o) of this SMTCA.
- 2. Acceptance.** Except as set forth in Section 3 of this SMTCA, Supplier's written acceptance of this SMTCA and applicable quote, proposal, or statement of work the shipment of any Goods or performance of any services hereunder shall constitute Supplier's acceptance of this SMTCAA, and no additional terms or conditions proposed by Supplier shall be binding upon Owner or form a part of the SMTCA.
- 3. Modifications.** The SMTCA shall not be modified or varied without the written authorization of Owner. The Parties may vary or supplement the terms of this SMTCA in a Statement of Work through "Special Terms and Conditions," which shall take precedence over any inconsistent term of this SMTCA, or which may apply to specific scopes of work.
- 4. Performance.** Supplier agrees to perform all Work in strict compliance with this SMTCA.
- 5. Diligent Performance.** Time is of the essence. Supplier agrees to prosecute the Work with all due diligence and shall effect delivery of the Goods and/or perform the Services by the date(s) specified in this SMTCA, or as identified in the quote, proposal or statement of work.
- 6. Delivery; Ownership.** Goods shall be delivered DDP Site. Risk of loss and clear title to Goods shall pass to Owner upon delivery to and acceptance of Goods by Owner at the point of delivery designated in the quote, proposal, or statement of work. As a clarification, Seller shall retain risk of loss and insure the Goods until delivery to, and acceptance of, Goods by Owner at the point of delivery designated in the SMTCA, at which time risk of loss and clear title to Goods shall pass to Owner. Acceptance of delivery shall occur upon the earlier of (i) Owner's satisfactory visual inspection of the Goods upon delivery to Site or (ii) 5 days after the Goods are delivered to Site. For clarity, acceptance of delivery of Goods shall only relieve Supplier of risk of loss and shall not relieve Supplier from any other obligations under this SMTCA. All packing cases, bales, cartons and other shipping materials in which the Goods may be shipped shall upon delivery, become the property of Owner unless otherwise stipulated in the SMTCA. Title to services shall pass to Owner as services are performed.

7. Compliance with Laws and Policies. In delivering the Goods or performing the Services, Supplier and its employees, agents and Subcontractors shall:

a) Comply with and observe all (i) federal, state and local laws, (ii) orders, directives and permits that supplier is or should be aware of, and (iii) regulations that apply to or otherwise affect Owner, Supplier or Work (collectively "Applicable Law"); and

b) Comply with all rules, policies, procedures, processes and work practices established by the Owner from time to time, including without limitation health, safety, security and environmental policies and procedures (collectively "Owner's Policies and Procedures"); and which are provided by Owner to Supplier in writing.

If there is a difference among Applicable Laws, then the stricter or higher standard shall apply. If there is a difference between Applicable Law and the Owner's Policies and Procedures, then the stricter or higher standard shall apply unless such would result in a violation of Applicable Law in which case Applicable Law shall be complied with. Notwithstanding anything to the contrary in the SMTCA, Owner may immediately terminate this SMTCA without prejudice to any of its other rights or remedies if at any time Supplier, in Owner's sole opinion, fails to meet the requirements of this Section 7.

8. Warranties.

(a) Goods. Supplier warrants that the Goods when delivered shall: (i) comply with the SMTCA; (ii) be new (unless stated otherwise in the SMTCA) and of good, usable, and merchantable quality; (iii) be fit for the intended purpose; and (iv) be free of defects in material, workmanship, design and manufacture.

(b) Services. Supplier warrants that the Services performed shall: (i) comply with the SMTCA; and (ii) be free from faulty workmanship and errors, omissions and defects.

(c) Non-compliance. If the Work fails to comply with the applicable warranties above, Supplier shall take all measures necessary to rectify any non-compliance at the request of Owner and at Supplier's expense. Work which does not comply with the above warranties shall be performed again by Supplier at Supplier's expense and in compliance with the SMTCA. Owner may satisfy any or all of the foregoing obligations of Supplier if Supplier fails to satisfy such obligations promptly. Supplier shall pay to Owner upon demand all costs and expenses incurred by Owner in satisfying Supplier's obligations.

9. Quotes; Orders; Proposals; Invoices; Payment. Unless otherwise stipulated in the SMTCA, Supplier shall submit a quote, order, or proposal referencing the correct ordering location address; correct billing address; quote, order, or proposal number; UID number as provided by ordering associate, ordering associate name and contact information; Supplier point-of-contact name and contact information; itemized cost for each line item (labor (and rate), materials, parts, transportation/lodging (if any) freight or shipping charges, and applicable taxes). Quotes shall not reference any terms and conditions other than those of this SMTCA. Supplier shall submit an invoice to the address shown on the face of the order and e-mail them to [cyxtera@ipayables.com] when the Goods have been delivered and/or the Services have been performed. All invoices shall (i) reference the approved quote, proposal, or order number, (ii) reference the UID #, (iii) reference separately itemize charges for labor and materials; and (iv) include all transportation and freight charges (including tax where applicable), (v) include all taxes applicable to the work and materials. Invoices shall not reference any terms and conditions other than those of this SMTCA. Any invoice that purports to modify the SMTCA or incorporate any other terms and conditions may be rejected at Owner's discretion and/or cause a delay in payment. Supplier shall itemize applicable Provincial, state and/or city taxes and sales and use taxes on each invoice, unless otherwise specified. In no event will Owner be obligated to pay any tax on Supplier's income. If Owner requests, Supplier shall submit with each invoice a lien waiver on behalf of itself and its Subcontractors waiving all lien rights with respect to the Work covered by the invoice, provided that the waiver shall not be effective until Owner's payment of the invoice. Unless specified otherwise in the SMTCA, Payment (in the currency of the country where the Site is located) of undisputed amounts less any retainage specified in the SMTCA shall be due sixty (60) days after Owner's receipt of an invoice. Owner shall be entitled at all times to set-off any account owing from Supplier to Owner or to any of its Affiliates companies against any amount due or owing to Supplier. In no event will Owner be obligated to pay any invoice submitted by a Supplier that is 180-days or older without proper evidence of order and delivery of services or goods.

10. Audit. The Supplier shall maintain complete and accurate accounting records using generally accepted accounting principles to substantiate the Supplier's invoices and shall keep those records during the term of the contract and for two years thereafter. During the term of the SMTCA and for two years thereafter, Owner's representatives shall have, upon twenty-four (24) hours' notice, access at all reasonable times, to all of Supplier's and its Subcontractors' accounts and records of all description related to the Work or invoices for the Work. Owner shall have the right, but not the obligation, at all reasonable times to inspect the Work.

11. Subcontracting. Supplier shall not subcontract any part of the Services or assign any part of the SMTCA without the prior written consent of Owner, which consent may be withheld in Owner's sole discretion. In the event such consent is granted, the Supplier shall: (i) remain responsible for the proper performance of any subcontracted/assigned Services as if those Services had been performed by the Supplier; (ii) be responsible for the acts or omissions of any subcontractor of Supplier ("Subcontractor") as if the acts or omissions were its own; and (iii) be liable to and indemnify the Owner from any losses claims, demands, liabilities, damages, pleadings, fines, penalties, judgments and expenses (including, without limitation, legal expenses on a solicitor and his own client basis) resulting from any such subcontract or assignment and the Services performed as a result thereof. Supplier shall enforce the warranty obligations of its Subcontractors. All contracts between Supplier and its Subcontractors shall provide that warranties given by the Subcontractor shall be given to both Supplier and Owner and the warranties may be enforced by either the Supplier or Owner. Supplier shall ensure all of its Subcontractors also comply with the requirements of Section 14 (Insurance) of this SMTCA. The Supplier shall further ensure that any subcontract contains all reasonable provisions of the SMTCA that may impact the Work, and that such subcontract may be assigned to Owner at Owner's sole discretion in any circumstance where this SMTCA is terminated.

12. Intellectual Property. All Intellectual Property is and shall remain the sole property of Owner and shall be delivered to Owner upon termination of this SMTCA or upon demand by Owner. The Supplier waives all rights that it may have in respect of the Intellectual Property. Supplier shall:

(a) pay all royalties and patent license fees and related charges payable in respect to the Work and shall indemnify Owner against all such royalties, fees and related charges;

(b) defend, at its own expense, all suits and proceedings instituted against Owner in connection with any infringement or alleged infringement or unlicensed use of patent, registered design, trademark or copyright pertaining to the Work or the use thereof;

(c) indemnify Owner against all losses, costs, damages and expenses (including legal fees and costs) which Owner may suffer, sustain or incur in connection with or as a result of any claim, action or proceeding for such infringement, alleged infringement or unlicensed use; and

(d) at Supplier's expense, if any of the Work is found to infringe upon any patent, registered design, trademark or copyright and the use of any of the Work is enjoined, either procure for Owner the right to continue using the Work or replace the Work with non-infringing Work or modify the Work so as to become non-infringing, provided the quality of the Work is not diminished in anyway.

13. Confidentiality. Supplier shall keep strictly confidential all documents, computer programs, know-how, knowledge data and any other information which is furnished to Supplier by Owner or received by Supplier in connection with the performance of this SMTCA ("Confidential Information"). Supplier shall use the Confidential Information solely for the purpose of fulfilling its obligations under this SMTCA; any other use of the Confidential Information, during or after the Term of this SMTCA, is expressly prohibited. Supplier acknowledges that the breach by Supplier of this Section 13 would cause irreparable harm to Owner, for which Owner would not be adequately compensated by monetary damages. Accordingly, in the event of such breach or any threatened breach, and in addition to any other rights it may have, Owner shall be entitled, in its sole discretion, to commence proceedings for injunctive relief and Supplier hereby consents to any and all injunctions, restraining orders, directives and other equitable orders being issued against it restraining it from any further breach of this Section 13. Supplier's confidentiality obligations shall not apply to the extent that Confidential Information is within the public domain, was rightfully in the possession of Supplier prior to the date of disclosure of such information to Supplier by Owner,

obtained from third parties without violating any confidentiality agreement, required to be produced by Supplier pursuant to any subpoena or court order, or required by Supplier in the defense of any claim under this SMTCA.

14. Insurance. In addition to being responsible for determining the appropriate type and amount of any additional appropriate insurance required as a prudent supplier for performing the Work and without in any way limiting the liability of Supplier or its obligation to indemnify Owner under this SMTCA, Supplier shall, at its own cost, obtain and maintain in full force and effect during the term of the SMTCA and for any extended period provided for in the SMTCA or by law, the insurance coverages as well as the limits and endorsements shown in Appendix A ("Insurance Requirements for Supplier") attached to this SMTCA and incorporated herein by reference. The requirement for Professional Liability insurance will be waived if there are no professional services provided as part of the Work or if Supplier's General Liability coverage does not exclude from coverage any claims that may result from the provision of professional services by Supplier. Supplier shall provide an unqualified certificate of insurance stating that all of the above coverages together with any necessary endorsements are in place.

Supplier and Supplier's insurance broker shall each promptly notify Owner upon receipt of notice of cancellation of any of the required policies; this notification obligation shall be reflected on said certificate. Further, Supplier shall deliver to the Owner, within five days of the Owner's demand, satisfactory evidence of the Supplier's compliance with the Workers' Compensation laws in force in the jurisdiction(s) where the Work is performed. All insurance policies required under this SMTCA shall be considered primary and not contributory with or in excess to any insurance that may be maintained by the Owner. If the Supplier fails to maintain the Insurance as set forth herein, the Owner shall have the right, but not the obligation, to purchase the Insurance at the Supplier's expense. The Supplier's failure to maintain the required Insurance will be considered a material breach of this SMTCA and may result in termination of this SMTCA for cause, at the Owner's option. Supplier shall reimburse Owner for any insurance deductible that Owner is required to pay for a claim resulting from an act or omission of Supplier. Upon execution of this SMTCA, Supplier and/or its insurer shall provide the said certificate of insurance to Owner as evidence of such coverage. In addition, Supplier shall provide the Owner with satisfactory evidence that the certificate of insurance referenced herein is in place for any and all renewal(s) of the Term (as that term is defined in the SMTCA) as applicable.

15. Indemnification. To the fullest extent permitted by law, Supplier shall be responsible for and shall indemnify, defend and hold harmless Owner Parties and their officers, directors, agents and employees (collectively, "Indemnitees") from all claims, demands, losses, damages, fines, penalties, judgments and expenses (including legal fees and costs) which result from any willful misconduct, negligent act or omission of Supplier or its Subcontractors or employees or agents of Supplier or its Subcontractors in connection with performance of the SMTCA or supply of the Work. Further, to the fullest extent permitted by law, Supplier shall be responsible for and shall indemnify Indemnitees from all claims, losses, damages and expenses (including legal fees and costs) of employees or agents of Supplier or its Subcontractors in connection with the Work. Notwithstanding anything to the contrary herein, nothing in this Section 15 shall be interpreted to require Supplier to indemnify any of the Indemnitees for such Indemnitees' own negligence (other than negligent supervision of Supplier, Subcontractors or their employees) or willful misconduct. To the fullest extent permitted by law, Supplier expressly waives the benefit, for itself and all Subcontractors, insofar as the indemnification of Indemnitees is concerned, of the provisions of any applicable workers' compensation law or any court decision interpreting such law limiting the tort or other liability of any employer on account of injuries to the employer's employees.

16. Hazardous Materials. Supplier shall not perform any Work in which it uses or incorporates, in whole or in part, any materials regulated, or deemed hazardous, by state, provincial, federal, or local environmental requirements ("Hazardous Materials") in violation of any such environmental requirements or in such a manner as to leave any Hazardous Materials which could be hazardous to persons or property or cause liability to Owner. Upon discovery of an existing or suspected release on or at the Site, Supplier shall cease Work in that area, immediately contact Owner's designated representative and on-site coordinator and notify Owner in writing. Supplier shall be responsible for and indemnify Indemnitees for all damages, costs, penalties, liabilities and cleanup arising out of Supplier's or its Subcontractors' (i) contamination of the Site with Hazardous Materials, (ii) improper handling, storage, generation, management or disposal, release or abandonment of, Hazardous Materials or (iii) noncompliance with environmental and safety laws by Supplier or its Subcontractors.

17. Entry on Owner Property. To the extent Supplier enters Owner's premises, Supplier shall be responsible for inspecting the Site for visually obvious unsafe conditions and taking the necessary safety precautions for protection

of Supplier, its employees, agents, and Subcontractors, and for ensuring a safe place for performance of the Services.

18. Termination. This SMTCA or any portion of the Work may be terminated by Owner without cause by giving notice to Supplier specifying the portion of the materials or services to be terminated and the effective date of the termination. In addition, the Owner, in its sole discretion, may immediately terminate this SMTCA for cause without limiting any of its other rights or remedies if the Supplier at any time: (a) fails to supply the Goods; (b) fails to provide the Services; (c) fails to comply with any terms, conditions or provisions of this SMTCA; or (d) is adjudged bankrupt or makes a general assignment for the benefit of its creditors or if a receiver is appointed with respect to the property of the Supplier or if the Supplier institutes or is the subject of insolvency proceedings under the Bankruptcy or other laws of any jurisdiction. Notwithstanding the foregoing, if the Supplier, in the Owner's sole opinion, is in default of any provision of this SMTCA, the Owner may, without limiting any other remedy it may have, correct the default and may deduct the cost of correction from any payment then or thereafter due to Supplier. Further, if the Owner determines that Work fails to comply with the SMTCA, in addition to so terminating the SMTCA, the Owner may, without prejudice to any other remedy it may have, return the Goods to the Supplier, at the Supplier's expense and recover from the Supplier all monies paid under the SMTCA for said Goods. Termination of the SMTCA by the Owner shall not relieve or discharge the Supplier from any obligation under the SMTCA in respect of Goods that have been delivered prior to the date of termination.

Upon termination, Supplier shall submit to Owner for verification and approval an itemized invoice for Work performed up to and including the date of termination. Subject to the foregoing and the provisions of the previous paragraph, if this SMTCA is terminated by Owner, Owner shall pay Supplier for Work satisfactorily performed to the date of termination, less any back charges or other amounts that may be owing by Supplier to Owner Parties; and if the SMTCA is terminated for cause, the costs the Owner incurs in having the Work completed by third parties to the extent the total cost of third parties and the cost of Work satisfactorily provided by Supplier hereunder exceed the Purchase Price.

Upon receipt of a termination notice, Supplier shall discontinue the Work in accordance with the notice and shall take such steps as may be necessary or desirable to minimize the costs to Owner associated with the termination of the Work. Termination of this SMTCA by Owner shall not operate to relieve or discharge Supplier from any obligation under this SMTCA in respect to the Work that has been completed. In no event shall Owner be responsible for termination expenses, overhead costs associated with Work not performed by Supplier or any profits Supplier would have earned if it had completed the Work. In the event this SMTCA or any portion of the Work is terminated, Owner may complete or have others complete the Work.

Upon expiration or termination of this SMTCA, Supplier shall, upon the request of Owner: (a) return all papers, materials and property of Owner held by Supplier and (b) provide reasonable assistance as may be necessary for the orderly, non-disrupted continuation of Owner's business. Supplier shall assist in coordinating the transfer of the provision of the Services to Owner or a successor supplier, which shall include continuing to provide the required level of Services until the date of expiration or termination and providing Owner or such successor supplier with all pertinent information about the Services that does not constitute a Supplier trade secret.

19. Disputes. The parties have a duty to negotiate in good faith to resolve any disputes and shall inform one another promptly following the occurrence or discovery of any item or event that would reasonably be expected to result in a dispute required to be resolved in accordance with this dispute resolution procedure. The contractual representatives of the parties will initially negotiate to resolve any such dispute. If those representatives fail within ten (10) days after being so informed to resolve any such dispute, said dispute shall, at the written request of either party, be referred to senior officers of the parties who are duly authorized to settle the dispute. The senior officers of the parties shall meet and confer as often as they deem reasonably necessary to resolve the dispute amicably within thirty (30) days. Any dispute, claim or controversy arising out of or relating to this SMTCA or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Section 19 (dispute resolution provision), if not settled by agreement of the parties, shall at the option of either party and, upon written notice to the other party, be settled by non-binding mediation followed by arbitration. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. Each party shall pay its own expenses in connection with the mediation. The arbitrator

may, in the Award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable legal fees of the prevailing party.

20. Privacy. Supplier acknowledges that the Owner is subject to legislation governing privacy and the collection, use and disclosure of personal information. The Supplier agrees that, if applicable, it shall comply with the relevant privacy legislation and the Owner's privacy policies in connection with the provision of the Work. Supplier shall be liable for and indemnify and hold the Owner harmless against any and all claims, damages or losses arising from the Supplier's failure to comply with such legislation or policies.

21. Publicity. Supplier shall not use Owner's or its Affiliates' trademarks, service marks or logos, except pursuant to a separate written agreement duly executed between the Parties. In addition, Supplier shall not, without Owner's express prior written consent (a) use Owner's or its Affiliates' names, (b) publicly disclose this SMTCA, the Services being performed pursuant to this SMTCA or the relationship created by this SMTCA or (c) use of any language, pictures, videos, symbols, designs or other graphical representation which could in Owner's judgment imply the Owner or its Affiliates' identities, or an endorsement by Owner, its Affiliates or any of its or their employees in any communication of whatever nature. Supplier shall refer to Owner any questions from the media or third parties regarding the Work or Supplier's relationship with Owner and shall not discuss the Work or Supplier's relationship with Owner with the media or third parties.

22. Background Checks. The Owner has in place a procedure governing background screening for all contractors requiring access to the Owner's computer network systems or unescorted access to Owner's facilities, which can be provided by Owner to Supplier in writing or through an internet link at the Supplier's request. Prior to gaining such access to the Owner's facilities or network systems or at any other time during the term of the SMTCA, Supplier shall provide to the Owner, upon Owner's request and at Supplier's expense, satisfactory evidence of a criminal record check from an accredited law enforcement agency. The Owner, in its sole discretion, may waive or modify the requirements set out in this section.

23. Miscellaneous.

(a) Entire SMTCA. This SMTCA constitutes the final, complete, and exclusive expression of the Parties' agreement on the matters contained in this SMTCA. The terms of this SMTCA shall govern in lieu of all other pre-printed, standardized or other provisions that may otherwise appear in any other paper or electronic record of either Party (such as standard terms on order or acknowledgment forms, advance shipping notices, invoices, time sheets, and packages, shrink wrap terms, and click wrap terms). All prior written and oral negotiations and agreements, and all contemporaneous oral negotiations and agreements, between the Parties on the matters contained in this SMTCA are expressly merged into and superseded by this SMTCA. The Parties do not intend that the provisions of this SMTCA be explained, supplemented, or qualified through evidence of trade usage or any prior course of dealings or any course of performance under any prior agreement. In entering into this SMTCA, neither Party has relied upon any statement, estimate, forecast, projection, representation, warranty, action or agreement of the other Party except for those expressly contained in this SMTCA. There are no conditions precedent to the effectiveness of this SMTCA other than any expressly stated in this SMTCA.

(b) Amendments and Waivers. The Parties may not amend this SMTCA or an Order except by a written agreement of the Parties that identifies itself as an amendment to this SMTCA or such Order and is signed by both Parties, or as otherwise expressly provided below in this Section. No waiver of any right or condition is effective unless given in writing and signed by the Party waiving such right or condition. No delay or omission by either Party to exercise any right or power it has under this SMTCA shall impair or be construed as a waiver of such right or power. A waiver by any Party of any breach, condition or covenant shall not be construed to be a waiver of any succeeding breach or condition or of any other covenant. All waivers must be in writing and signed by the Party waiving its rights.

Owner's authorized representative may, at any time, propose changes to the scope of the Statement of Work, which shall be confirmed in writing, and Supplier shall not unreasonably withhold or condition its consent. An equitable adjustment shall be made to the Cost of Work if such change to the scope substantially affects the time or cost of performance of the Work.

(c) Governing Law. This SMTCA and the transactions it contemplate shall be governed, interpreted, construed, enforced and performed in accordance with the Laws of the State of Texas, without regard to conflicts of laws principles.

(d) Forum for Judicial Actions. Other than to the extent expressly set forth below in this Section, any legal action or proceeding arising out of or relating to this SMTCA or the transactions it contemplates (“Judicial Action”) shall be brought only in the Dallas Division of the United States District Court for the Northern District of Texas or in any Texas state court sitting in Dallas, Texas, and each Party consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts) in any such Judicial Action and waives any claim of forum non convenience in connection therewith and objection to venue laid therein. Process in any such Judicial Action may be served on a Party anywhere in the world, whether within or without the State of Texas. The choice of forum above shall not prohibit the enforcement of any judgment obtained in that forum or any other appropriate forum.

(e) Assignment and Delegation. Neither Party may assign, delegate, or otherwise transfer its rights or obligations under this SMTCA, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or any other manner, without the prior written consent of the other Party, except as follows: (i) without securing the consent of Supplier, Owner may assign its rights, or delegate its duties, or both, in whole or in part: to any present or future Affiliate of Owner, to any lender providing financing to Owner, or to any third party that assumes the operation of or otherwise acquires any substantial portion of the business of Owner affected by this SMTCA; and (ii) Supplier may subcontract its performance subject to the Section 10 of this SMTCA. Any purported assignment, delegation or transfer for which consent is required under the terms of this SMTCA, and which is made without such consent given in writing, is null and void.

(f) Waiver. Failure by either party to assert any of its rights under the SMTCA shall not be construed as a waiver thereof. No waiver of any breach or default hereunder shall be considered valid unless in writing, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

(g) Headings/Interpretation. Headings are for reference only, do not form any part of this SMTCA and shall be given no legal effect in the interpretation of this SMTCA. The singular includes the plural and vice versa, and words importing gender shall include all genders or a body corporate or other legal entity where the context requires. No provision shall be interpreted more or less favorably towards either party because its counsel drafted all or a portion of this SMTCA.

(h) Severability. If any provision of this SMTCA is determined to be invalid, illegal, or unenforceable, then the remaining provisions of this SMTCA shall remain in full force and effect if the economic and legal substance of the transactions contemplated by this SMTCA are not affected in any manner that is materially adverse to either Party by limiting or severing the provision determined to be invalid, illegal, or unenforceable.

(i) Counterparts. This SMTCA may be executed in counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

(j) Third Party Beneficiaries. Except to the extent set forth to the contrary in this SMTCA, there are no third-party beneficiaries of this SMTCA, and this SMTCA shall not provide any third person or entity with any remedy, claim, liability, reimbursement, claim of action or other legal or equitable right in excess of those existing without reference to this SMTCA.

(k) Independent Contractor. Supplier is an independent contractor and not an employee or agent of Owner. All persons performing the Work at the Site shall be employees of Supplier or employees of an authorized Subcontractor of Supplier and not the employees of Owner. While Owner may instruct Supplier as to the objectives, timing and the results required, Supplier shall have full control over how it achieves such objectives, timing or results and has full power and authority to select the means, methods, and manner for performing the Work. Whenever Supplier is performing Work at the Site, Supplier shall designate a site superintendent or other representative in charge of Supplier’s Services at the Site.

(l) Workers' Compensation. Any persons performing Services at the Site or any location controlled by an Owner Party shall be covered by State or Provincial Workers' Compensation program or by Workers' Compensation insurance, as described in the attached Insurance Requirements for Suppliers.

(m) Consequential Damages. Supplier, on behalf of itself and its subcontractors, expressly waives all Supplier's claims against Indemnitees for all consequential, incidental, indirect, punitive, or special damages arising out of or relating to this SMTCA. Owner expressly waives all claims against Supplier or its Affiliates for all of Owner's consequential, incidental, indirect, punitive, or special damages arising out of or related to this SMTCA. Provided, however that waivers shall not be given effect if such damages were caused by the fraud, gross negligence, or willful misconduct of the party claiming the benefit of said waiver. If liquidated damages are included in this SMTCA, nothing in this Section 23 shall be construed to limit Owner's rights to recover such liquidated damages.

(n) Force Majeure. Neither party shall be liable for damages arising or incurred during the time and to the extent that such party is prevented or delayed from complying with its obligations hereunder, by causes beyond the control of the party affected including acts of God, war, laws, orders or regulations of governmental bodies or agencies and unavoidable accidents. Any party failing or delaying in the performance of its obligations hereunder due to any such cause shall, within forty-eight (48) hours of discovering such cause, give the other party notice in writing of such cause and the consequences thereof, including a reasonable estimate of the anticipated delay in performance, and it shall use, to the best of its ability, reasonable diligence to remedy the same. Notwithstanding the foregoing, Owner may terminate this SMTCA pursuant to Section 18 in the event of such delay or anticipated delay in performance.

(o) Defined Terms.

"Affiliate" means a person or entity directly or indirectly controlling, controlled by or under common control with the party in question. Any person or entity shall be deemed to control any partnership of which, at the time, the person or entity is a general partner, in the case of a limited partnership, or is a partner who has authority to bind the partnership, in all other cases.

"SMTCA" means these General Terms and Conditions and the Statement of Work.

"Cost of Work" means the cost of Services or the price for Goods set forth on in the Statement of Work.

"Goods" means the goods supplied under this SMTCA.

"Intellectual Property" means all trade secrets, trademarks, patents, copyrights, and other proprietary rights of Owner, together with all documents, information, data, computer programs, electronic media, know how, knowledge, trade secrets, trademarks, patents, copyrights or products developed, improved or prepared by the Supplier, or its employees, agents or sub-contractors while performing this SMTCA.

"Owner" shall mean Phoenix Infrastructure, LLC and affiliates, a Delaware limited liability company. Owner may be referred to in the singular as a "Party" or with Supplier as the "Parties."

"Site" means the facility, plant or office location for which the Work is performed, unless otherwise specified in the SMTCA, including the Statement of Work.

"Supplier" shall mean the party listed as such on the Statement of Work. Supplier may be referred to in the singular as a "Party" or with Owner as the "Parties."

"Services" means the services provided under this SMTCA.

"Work" shall mean Goods or Services.

(p) Notice to Owner. Any notice required by this SMTCA or by law shall be in writing and addressed to:

Phoenix Infrastructure, LLC

3100 Olympus Blvd, Suite 510
Coppell, Texas 75019-5473
Attn: Legal Department

Such notice shall be properly served when sent via registered mail, personally delivered, faxed or electronically transmitted; when electronic transmission is used it must meet the minimum requirements set forth in any legislation governing the electronic transmission of documents pursuant to this SMTCA and followed up by registered mail or personal delivery at the addresses mentioned above. Notices shall be effective upon receipt or refusal to accept. Owner may change its address for the purpose of this Section 20 by giving written notice of such change to the Supplier.

(q) Survival of Obligations. Obligations and rights under this SMTCA, which by their nature would reasonably continue beyond the termination or expiration of this SMTCA (including those in Sections 7, 8, 12, 13, 14, 15, 19, 20, 21, 22 and 23), all of which shall survive the termination of this SMTCA.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this SMTCA effective as of the date first above written.

INSERT COMPANY NAME HERE (ALL CAPS)

PHOENIX INFRASTRUCTURE, LLC

Signature

Signature

Name

Name

Title

Title

Date

Date

Insurance Requirements for Vendors, Suppliers, Construction, Design & Engineering

Unless otherwise stated, all limits shown shall be per occurrence limits. Any general aggregate limits shall apply separately to work under this SMTCA. If any coverage is provided on a claims made basis, the policy (or tail coverage) shall be maintained in force for the longer of the extended period provided in the SMTCA and the Statute of Limitations for claims covered by the policy.

Required limits for Employer’s Liability, General Liability and Automobile coverages may be met through a combination of primary and excess/umbrella coverages.

Onsite Vendor

Worker’s Compensation	Statutory Maximum	Statutory
Employers Liability: each accident and disease (each employee)		\$1M
Commercial General Liability: General Liability coverage shall include: blanket contractual liability (including this SMTCA), bodily injury and death, broad form property damage including loss of use, excavation, collapse, shoring and pile driving, as applicable (no [XCU] exclusion), products and broad form completed operations and cross liability endorsements. Non-Owned Automobiles endorsement shall be included in Canada.	Each Occurrence	\$1M per Occurrence/\$2M Aggregate can be made up of primary and excess layers
Excess or Umbrella Liability: any such policy shall “follow form,” (i.e., provide coverage and endorsements that are at least as extensive as and no more restrictive than the underlying primary policies).		Optional
Automobile Liability: Combined Single Limit (Bodily Injury and Property Damage), Each Accident.		\$2M
E&O Technology		\$5M
Cyber Liability		\$1M
Professional Liability		\$2M

Offsite Vendor

Worker’s Compensation	Statutory Maximum	Statutory
Employers Liability: each accident and disease (each employee)		\$1M
Commercial General Liability: General Liability coverage shall include: blanket contractual liability (including this SMTCA), bodily injury and death, broad form property damage including loss of use, excavation, collapse, shoring and pile driving, as applicable (no [XCU] exclusion), products and broad form completed operations and cross liability endorsements. Non-Owned Automobiles endorsement shall be included in Canada.	Each Occurrence	\$1M per Occurrence/\$2M Aggregate can be made up of primary and excess layers
Excess or Umbrella Liability: any such policy shall “follow form,” (i.e., provide coverage and endorsements that are at least as extensive as and no more restrictive than the underlying primary policies).		Optional
Automobile Liability: Combined Single Limit (Bodily Injury and Property Damage), Each Accident.		\$2M
E&O Technology		\$5M
Cyber Liability		\$1M
Professional Liability		\$2M

Materials Suppliers

Worker’s Compensation	Statutory Maximum	Statutory
Employers Liability: each accident and disease (each employee)		\$1M
Commercial General Liability: General Liability coverage shall include blanket contractual liability (including this SMTCA), bodily injury and death, broad form property damage including loss of use, excavation, collapse, shoring and pile driving, as applicable (no [XCU] exclusion), products and broad form completed operations and cross liability endorsements. Non-Owned Automobiles endorsement shall be included in Canada.	Each Occurrence	\$1M per Occurrence/\$2M Aggregate can be made up of primary and excess layers.
Excess or Umbrella Liability: any such policy shall “follow form,” (i.e., provide coverage and endorsements that are at least as extensive as and no more restrictive than the underlying primary policies).		Optional
Automobile Liability: Combined Single Limit (Bodily Injury and Property Damage), Each Accident.		\$2M
E&O Technology		Optional
Cyber Liability		\$500K
Professional Liability		\$500K

Transportation Suppliers

Worker’s Compensation	Statutory Maximum	Statutory
Employers Liability: each accident and disease (each employee)		\$5M
Commercial General Liability: General Liability coverage shall include: blanket contractual liability (including this SMTCA), bodily injury and death, broad form property damage including loss of use, excavation, collapse, shoring and pile driving, as applicable (no [XCU] exclusion), products and broad form completed operations and cross liability endorsements. Non-Owned Automobiles endorsement shall be included in Canada.	Each Occurrence	\$5M
Excess or Umbrella Liability: any such policy shall “follow form,” (i.e., provide coverage and endorsements that are at least as extensive as and no more restrictive than the underlying primary policies).		Optional
Automobile Liability: Combined Single Limit (Bodily Injury and Property Damage), Each Accident.		\$5M
E&O Technology		Optional
Cyber Liability		\$500K
Professional Liability		\$500K

Consulting, Commissioning Services

Worker’s Compensation	Statutory Maximum	Statutory
Employers Liability: each accident and disease (each employee)		\$1M
Commercial General Liability: General Liability coverage shall include: blanket contractual liability (including this SMTCA), bodily injury and death, broad form property damage including loss of use, excavation, collapse, shoring and pile driving, as applicable (no [XCU] exclusion), products and broad form completed operations and cross liability endorsements. Non-Owned Automobiles endorsement shall be included in Canada.	Each Occurrence	\$1M per Occurrence/\$2M Aggregate can be made up of primary and excess layers

Excess or Umbrella Liability: any such policy shall "follow form," (i.e., provide coverage and endorsements that are at least as extensive as and no more restrictive than the underlying primary policies).		Optional
Automobile Liability: Combined Single Limit (Bodily Injury and Property Damage), Each Accident.		\$2M
Riggers Insurance (if applicable, for major crane lift projects as needed)		\$10M
E&O Technology		\$5M
Cyber Liability		\$1M
Professional Liability		\$2M

General Contractors (Onsite)

Worker's Compensation	Statutory Maximum	Statutory
Employers Liability: each accident and disease (each employee)		\$1M
Commercial General Liability: General Liability coverage shall include: blanket contractual liability (including this SMTCA), bodily injury and death, broad form property damage including loss of use, excavation, collapse, shoring and pile driving, as applicable (no [XCU] exclusion), products and broad form completed operations and cross liability endorsements. Non-Owned Automobiles endorsement shall be included in Canada.	Each Occurrence	\$1M per Occurrence/\$2M Aggregate can be made up of primary and excess layers
Excess or Umbrella Liability: any such policy shall "follow form," (i.e., provide coverage and endorsements that are at least as extensive as and no more restrictive than the underlying primary policies).		Optional
Automobile Liability: Combined Single Limit (Bodily Injury and Property Damage), Each Accident.		\$2M
Professional Liability		\$2M
E&O Technology		
Cyber Liability		
Professional Liability		

Trade Partners (Onsite)

Worker's Compensation	Statutory Maximum	Statutory
Employers Liability: each accident and disease (each employee)		\$1M
Commercial General Liability: General Liability coverage shall include blanket contractual liability (including this SMTCA), bodily injury and death, broad form property damage including loss of use, excavation, collapse, shoring and pile driving, as applicable (no [XCU] exclusion), products and broad form completed operations and cross liability endorsements. Non-Owned Automobiles endorsement shall be included in Canada.	Each Occurrence	\$1M per Occurrence/\$2M Aggregate can be made up of primary and excess layers
Excess or Umbrella Liability: any such policy shall "follow form," (i.e., provide coverage and endorsements that are at least as extensive as and no more restrictive than the underlying primary policies).		Optional
Automobile Liability: Combined Single Limit (Bodily Injury and Property Damage), Each Accident.		\$2M
E&O Technology		Optional
Cyber Liability		\$500K
Professional Liability		\$500K

Design & Testing Partners (Onsite & Offsite)

Worker's Compensation	Statutory Maximum	Statutory
Employers Liability: each accident and disease (each employee)		\$5M
Commercial General Liability: General Liability coverage shall include: blanket contractual liability (including this SMTCA), bodily injury and death, broad form property damage including loss of use, excavation, collapse, shoring and pile driving, as applicable (no [XCU] exclusion), products and broad form completed operations and cross liability endorsements. Non-Owned Automobiles endorsement shall be included in Canada.	Each Occurrence	\$5M
Excess or Umbrella Liability: any such policy shall "follow form," (i.e., provide coverage and endorsements that are at least as extensive as and no more restrictive than the underlying primary policies).		Optional
Automobile Liability: Combined Single Limit (Bodily Injury and Property Damage), Each Accident.		\$5M
E&O Technology		Optional
Cyber Liability		\$500K
Professional Liability		\$500K

Riggers Insurance (Onsite)

Worker's Compensation	Statutory Maximum	Statutory
Employers Liability: each accident and disease (each employee)		\$5M
Commercial General Liability: General Liability coverage shall include: blanket contractual liability (including this SMTCA), bodily injury and death, broad form property damage including loss of use, excavation, collapse, shoring and pile driving, as applicable (no [XCU] exclusion), products and broad form completed operations and cross liability endorsements. Non-Owned Automobiles endorsement shall be included in Canada.	Each Occurrence	\$5M
Excess or Umbrella Liability: any such policy shall "follow form," (i.e., provide coverage and endorsements that are at least as extensive as and no more restrictive than the underlying primary policies).		Optional
Automobile Liability: Combined Single Limit (Bodily Injury and Property Damage), Each Accident.		\$5M
E&O Technology		Optional
Cyber Liability		\$500K
Professional Liability		\$500K

Additional Endorsements Required and to be Stated on Certificates of Insurance:

Owner Parties and Owner Parties' employees, officers and directors shall be included as "Additional Insured" for the Work on a primary and non-contributory basis, with respect to General Liability and Excess/Umbrella (if any) coverages.

All policies applicable to the Work shall contain a waiver of any right of subrogation or recourse by Supplier's insurer against Owner and its employees, officers, and directors.

STATEMENT OF WORK