

TOYOTA

**TOYOTA TERMS AND CONDITIONS
(INDIRECT)**

TABLE OF CONTENTS

	Page
1. GENERAL.....	1
1.1 Parties	1
1.2 Acceptance.....	1
1.3 Agency Relationship; Third Party Beneficiary Relationship.....	1
1.4 Contract Documents	2
1.5 Toyotasupplier.com and Other Toyota Networks.....	3
1.6 No Requirements/Output Contract	3
1.7 Guiding Principles	3
1.8 Good Faith	3
2. GOODS AND SERVICES	4
2.1 Goods.....	4
2.2 Services.....	5
3. GENERAL TERMS AND CONDITIONS.....	12
3.1 Quantity; Description.....	12
3.2 Price	13
3.3 Liens	13
3.4 Payments.....	14
3.5 Set-Off	15
3.6 Inspection.....	16
3.7 Rejected or Nonconforming GS.....	16
3.8 Time is of the Essence	18
3.9 Delay.....	18
3.10 Required Changes and Adjustments	19
3.11 Acceleration.....	20
3.12 Compliance with Applicable Laws; Testing; Certification.....	20
3.13 ACA Compliance.....	21
3.14 Toyota Property	23
3.15 Non-Disclosure Agreement	24
4. GENERAL COVENANTS, RIGHTS AND REMEDIES OF PARTIES	26
4.1 Toyota Party’s Rules, Regulations, and Programs.....	26
4.2 Independent Contractor.....	27
4.3 Non-exclusive	27
4.4 Insurance.....	27
4.5 Warranty	29
4.6 Taxes; Duty.....	30
4.7 Advertising.....	32
4.8 Intellectual Property.....	32
4.9 Term and Termination	36
4.10 Default; Remedies.....	37
5. MISCELLANEOUS	39
5.1 Order of Precedence.....	39
5.2 Governing Law; Choice of Forum.....	39
5.3 Assignment; Subcontracts.....	39
5.4 Notices	40
5.5 Battle of the Forms Not Applicable.....	40
5.6 Entire Agreement; Amendments.....	40
5.7 Survival.....	41

TABLE OF CONTENTS CONTINUED

	Page
5.8	Certain Matters of Construction..... 41
5.9	Alternative Dispute Resolution..... 41
5.10	SUPPLIER’S LIABILITY AND INDEMNITY OF TOYOTA PARTY 43
5.11	Severability..... 46
6.	PROVISIONS APPLICABLE TO CERTAIN JURISDICTIONS 47
6.1	Alabama 47
6.2	Arizona..... 48
6.3	British Columbia, Canada..... 49
6.4	California 51
6.5	Indiana 52
6.6	Kentucky..... 52
6.7	Mexico 53
6.8	Michigan 55
6.9	Mississippi 56
6.10	Ontario, Canada 56
6.11	Tennessee..... 58
6.12	West Virginia..... 59

Glossary of Defined Terms

ACA	3.13
ACA Payment	3.13(c)
ACA Safe Harbor	3.13(c)
Act	6.8(a)
Agency Agreements	1.3(b)
Alternative GS	3.9(b)
Assessable Payment/Penalty Tax Indemnitees	3.13(e)
Bankruptcy Code	4.8(h)
Business Day	5.8(e)
Cargo	2.2(b)(1)(i)
Certificate Holder	6.1(c)(1)
Change of Control.....	5.3
CISG	5.2
Commissioned Work	4.8(f)
Confidential Information	3.15(a)
Conforming Invoice	3.4(c)
Construction or Installation Activities	2.2(c)
Construction or Installation Provisions	2.2(c)
Construction or Installation Subcontractor	2.2(c)
Contract Documents	1.4
COTS Software.....	4.8(b)
CPR.....	5.9(b)
Damage Claim	2.2(b)(2)(iii)
Default	4.10(a)
Delivery Change	3.9(c)
Delivery Schedules	3.9(c)
Department.....	6.1(c)(1)
Designated Payment Terms	3.4(d)
Designated Set-Off	3.5
Direct Claim.....	5.10(d)
Direct Claim Notice	5.10(d)
Discussion Period.....	5.10(d)
Dispute	5.9
Dispute Notice	5.9(b)
Electronic Forms	1.5
Employee Obligations	6.7(c)(3)
Environmental Reports	2.1(d)(1)
Environmental Requirements	3.12(a)
EPOs	1.5
Finished Vehicle Requirements	2.2(b)(4)
FMCSA.....	4.5(d)
Force Majeure Event	3.9(d)(1)
Generic Contract Documents	1.4
Global Affiliate	4.8(a)
Global Affiliate Intellectual Property	4.8(a)
Goods	2.1(a)
GS	2
GST.....	4.6(c)
Guiding Principles	1.7

HST	4.6(c)
Inspection Period	3.6(b)
Intellectual Property	4.8
Joint Development Agreement.....	4.8(e)
Lien	3.3(a)
Lien Waiver	2.2(c)(12)(i)
LISG	5.2
Local Community	1.7
Loss.....	5.10(b)
Manufacturing and Legal Requirements	3.12(a)
Medical Coverage	3.13
Mexican Toyota Party	6.7(b)
Mutually Developed GS	4.8(e)
NAMC	1.3(a)
Negotiated Matter	1.8
Non-Disclosure Agreement	3.15
Other Information	4.8(d)
Parts Transportation Requirements	2.2(b)(3)
Payment Procedures	3.4(b)
Payment System	3.4(b)
Person.....	5.3
Personnel	3.13(a)
Proceeding.....	3.13(h)
PST.....	4.6(c)
Public Instrument	6.7(c)(1)
Quality Standards	4.5(b)
Rejected GS	3.7
Remedial Work	3.7
Required Changes	3.10(a)
Return	3.7(a)
Returnable Packaging	2.2(b)(1)(ii)
Rules	6.7(a)
Separated Contract	4.6(b)(1)
Services	2.2(a)
SLIM.....	1.4
Specific Contract Documents	1.4
Subcontractors	3.3(a)
Supplier	1.1
Supplier Intellectual Property	4.8(b)
Supplier Party.....	5.10(a)
Supplier Payables	3.4(a)
Supplier Specifications	4.5(a)
Supplier's Warranties	4.5(a)
TC	1.3(a)
TEMA	1.3(a)
Termination Payment	4.9(d)(1)
Terms	1.1
Testing and Certification	3.12(b)
Third Party Claim	5.10(c)(1)
TMMAL	6.1(c)
TMNA	1.3(a)

TMNA Sub.....	1.3(a)
TMS/USA	1.3(a)
Toyota Indemnified Party	5.10(b)
Toyota Intellectual Property	4.8(a)
Toyota Networks	1.5
Toyota Party	1.3(a)
Toyota Premises	2.2(c)
Toyota Price	3.2(a)
Toyota Property	3.14(a)
Toyota Specifications	4.5(a)
Toyota Written Forms	1.5
Transportation Services	2.2(b)(1)(i)
Trust Fund Act	6.8(b)
USD	3.4(f)
Work	6.3(f)

TOYOTA TERMS AND CONDITIONS (INDIRECT)

1. GENERAL.

1.1 **Parties.** Unless otherwise set forth in a Contract Document, these Toyota Terms and Conditions (Indirect) (the “**Terms**”) are between (i) the particular Toyota Party that is issuing the purchase order; and (ii) each party providing GS to Toyota Party pursuant to these Terms and the Contract Documents (each, a “**Supplier**”), and these Terms shall be solely between Supplier and that particular Toyota Party, and no other Toyota Party shall have any obligation or be subject to any liability in any way to Supplier with respect to or in connection with these Terms.

1.2 **Acceptance.** The parties do not intend for these Terms to be signed, but instead intend for these Terms to be accepted by any performance of Supplier for Toyota Party. Supplier’s commencement of work on GS for Toyota Party and Supplier’s continuing and ongoing performance under these Terms (including under any Contract Documents) shall serve as evidence of and constitute Supplier’s acceptance of all of these Terms. In addition to the foregoing, submission of a Conforming Invoice by Supplier (or submission of any advance shipping notification, bill of lading, evidence of shipment of GS, other documentation concerning Supplier Payables or any other documentation which demonstrates that Supplier is performing its commercial relationship with Toyota Party, as may be deemed acceptable to Toyota Party in its sole discretion, and whether such notification, evidence or document is transmitted to Toyota Party electronically or otherwise but which can be reduced to writing) shall constitute an independent written acknowledgement of Supplier’s acceptance of all of these Terms and of the agreement between the parties. Notwithstanding the foregoing, the obligations of Supplier under **Section 3.15** shall apply to Confidential Information received by or on behalf of Supplier prior to its acceptance of these Terms by performance or as otherwise set forth herein.

1.3 **Agency Relationship; Third Party Beneficiary Relationship.**

(a) **General.** Toyota Motor Engineering & Manufacturing North America, Inc. (“**TEMA**”), Toyota Motor North America, Inc. (“**TMNA**”), Toyota Motor Sales, U.S.A., Inc. (“**TMS/USA**”), Toyota Connected North America, Inc. (“**TC**”), any NAMC, or any TMNA Sub, as the case may be, may (i) act as a designated agent in coordinating the purchase of GS for Toyota Motor Manufacturing, Kentucky, Inc., Toyota Motor Manufacturing, Indiana, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor Manufacturing, Alabama, Inc., Toyota Motor Manufacturing, Texas, Inc., Toyota Motor Manufacturing, Mississippi, Inc., Toyota Motor Manufacturing de Baja California, S. de R.L. de C.V., Bodine Aluminum, Inc., TABC, Inc., Toyota Motor Manufacturing Canada Inc., Canadian Autoparts Toyota Inc., Toyota Motor Manufacturing, California, Inc., Toyota Motor Manufacturing, Northern Kentucky, Inc., Toyota Motor Manufacturing de Guanajuato S.A. de C.V., TMMGT Servicios, S.A. de C.V., Toyota Production System Support Center, Inc. or any other North American manufacturing company directly or indirectly owned by TMNA (collectively referred to herein as “**NAMCs**,” and individually as an “**NAMC**”); (ii) contract on behalf of any other direct or indirect subsidiary of TMNA currently existing or subsequently formed, other than an NAMC, including Toyota Logistics Services, Inc., AirFlite, Inc., Toyota Research Institute, Inc. and Toyota de Puerto Rico Corp. (collectively referred to herein as “**TMNA Subs**,” and individually as a “**TMNA Sub**”); or (iii) contract for the benefit of itself. TEMA, TMNA, TMS/USA, TC, the NAMCs and the TMNA Subs are collectively referred to herein as “**Toyota Parties**,” and individually as “**Toyota Party**.”

(b) **Agency Agreements; Third Party Beneficiary Relationship.** Supplier acknowledges and agrees that an agency relationship exists between certain Toyota Parties, on the one

hand, and the applicable Toyota Party, on the other hand, pursuant to such internal documents as the applicable Toyota Parties deem appropriate from time to time (collectively, the “**Agency Agreements**”). Pursuant to such Agency Agreements, certain Toyota Parties (i) have both express and apparent authority to act as agent on behalf of the applicable Toyota Party in conjunction with the Contract Documents; and (ii) shall be entitled to the benefits of, and to enforce the terms of, the Contract Documents, as an intended third party beneficiary, and Supplier acknowledges the rights of such Toyota Parties under these Terms and the Contract Documents. Notwithstanding such agency relationship created thereby, each Toyota Party may, from time to time, act on its own behalf or on behalf of certain other Toyota Parties, as designated by the applicable Toyota Party, in its sole discretion, or as circumstances require for the reasonable interpretation of any applicable Contract Documents.

1.4 **Contract Documents.** The parties intend to and shall use additional documents generated (or otherwise approved in writing) by or on behalf of Toyota Party to supplement these Terms and further define the purchasing relationship between the parties, and such additional documents shall be both specific to Supplier (such as purchase orders, EPOs, Electronic Forms, statements of work, scopes of work, Data Handling Agreements, Business Associate Agreements, releases, manifests, specifications and drawings (but specifically excluding any standard terms and conditions contained or incorporated in any Supplier estimate, order form, order confirmation, quote, proposal, invoice or other similar submission or response by Supplier)) (collectively, the “**Specific Contract Documents**”) and generic to all suppliers (such as the Supplier Quality Assurance Manual (SQAM) and other quality manuals, the Supplier Logistics Instruction Manual (“**SLIM**”), Toyota Written Forms, all information systems usage and security requirements, policies and procedures, data handling requirements, purchasing and accounting systems, Toyota Party policies and procedures, and similar matters) (collectively, the “**Generic Contract Documents**”). Specific Contract Documents and Generic Contract Documents are collectively referred to herein as “**Contract Documents**.” Contract Documents shall be both in Toyota Written Forms and Electronic Forms, and shall be provided to Supplier independently of these Terms. Contract Documents shall be created one (1) time in some instances, and shall be created, amended or modified on an ongoing basis in other instances. Contract Documents, which shall be exchanged and updated from time to time, are not independent contractual agreements between Supplier and Toyota Party, but constitute additional terms and conditions of these Terms. All Contract Documents shall be such documents as are designated by Toyota Party from time to time and can be added, superseded or deleted by Toyota Party from time to time, all in its sole discretion. Toyota Party shall (i) provide copies of or access to Specific Contract Documents, including any amendments or modifications, pursuant to procedures established by Toyota Party in the reasonable exercise of its sole discretion; and (ii) take reasonable steps to provide notice of Generic Contract Documents, including any amendments or modifications, pursuant to procedures established by Toyota Party in the reasonable exercise of its sole discretion. Supplier may at any time submit questions to Toyota Party about the Contract Documents and Toyota Party shall review and, as appropriate, take reasonable steps to respond to Supplier. All Contract Documents, and all documents incorporated by reference in the Contract Documents, are incorporated by reference into these Terms notwithstanding the fact that the Contract Documents may not be attached to these Terms. **FOR THE AVOIDANCE OF DOUBT, ANY STANDARD TERMS AND CONDITIONS CONTAINED OR INCORPORATED IN ANY SUPPLIER ESTIMATE, ORDER FORM, ORDER CONFIRMATION, QUOTE, PROPOSAL, INVOICE OR OTHER SIMILAR SUBMISSION OR RESPONSE BY SUPPLIER (EVEN IF SUPPLIER PURPORTS TO CONDITION ITS ACCEPTANCE TO TOYOTA PARTY’S AGREEMENT TO SUCH DIFFERENT OR ADDITIONAL TERMS, AND REGARDLESS OF WHEN SUCH DOCUMENTS OR TERMS ARE OR WERE SUBMITTED) ARE EXCLUDED, INAPPLICABLE UNDER THESE TERMS AND THE CONTRACT DOCUMENTS AND OTHERWISE SUPERSEDED, AND INSTEAD THESE TERMS SHALL APPLY.**

SUPPLIER ACKNOWLEDGES AND AGREES THAT ITS PERFORMANCE IS MADE SUBJECT TO THE CONTRACT DOCUMENTS, ALL OF WHICH ARE HEREBY INCORPORATED BY

REFERENCE, NOTWITHSTANDING THAT SOME OF THE TERMS AND PROVISIONS ARE CONTAINED IN DOCUMENTS WHICH ARE NOT ATTACHED TO THESE TERMS.

1.5 ***Toyotasupplier.com and Other Toyota Networks.*** Supplier agrees that Toyota Party may use electronic purchase orders (“**EPOs**”), price confirmations and other electronic forms (collectively, with EPOs, the “**Electronic Forms**”), which may be posted or made available through any of the Toyota Parties’ Internet networks and applications operated as toyotasupplier.com, through SAP Ariba software, or through other networks and applications as may be designated by Toyota Party from time to time (such Internet networks, applications and software are referred to collectively as the “**Toyota Networks**”) to supplement, modify or replace existing written Contract Documents (collectively, “**Toyota Written Forms**”). From time to time, Electronic Forms shall supplement Toyota Written Forms, or Electronic Forms may replace Toyota Written Forms entirely. Toyota Party (including through the other Toyota Parties) reserves the right to set policies and procedures, from time to time, for the transition to and implementation of Electronic Forms, and such policies and procedures shall be modifications to these Terms and the applicable Contract Documents as posted on the Toyota Networks. All policies and procedures for the Toyota Networks shall become effective as of the date established by Toyota Party or the other Toyota Parties. By using the Toyota Networks, Supplier hereby agrees to and accepts any and all terms and conditions set forth on the Toyota Networks, either in place of or in addition to these Terms and the Contract Documents (including other Toyota Written Forms and Electronic Forms) as set forth on such Toyota Networks, and, for purposes of clarity, references to Contract Documents include all Toyota Written Forms and Electronic Forms. Toyota Party (including through the other Toyota Parties) reserves the right at any time to add, delete or modify the functionality of the Toyota Networks upon notice, delivered by regular mail, by e-mail, or by an on-screen alert on the Toyota Networks. Toyota Party also reserves the right to terminate Supplier’s enrollment in, and use of, the Toyota Networks at any time.

1.6 ***No Requirements/Output Contract.*** Toyota Party may buy or otherwise acquire goods and services from other sources that are similar to or exactly like GS or reduce quantities of GS acquired from Supplier irrespective of the course of dealing between the parties. The Contract Documents shall not constitute a requirements or output contract unless and to the extent specifically designated as such in a Contract Document signed by Toyota Party and Supplier.

1.7 ***Guiding Principles.*** Supplier understands the importance of guiding principles for the Toyota Parties (“**Guiding Principles**”) which provide, among other things, the philosophical direction for the Toyota Parties. Guiding Principles specifically govern the practices and policies of Toyota Party as a corporate citizen in its dealings with its suppliers, customers and communities in which Toyota Party team members and families live and work (“**Local Community**”). In all dealings between Toyota Party and Supplier, both parties agree to use their commercially reasonable efforts to comply with the Guiding Principles (as these may be adopted and modified by any of the Toyota Parties from time to time), including (i) compliance with the spirit and letter of all applicable commercial and other laws and all principles of corporate ethics; (ii) exhibiting proper care and concern for the environment and safety; (iii) respect for and contribution to the betterment and improvement of the Local Community; (iv) enlightenment, growth and continuous improvement of all management, employees and business partners; (v) adoption and practice of customer first principles; (vi) practice of fair trade and sound business practices in all business dealings; (vii) promotion of social responsibility for all management, employees and business partners; and (viii) consideration of, and regular contribution towards, sustainable development of society, the environment and the overall well-being of the Earth. For the avoidance of doubt, nothing in this **Section 1.7** shall limit the obligations of Supplier set forth in these Terms or the Contract Documents.

1.8 ***Good Faith.*** In performing these Terms, including any provision of these Terms whereby Toyota Party may act in its sole discretion, the parties agree (i) to at all times act in good faith towards each other; and (ii) to negotiate in good faith all matters, issues or provisions which arise under or are related to

these Terms that require the parties to reach a consensus, understanding or agreement (a “**Negotiated Matter**”). As appropriate, Toyota Party agrees to discuss and seek input from Supplier on all Negotiated Matters. In the event the parties cannot agree on the resolution of a Negotiated Matter after complete discussion and negotiation, and as a matter of last resort, it is agreed that the decision of Toyota Party, made in its sole discretion and in good faith on the basis of its best business judgment, shall be final in reaching resolution of any Negotiated Matter, subject to **Section 5.9**.

2. **GOODS AND SERVICES.** In accordance with and pursuant to these Terms, Toyota Party, from time to time, is coordinating with Supplier for the purchase, supply, performance, or other provision by, or on behalf of, Supplier, of any and all of the Goods or Services described below in this **Section 2** (collectively, “**GS**”).

2.1 **Goods.**

(a) **Generally.** Toyota Party, from time to time, is coordinating with Supplier for the purchase, supply, or other provision by, or on behalf of, Supplier, of all goods identified in the Contract Documents and any items, documents or intangible property related to, incorporated into, or associated with any GS, which may include any of the following (“**Goods**”): goods, raw materials, items, machinery, equipment, general stores, spare parts for machinery or equipment, prototype automotive parts, personal property, hardware, software, or other Intellectual Property, including any specifications, designs, plans, drawings, standards, project schedules, accessions and additions relating to any GS.

(b) **General Delivery Terms.** Except as otherwise set forth in the Contract Documents, general delivery instructions shall be: (i) for all Goods to be delivered to a location in the United States (including any of its possessions or territories) or Canada designated by or on behalf of Toyota Party, F.O.B. designated destination as defined in the Uniform Commercial Code (as the same may be amended from time to time); (ii) for all Goods which originate in a country other than in Mexico but which are delivered to a location in Mexico designated by or on behalf of Toyota Party, DAP Toyota Party’s delivered at point (Incoterms 2010); and (iii) for all Goods which originate in Mexico and which are delivered to a location in Mexico designated by or on behalf of Toyota Party, DAP Toyota Party’s delivered at point (Incoterms 2010). Supplier shall ensure that all bills of lading in connection with Goods are marked to reflect that the applicable carrier has been pre-paid, and no bill of lading shall be marked “no recourse,” “nonrecourse,” “without recourse,” “freight collect” or otherwise provide that Toyota Party shall be liable to carrier for any freight costs, fees or other charges, unless so specified in the Contract Documents. Unless otherwise set forth in in these Terms or in the Contract Documents, Supplier shall be the Importer of Record for all Goods which originate in a country other than the country in which the Goods shall be delivered.

(c) **Overshipments; Undershipments.** Toyota Party shall have no liability for payment of Supplier Payables arising from Goods delivered to the applicable destination location designated by or on behalf of Toyota Party that exceed the quantities specified in the applicable Contract Documents. At the sole option of Toyota Party, Toyota Party may do any one of the following: (i) keep any overshipments of Goods and elect to have the quantities of Goods under the applicable Contract Documents increased by the same amount of Goods as the quantity of overshipments; (ii) (A) keep a portion of the overshipped Goods and elect to have the quantities of Goods under the applicable Contract Documents increased by the same amount of Goods as the portion of overshipped Goods retained by Toyota Party; and (B) return the unretained portion of the overshipped Goods to Supplier at Supplier’s sole cost and expense; or (iii) return all of the overshipped Goods to Supplier at Supplier’s sole cost and expense. In case of undershipments of any Goods, Supplier shall, if so requested by Toyota Party, immediately ship, at Supplier’s sole cost and expense, to the destination and by the time designated by Toyota Party the additional Goods needed to fully complete the applicable Toyota Party requirements. Alternatively, Toyota Party may elect to have the quantities of Goods under the applicable Contract Documents reduced by the

same amount of Goods as the quantity of any undershipments; provided, however, that following an election by Toyota Party to reduce the quantities of Goods under the applicable Contract Documents, Toyota Party shall continue to be entitled to any volume discount pricing or tiered pricing, if applicable, as if Toyota Party had purchased the quantity of Goods that were undershipped.

(d) ***Environmental Reports; Other Ingredients.***

(1) **Environmental Reports.** Prior to the shipment of any Goods, Supplier shall provide Toyota Party with (i) any and all Safety Data Sheets (SDS), Chemical Abstracts Service (CAS) Numbers, and ingredient information that are related, directly or indirectly, to the Goods (or Goods used in subassemblies or in the manufacture, performance or production of Goods); and (ii) such other documentation as Toyota Party may request from time to time that is prepared pursuant to any applicable Manufacturing and Legal Requirements or any and all Toyota Specifications relating to environmental or similar matters (the items in subsections (i) and (ii) above are collectively referred to herein as “**Environmental Reports**”). Environmental Reports shall be deemed Confidential Information. Supplier shall promptly furnish to Toyota Party any modifications, amendments or supplements to the Environmental Reports so as to ensure the accuracy and completeness of the Environmental Reports and continuing compliance with Manufacturing and Legal Requirements. Further, Supplier shall promptly inform Toyota Party of any changes in materials or ingredients in Goods, and promptly (but no later than as required by, and to ensure continuing compliance with, Manufacturing and Legal Requirements) furnish Toyota Party with updated or new Environmental Reports relating, directly or indirectly, to the Goods. For all Goods to be delivered to any location in Mexico as designated by or on behalf of Toyota Party, Supplier shall timely provide Toyota Party with any and all applicable Environmental Reports translated to Spanish, or otherwise provide Toyota Party with such documents in English and Spanish, or in accordance with such other instructions as Toyota Party may designate from time to time. To the extent the applicable Environmental Report is translated, Supplier is responsible for such translation and remains responsible for any problems or issues resulting from such translation.

(2) **Additional Information.** Supplier shall notify Toyota Party immediately upon obtaining any information or indications that Goods supplied, or to be supplied, by or on behalf of Supplier have hazardous characteristics, regardless of the information set forth in any Environmental Reports. If requested by Toyota Party, Supplier shall provide Toyota Party with any other information it reasonably requests concerning the ingredients, composition, manufacturing processes, or materials in or included as part of any Goods.

2.2 ***Services.***

(a) ***Generally.*** Toyota Party, from time to time, is coordinating with Supplier for the purchase, supply, performance, or other provision by, or on behalf of, Supplier, of all services identified in the Contract Documents and any services related to, incorporated into, or associated with any GS, which may include any of the following (“**Services**”):

(1) labor, maintenance, repairs, installation, testing, calibration, operating trials, and other services in connection with or related to the sale, transportation, importation or exportation of any of the Goods purchased by Toyota Party as described in **Section 2.1(a)**;

(2) Transportation Services as more specifically described in **Section 2.2(b)**, and any and all services rendered by Supplier related to or arising from the Transportation Services;

(3) Construction or Installation Activities as more specifically described in **Section 2.2(c)**, and any and all services rendered by Supplier related to or arising from the Construction or Installation Activities; and

(4) the direct and indirect supply of any and all other services for the benefit of Toyota Party or on Toyota Party's behalf, rendered by Supplier in performing under any of the Contract Documents.

(b) *Transportation Services.*

(1) **Transportation of Cargo – Generally.**

(i) In conjunction with the transportation of cargo, including manufacturing production parts, automotive service parts, accessory automotive parts, prototype automotive parts, vehicles and other items or materials entrusted to Supplier by Toyota Party, or a third party on Toyota Party's behalf (collectively, "**Cargo**") to be inspected, stored, loaded, transported, delivered or unloaded by Supplier (the "**Transportation Services**"), and as designated from time to time by Toyota Party in one (1) or more Contract Documents, Supplier shall: (A) properly prepare, pack, mark and ship Cargo in strict conformity with the packaging and delivery requirements of Toyota Party and any applicable carrier (and if no packaging specifications are set forth in the Contract Documents, then packaging shall be in a commercially reasonable manner and in compliance with all applicable Manufacturing and Legal Requirements); (B) procure and maintain in full force and effect insurance as required by **Section 4.4**; (C) route deliveries of Cargo in strict conformity with the routing requirements of Toyota Party; (D) deliver Cargo in quantities and at the time and the place specified by or on behalf of Toyota Party, and all deliveries of Cargo shall meet all the requirements and regulations of all carriers and applicable authorities, including all deliveries to or on behalf of Toyota Party in Mexico, the Mexican Official Standards, and Normas Oficiales Mexicanas; (E) not charge Toyota Party for handling, packaging, storage or transportation of Cargo unless otherwise stated in applicable Contract Documents; (F) provide with each shipment of Cargo such packing slips, bills of lading or other shipping receipts or identifying documentation which taken together shall allow Toyota Party to identify the Cargo shipped and determine that such Cargo has been delivered in strict conformity with all applicable packaging, delivery, routing and other requirements of Toyota Party; and (G) in situations where Supplier is not the carrier, provide in any contract (written or oral) with any carrier that Supplier is liable for all freight costs, fees, tolls, fuel costs, taxes (including road, vehicle or fuel taxes) or other charges arising in connection with the Cargo shipped to the destination location designated by or on behalf of Toyota Party, and that carrier specifically waives any and all claims against any Toyota Parties for such amount. While transporting the Cargo in accordance with this **Section 2.2(b)(1)(i)**, Supplier shall not divert or reassign any shipment except upon Toyota Party's written instructions or as otherwise set forth in the Contract Documents.

(ii) In the event returnable packaging is deemed by Toyota Party to be advisable or necessary for the delivery of Cargo ("**Returnable Packaging**"), Toyota Party and Supplier shall negotiate the terms and conditions for the design, construction, use (including storage, loading and unloading, transportation and return thereof), ownership and costs of any Returnable Packaging on terms acceptable to Toyota Party in the reasonable exercise of its discretion.

(2) **Damaged Cargo.** To the extent that Supplier is responsible for inspecting, accepting, storing, loading, transporting, delivering or unloading Cargo for Toyota Party, Supplier assumes liability for full actual loss of or damage to any Cargo during all times in which Supplier has duties with respect to such Cargo, including at all times where any Cargo is being stored at a terminal, warehouse or

other location. The following sets forth the procedure for dealing with Cargo that is damaged by Supplier (including by its Subcontractors).

(i) ***Cargo in Transit.*** Unless otherwise set forth in the Contract Documents, in the event of suspected damage to the Cargo at any time prior to delivery of the Cargo to the destination identified in the Contract Documents, Supplier shall deliver the Cargo to the recipient designated by Toyota Party and immediately notify Toyota Party of the suspected damage via e-mail and telephone.

(ii) ***Non-Transit Cargo.*** Unless otherwise set forth in the Contract Documents, in the event that the suspected damage to the Cargo is discovered after delivery of the Cargo to the destination identified in the Contract Documents, Toyota Party shall, upon determination that the Cargo is damaged, promptly notify Supplier of the suspected damage.

(iii) ***Damaged or Lost Cargo.*** Unless otherwise set forth in the Contract Documents, after delivery of the Cargo to the destination identified in the Contract Documents, Toyota Party, or a third party acting on Toyota Party's behalf, shall inspect the Cargo and, in its sole discretion, determine whether the Cargo is damaged. Unless otherwise set forth in the Contract Documents, upon Supplier's written request, Toyota Party, or its designated third party, shall hold the damaged Cargo for up to five (5) days to allow for examination by Supplier or its authorized insurance adjuster. At the sole discretion of Toyota Party, the damaged Cargo may be scrapped, partially or totally, or returned, in each case except as otherwise set forth in the Contract Documents. Toyota Party shall have no obligation to salvage or cause to be salvaged any damaged, undeliverable or rejected Cargo. Failure by Toyota Party to salvage or cause to be salvaged such Cargo shall not constitute a failure to mitigate damages in connection with any claims made in respect thereof. Except as otherwise set forth in the Contract Documents and in addition to any and all other remedies elsewhere in these Terms and provided by law or in equity, the damage claim shall be the difference between the pre-damaged market value of the Cargo and its scrap value (if any), or, in the case of lost Cargo, the damage claim shall be the pre-loss market value of the Cargo, in each case plus any additional costs associated with the replacement Cargo purchased, storage, return transportation, scrapping and other disposal expenses, labor, or expedited shipment costs and Toyota Party's expenses in connection with the investigation or attempted recovery of any lost Cargo (the "**Damage Claim**"). Except as otherwise set forth in the Contract Documents, upon submission of the Damage Claim to Supplier, Toyota Party may elect, in its sole discretion, to (A) have Supplier promptly issue payment to Toyota Party; or (B) set off the Damage Claim against Supplier's next invoice or Supplier Payables. It is understood and agreed to by the parties that the intent of this provision is to place Toyota Party in the same position it would have been in if damage to or loss of the Cargo had not occurred.

(3) **Transportation of Automotive Parts.** To the extent that Supplier is transporting manufacturing production parts, automotive service parts, accessory automotive parts, prototype automotive parts or performing services related to the transportation of any such manufacturing production parts, automotive service parts, accessory automotive parts or prototype automotive parts for, or on behalf of, Toyota Party, Supplier shall inspect, accept, store, load, transport, deliver and unload the manufacturing production parts, automotive service parts, accessory automotive parts or prototype automotive parts promptly and efficiently upon tender from Toyota Party or by a third party on Toyota Party's behalf, at Supplier's sole cost and expense, and pursuant to and in accordance with the requirements set forth in all applicable transportation related policies and procedures, including SLIM, each as updated from time to time by any of the Toyota Parties (collectively, the "**Parts Transportation Requirements**"), and any other applicable Contract Documents, and Supplier shall perform all of its obligations under this **Section 2.2(b)(3)** as contract carriage in order to meet Toyota Party's distinct needs, pursuant to and in

accordance with the terms and conditions set forth in the Parts Transportation Requirements and other applicable Contract Documents.

(4) **Transportation of Vehicles.** To the extent that Supplier is transporting vehicles (e.g., assembled motor vehicles) or performing Services related to the transportation of vehicles for, or on behalf of, Toyota Party, Supplier shall inspect, accept, store, load, transport, deliver and unload the vehicles promptly and efficiently upon tender from Toyota Party or by a third party on Toyota Party's behalf, at Supplier's sole cost and expense, and pursuant to and in accordance with the requirements set forth in the Toyota/Lexus Vehicle Handling Manual, Rider for Contract Carriage of Assembled Motor Vehicles and all other vehicle transportation related policies and procedures, each as updated from time to time by any of the Toyota Parties (collectively, the "**Finished Vehicle Requirements**"), and any other applicable Contract Documents, and Supplier shall perform all of its obligations under this **Section 2.2(b)(4)** as contract carriage in order to meet Toyota Party's distinct needs, pursuant to and in accordance with the terms and conditions set forth in the Finished Vehicle Requirements and other applicable Contract Documents. The Finished Vehicle Requirements shall be incorporated by reference in these Terms notwithstanding the fact that such Finished Vehicle Requirements may not be attached to these Terms; provided that in the event of a conflict between the Finished Vehicle Requirements incorporated herein and the remaining provisions of these Terms, including the damage provision set forth in **Section 2.2(b)(2)(iii)**, the Finished Vehicle Requirements shall control.

(c) **Provisions Relating to Construction or Installation.** The purchase of GS by Toyota Party from Supplier may, to the extent identified in the Contract Documents, provide for installation, construction or testing of the GS on the Toyota Premises (collectively, the "**Construction or Installation Activities**"). For purposes of these Terms and the Contract Documents, the term "**Toyota Premises**" means the premises of any of the Toyota Parties and any other premises designated by Toyota Party. Toyota Party may also contract for Construction or Installation Activities to be performed by Supplier or third parties pursuant to third party contracts. The additional provisions of this **Section 2.2(c)** shall be applicable to such Construction or Installation Activities (collectively, the "**Construction or Installation Provisions**"). For purposes of the Construction or Installation Provisions, the following rules of construction shall apply in addition to the other requirements set forth in these Terms and the Contract Documents. The term "**Construction or Installation Subcontractor**" means any Subcontractor performing any portion of the Construction or Installation Activities (or related activities) for or on behalf of Supplier. The term "**Supplier**," in addition to any other definition provided for in these Terms, and where the context requires an expanded definition in conjunction with the applicable provisions of these Terms (as determined by Toyota Party in its sole discretion), shall also include any applicable Subcontractor (including, as applicable, any Construction or Installation Subcontractor) even where only the term "Supplier" is used. In the event that Supplier utilizes a Construction or Installation Subcontractor for any of the Construction or Installation Activities, Supplier shall at all times remain liable and responsible for the performance of the Construction or Installation Activities and for the acts and omissions of such Construction or Installation Subcontractor. In the event of a conflict between the Construction or Installation Provisions and the remaining provisions of these Terms, the Construction or Installation Provisions shall control solely with respect to the Construction or Installation Activities.

(1) **Toyota Party's Operations.** Toyota Party may, during the Construction or Installation Activities, elect to commence or continue operations on the Toyota Premises. To this end, Supplier shall cooperate with Toyota Party as to performance of the Construction or Installation Activities. To avoid interference with the operations of Toyota Party or others that may be operating on the Toyota Premises, Supplier shall perform the Construction or Installation Activities at hours and in such manner and at such times as to suit Toyota Party's convenience and all costs in connection therewith shall be included in Supplier's base bid. Toyota Party shall not pay, entertain or recognize any claims by Supplier or others for increased compensation based on delay, lack of access or other problems caused, in whole or

in part, by commencement or continuation of operations on the Toyota Premises during the Construction or Installation Activities. Without limiting the foregoing, Supplier acknowledges, and shall require its Construction or Installation Subcontractors to acknowledge, that unforeseen delays may arise as a result of (i) Toyota Party's actions in ensuring the uninterrupted continuance of its operations; or (ii) the actions of Toyota Party or third parties taken in connection with work taking place concurrently on the Toyota Premises. Supplier hereby expressly assumes the risk of such delays and has factored the possibility of such delays into its pricing as reflected in the Contract Documents.

(2) **Registrations and Permits.** Supplier shall maintain and shall cause its Construction or Installation Subcontractors to maintain, all registrations and licenses required by applicable Manufacturing and Legal Requirements, and shall provide, at the request of Toyota Party, written copies of such registrations and licenses. Unless otherwise directed by Toyota Party, Toyota Party shall furnish, at its expense, a general building permit for the Construction or Installation Activities. Supplier shall not include or charge any fees for the general building inspections and permits. Toyota Party shall work directly with the governing authorities for the general building permit, and Supplier shall provide reasonable assistance if requested by Toyota Party. Except as otherwise set forth in this **Section 2.2(c)(2)**, Supplier (including its Construction or Installation Subcontractors) shall obtain and pay the necessary fees required for all other permits or inspections required for the Construction or Installation Activities, and, at the completion of the Construction or Installation Activities, shall furnish certificates of approval or occupancy from all governing inspection authorities.

(3) **Tests.** Supplier shall furnish all labor, materials and equipment required to complete performance and other tests of its Construction or Installation Activities, as required by the Manufacturing and Legal Requirements, including any governing codes, regulations and specifications. Such tests shall be performed at no additional cost to Toyota Party. All tests shall be performed in the presence of Toyota Party representatives, unless attendance at the test has been waived by Toyota Party in writing. All materials required to be tested which are to be buried underground or otherwise concealed shall be tested before being covered, and the test conditions shall be maintained for a sufficient length of time to permit adequate inspection. Supplier shall furnish Toyota Party with test results and data upon completion of any and all the testing. In no event shall the Construction or Installation Activities or other Services related thereto performed by or on behalf of Supplier or any Construction or Installation Subcontractor pursuant to this **Section 2.2(c)(3)** be deemed to constitute an employment or labor relationship of any kind between Toyota Party and the individuals rendering such services on behalf of Supplier or such Construction or Installation Subcontractor.

(4) **Salvage and Removal of Existing Work and Equipment.** Unless otherwise set forth in the Contract Documents, Supplier shall remove, at its sole cost and expense, existing structures, materials and equipment as may be necessary to permit the Construction or Installation Activities. All cutting, repairing or patching in connection with these removals shall be performed without additional cost to Toyota Party. Unless otherwise set forth in the Contract Documents, all structures, materials and equipment removed from existing buildings shall be deemed Toyota Property. Supplier shall protect the structures, materials and equipment from damage and loss until Supplier has afforded Toyota Party a reasonable opportunity to inspect the structures, materials and equipment, following which Supplier shall deliver the structures, materials and equipment to a storage area designated by Toyota Party. No structure, material or equipment removed in accordance with this **Section 2.2(c)(4)** may be taken from the Toyota Premises without first securing a properly executed property pass from Toyota Party. Boxes, cartons or similar items are subject to inspection by Toyota Party.

(5) **Repair Work.** All necessary repair work shall be performed by Supplier or a Construction or Installation Subcontractor with the appropriate trade with the direction and oversight by Supplier. All cost associated with such repair work shall be paid by Supplier. Supplier must obtain

Toyota Party's written approval prior to drilling holes in structural steel or cutting openings of any size in walls, ceilings, roofs, floors or other structures in connection with any repair work.

(6) **Materials and Equipment Furnished by Toyota Party.**

(i) All materials and equipment furnished by Toyota Party for Construction or Installation Activities by Supplier shall, upon delivery to the job site, be unloaded, transferred, stored and fully protected by Supplier until the Construction or Installation Activities are completed and accepted by Toyota Party in accordance with the Contract Documents. To the extent the materials and equipment are delivered in accordance with the Delivery Schedule, or other delivery date agreed to by Toyota Party and Supplier, any demurrage or similar charge incurred due to the failure of Supplier to promptly unload the materials and equipment shall be the responsibility of Supplier.

(ii) Supplier shall carefully examine all materials and equipment furnished by Toyota Party and shall immediately notify Toyota Party in writing of any reasonably ascertainable defects or damage. Such examination shall be for the sole purpose of establishing the physical condition of such materials or equipment as between Toyota Party and Supplier. In no event shall Supplier's inspection be deemed an acceptance of such materials and equipment with respect to the contract between Toyota Party and the provider of such materials or equipment. Supplier shall be responsible for subsequent damage or loss until the Construction or Installation Activities are completed and accepted by Toyota Party in accordance with the Contract Documents. Any damage reasonably ascertainable by Supplier and not identified in writing at the time of receipt shall be deemed to be subsequent damage.

(iii) Any material furnished by Toyota Party at an off-site location, on other than a charge basis in connection with the Contract Documents, shall be deemed held by Supplier on consignment. All such materials not used in the Construction or Installation Activities shall be returned to Toyota Party, as directed by Toyota Party and at Toyota Party's expense. Any material furnished and not accounted for or not returned shall be paid for by Supplier.

(iv) Supplier shall not remove any material or equipment furnished by Toyota Party for Construction or Installation Activities from the job site without advance written consent from Toyota Party.

(7) **Approval of Materials.** As requested by Toyota Party, Supplier shall secure and submit to Toyota Party for approval samples of materials to be used in the Construction or Installation Activities.

(8) **Approval of Construction or Installation Subcontractors.** Unless Toyota Party has specifically identified otherwise, Supplier shall submit to Toyota Party for approval Supplier's proposed Construction or Installation Subcontractors. Toyota Party shall reply to Supplier in writing stating whether Toyota Party has a reasonable objection to the Construction or Installation Subcontractors. Unless otherwise set forth in the Contract Documents, failure of Toyota Party to reply within seven (7) days shall constitute notice of no reasonable objection. If Toyota Party has a reasonable objection to the proposed Construction or Installation Subcontractors, Toyota Party and Supplier shall work together to identify substitute Construction or Installation Subcontractors to whom Toyota Party has no reasonable objection. The price shall be increased or decreased by the difference in cost resulting from such substitution and an appropriate change order shall be issued.

(9) **Cleaning of the Toyota Premises.** Supplier shall be fully responsible for keeping the Toyota Premises (and any surrounding premises) free at all times from accumulations of all rubbish, trash, debris, broken concrete and other waste material caused by Supplier (including its

Construction or Installation Subcontractors) during the Construction or Installation Activities. Supplier shall take all precautions to avoid depositing earth, debris or mud on the Toyota Premises (and any surrounding premises), existing roads, adjacent public roads, parking areas and other property. Supplier shall be responsible for removal of earth, debris and mud, all of which shall be undertaken in compliance with all Manufacturing and Legal Requirements. When performing Construction or Installation Activities within an operating facility, debris, rubbish, trash, packaging and other waste material must be placed in appropriate containers immediately. All containers shall be covered for removal through any area where any of the Toyota Parties are conducting operations. No facilities or equipment of any of the Toyota Parties may be used for trash accumulation or the hauling away from the premises without Toyota Party's prior written approval. As Construction or Installation Activities are completed in an area, Supplier shall remove all tools, scaffolding and surplus materials and leave the area broom clean and shall keep such areas clear and broom clean until turning the area over to Toyota Party. If Supplier does not clean the Toyota Premises (or any surrounding premises) as required:

(i) Toyota Party shall advise Supplier that the Toyota Premises (or the surrounding premises) are not being maintained in the condition required.

(ii) Should Supplier fail to initiate substantial progress toward clean-up of the Toyota Premises (or the surrounding premises) within twenty-four (24) hours following the receipt of written notice, Toyota Party may elect to provide the necessary labor, materials or equipment to fulfill the necessary requirements and set off such costs from Supplier Payables. If more than one (1) party's work is involved, a proportionate share of Toyota Party's cost shall be charged to Supplier and determined as follows:

a. Costs resulting from the removal of all debris, rubbish, trash, packaging and other waste material which are identifiable to the activity of a specific party or its Construction or Installation Subcontractors shall be charged to that party.

b. Costs resulting from the removal of all debris, rubbish, trash, packaging and other waste material shall be prorated among all such suppliers on the basis of the ratio of the work force of each (including their Construction or Installation Subcontractors) to the total work force on the applicable area of the job site.

(iii) Toyota Party shall maintain adequate records related to the assessment of charges.

(10) **Combustible Materials.** Supplier shall notify and obtain prior written consent from Toyota Party prior to bringing any combustible waste material onto the Toyota Premises. All combustible waste materials shall be removed from all buildings at the close of every work day, and shall be stored in compliance with all Manufacturing and Legal Requirements (as well as any other requirements under these Terms and the Contract Documents).

(11) **Coordination On-site.** Supplier shall work with other contractors on the same site at the same time. The coordination between Supplier and the other contractors shall be done by Toyota Party.

(12) **Liens.**

(i) As requested by Toyota Party and to the extent permitted by applicable Manufacturing and Legal Requirements, Supplier shall provide Toyota Party with an executed release, satisfaction or waiver of all Liens (collectively, a "**Lien Waiver**"). Partial or progress waivers of

lien executed by Supplier (including any applicable Construction or Installation Subcontractors) during the Construction or Installation Activities required by the Contract Documents shall not be required to release claims to statutory retainage under Section 53.101 of the Texas Property Code until such retainage is actually due and paid or payable. The Lien Waiver and any partial or progress waivers of lien must be in the form provided by Toyota Party. Moreover, an invoice for final payment does not constitute a Conforming Invoice until Supplier (including any applicable Construction or Installation Subcontractors) delivers to Toyota Party the Lien Waiver.

(ii) As requested by Toyota Party, Supplier's applications for payment shall be accompanied by Supplier's affidavit indicating the status and amounts of payments to Construction or Installation Subcontractors as of the date of such application for payment. The affidavit must be in the form provided by Toyota Party.

(iii) Final payment to Supplier shall not relieve Supplier of its obligation to discharge any Lien filed before or after Supplier is paid for the Construction or Installation Activities under a Contract Document.

(iv) In the event a Lien is filed or recorded on the Toyota Premises or arises from any labor or material furnished for Toyota Party, Supplier shall take any and all steps necessary and proper for the release and discharge of the Lien, by bond or other security, in an amount satisfactory to Toyota Party and in the manner required or permitted by the Manufacturing and Legal Requirements of the applicable jurisdiction, and, in default of performing such obligation, Supplier shall reimburse Toyota Party for all monies paid by Toyota Party in releasing, satisfying and discharging such Liens, including reasonable attorney's fees and court costs.

(v) If the Contract Documents require that Supplier furnish a payment bond (or if Toyota Party otherwise requires that Supplier furnish a payment bond), Supplier shall, at the option and election of Toyota Party, furnish such bond in the form contemplated by Subchapter I of Chapter 53 of the Texas Property Code. In such event, Supplier shall be responsible for complying with and satisfying the provisions of Sections 53.202 and 53.203 of the Texas Property Code.

(vi) In the event any mechanic's or materialmen's lien is filed or attempted to be filed against the Construction or Installation Activities or any of the Toyota Parties' property, Supplier shall, at the option and election of Toyota Party, furnish a bond to indemnify against Liens in the form contemplated by Subchapter H of Chapter 53 of the Texas Property Code. In such event, Supplier shall be responsible for complying with and satisfying the provisions of Sections 53.172, 53.173 and 53.174 of the Texas Property Code.

(vii) Supplier shall, at the option and election of Toyota Party, assist (and to the extent required, join) Toyota Party in preparing and filing an Affidavit of Commencement as defined under Section 53.124 of the Texas Property Code. In addition, Supplier shall, at the option and election of Toyota Party, assist (and to the extent required, join) Toyota Party in preparing and filing an Affidavit of Completion as defined under Section 53.106 of the Texas Property Code.

3. GENERAL TERMS AND CONDITIONS.

3.1 **Quantity; Description.** The quantity and description for all GS shall be as designated in one (1) or more Contract Documents that expressly relate to or identify the GS to be purchased by Toyota Party, all as determined by Toyota Party in its sole discretion. By instructions issued to Supplier by an authorized representative of Toyota Party, Toyota Party may, from time to time, make changes, request Required Changes, issue additional instructions, require additional GS, or cancel GS ordered under the

Contract Documents. If any such change causes an increase or decrease in the cost of or the time required for the performance of the Contract Documents, an equitable adjustment shall be made in the price or Delivery Schedules, as applicable, and the Contract Documents shall be modified accordingly. Unless specifically allowed under the Contract Documents by Toyota Party, no activities of Supplier (including those performed by any Subcontractor) related to the handling of personally identifiable information (as defined by Toyota Party from time to time at its sole discretion), including any processing, hosting, maintenance or storage activities related to such personally identifiable information, shall be undertaken outside of the continental United States.

3.2 *Price.*

(a) **Generally.** The price to be paid for GS (the “**Toyota Price**”) shall be as designated in one (1) or more Contract Documents that expressly relate to or identify the GS to be purchased by Toyota Party, all as determined by Toyota Party in its sole discretion. As part of the ongoing, ordinary course of business between the parties, the Toyota Price may be adjusted by Toyota Party from time to time, either higher or lower, all as evidenced by one (1) or more Contract Documents issued by Toyota Party, after consultation with Supplier.

(b) **Most Favored Nation Pricing.** Supplier certifies that the Toyota Price is as low as or lower than prices offered by Supplier to any other customer purchasing the same type or quantity of GS as Toyota Party. In the event that the published prices of Supplier for the GS covered by the Contract Documents are reduced below the Toyota Price, or if Supplier provides or agrees to provide the type or quantity of GS covered by the Contract Documents to any other customer for a price lower than the Toyota Price, Toyota Party shall receive the benefits of such reduction and shall only be required to pay the Toyota Price decreased by the amount of such reduction or difference in price.

(c) **Retainage.** To the extent that the furnishing of the Construction or Installation Activities constitutes improvements to real property and to the extent permitted under applicable Manufacturing and Legal Requirements, sums otherwise payable to Supplier in connection with the Construction or Installation Activities shall be subject to ten percent (10%) retainage pursuant to Section 53.101 of the Texas Property Code. Such sums shall be retained by Toyota Party during the progress of the Construction or Installation Activities and for thirty (30) days after the Construction or Installation Activities are completed. The foregoing retainage shall be withheld under each application for payment, against both the original Toyota Price and against change order amounts increasing the Toyota Price. To the extent that (i) the furnishing of the Construction or Installation Activities constitutes improvements to real property; and (ii) Manufacturing and Legal Requirements other than Texas state law apply, then, to the extent permitted under applicable Manufacturing and Legal Requirements, Supplier waives the application of any statute that would require that any part of the price for the Construction or Installation Activities designated as retainage be set aside, placed in escrow or otherwise be paid to or become the property of Supplier in any manner except as set forth herein.

3.3 *Liens.*

(a) In addition to Supplier’s obligations set forth in **Section 2.2(c)(12)**, all GS are to be provided to Toyota Party free and clear of any and all claims, security interests, encumbrances or liens (collectively, a “**Lien**”). Additionally, Supplier shall have no Lien on any of the Cargo to be transported by Supplier to secure payment of freight or other charges. Supplier shall ensure that all agreements with subcontractors, third party suppliers, independent contractors, materialmen, journeymen, agents, or other representatives, including employees, contractors, agents and representatives of any of the foregoing (collectively, “**Subcontractors**”) prohibit such Subcontractors from asserting any Lien on such Cargo or otherwise holding the Cargo as security for payment.

(b) Except as otherwise set forth in these Terms or in the Contract Documents, where less than the entire Toyota Price is to be paid prior to delivery, title shall pass to Toyota Party upon delivery. To the extent permitted by Manufacturing and Legal Requirements, Supplier hereby waives and disclaims any Lien right, whether statutory or otherwise, in favor of Supplier in and to all GS purchased from Supplier pursuant hereto which shall come into Toyota Party's control or actual or constructive possession prior to full payment of the Toyota Price by Toyota Party.

3.4 *Payments.*

(a) **Generally.** In accordance with these Terms and the Contract Documents, Toyota Party shall pay Supplier for amounts owed and due to Supplier for conforming GS accepted by Toyota Party (the "**Supplier Payables**"). Unless otherwise specifically set forth in the Contract Documents, Supplier shall bear all of its own expenses arising from the performance of its obligations under these Terms. If pursuant to the Contract Documents Toyota Party is to reimburse certain expenses of Supplier, Supplier must provide sufficient documentation to substantiate such expenses (as determined by Toyota Party), and such expenses shall not include any mark-up by Supplier unless specifically authorized under the Contract Documents.

(b) **Payment Procedures.** Payment of Supplier Payables shall be in accordance with such processes, procedures and payment systems as are designated by Toyota Party in its sole discretion from time to time (collectively, the "**Payment Procedures**"), including the electronic invoice and payment system of Toyota Party (the "**Payment System**"). The Payment Procedures may also include provisions for additions to and set-offs against Supplier Payables arising in the ordinary course of dealing between the parties.

(c) **Conforming Invoice.** Supplier shall (i) invoice Toyota Party for Supplier Payables in strict conformity with the applicable Payment Procedures (a "**Conforming Invoice**"); and (ii) accept payment for such Supplier Payables at the times and in the amounts determined by the applicable Payment Procedures.

(d) **Payment Terms.** All Supplier Payables shall be paid in accordance with the payment terms set forth below (the "**Designated Payment Terms**") and otherwise in conformity with the applicable Payment Procedures.

(1) **Outside the Payment System.** The Designated Payment Terms for Supplier Payables which are not eligible for payment in the Payment System shall be the later of: (i) on or before the twenty-fifth (25th) day of the month following the month in which the Conforming Invoice is received by Toyota Party; or (ii) as otherwise set forth in the applicable Contract Documents, as determined by Toyota Party in its sole discretion.

(2) **Within the Payment System.** The Designated Payment Terms for Supplier Payables which are eligible for payment under the Payment System shall be (i) forty-five (45) days following the date any Conforming Invoice is received from Supplier; or (ii) as otherwise designated by Supplier in the Payment System.

(e) **Payment Obligation of Toyota Party.** Notwithstanding any other provisions of the Contract Documents to the contrary, Toyota Party shall have no obligation whatsoever to make any payment on Supplier Payables, unless and until Toyota Party is in receipt of a Conforming Invoice with respect to the GS at issue.

(f) **Applicable Currency.** All payments due to Supplier under these Terms and the Contract Documents shall be paid in United States Dollars (“**USD**”) or such other currency as set forth in the Contract Documents.

(g) **Audits; Observations.** Toyota Party shall have the right to audit those financial and other records of Supplier which pertain to the matters set forth in the Contract Documents, during ordinary business hours on not less than two (2) days’ prior notice, unless there is a material breach of the Contract Documents (and, in that event, immediately upon notice). Supplier also shall allow Toyota Party or its agents to make copies of those portions of Supplier’s records that Toyota Party deems reasonably necessary for its audits, and Supplier further agrees to use commercially reasonable efforts to keep copies of such records for a period of five (5) years after Toyota Party’s payment of the corresponding Supplier Payables, or such longer period as required pursuant to Manufacturing and Legal Requirements. Supplier’s information provided to Toyota Party under this **Section 3.4(g)** shall be protected as confidential information; provided, however, that Toyota Party may release such information and data to its affiliates and their respective consultants and legal advisors, and otherwise as permitted under these Terms and the Contract Documents. In the event an audit discloses that Supplier has overcharged Toyota Party and credits or payments are due to Toyota Party with respect to the audit period, Supplier shall immediately reimburse Toyota Party for such credits or payments, plus interest at the per annum rate of WSJ Prime Rate plus two percent (2%) as calculated from the date of receipt by Supplier of the overcharged amount until the date of payment to Toyota Party; provided that if such credits or payments with respect to the audit period are, in the aggregate, equal to or greater than five percent (5%) of the correct billing amount for such audit period, Supplier shall also immediately reimburse Toyota Party for all expenses associated with such audit. Toyota Party may, at its expense, and upon reasonable notice and during business hours, send to Supplier, and Supplier shall permit, Toyota Party’s personnel or authorized representatives to observe Supplier’s performance under these Terms and the Contract Documents.

(h) **Identification of Claims; Waiver, Release and Indemnity of Unidentified Claims.** Prior to final payment under any Contract Documents, Supplier shall identify in writing to Toyota Party any outstanding claims, actual or threatened, known to Supplier (including by any Subcontractor) that may result in a Loss, including: (i) any claim for equitable adjustment or equitable compensation based on purported delay, acceleration, or other changes (or refusal to change) in scheduling, deadlines, or milestones; (ii) lack of access or stacking of trades; (iii) impact claims or labor inefficiencies; (iv) loss of productivity; or (v) any conduct or omissions of Toyota Party. For any Losses arising from claims not specifically identified by Supplier to Toyota Party as set forth in this **Section 3.4(h)**, Supplier hereby waives and releases its own claims, if any, against Toyota Party, and Supplier shall obtain a waiver and release of all claims of any Subcontractor, and the Toyota Indemnified Parties shall be entitled to the rights set forth in **Section 5.10(b)**, which shall not be exclusive of any other right of indemnification, contribution, set-off, credit, or apportionment Toyota Party may otherwise have.

3.5 **Set-Off.** Prior to or as part of any payment to Supplier, Toyota Party reserves the right, in its sole discretion, to set off against Supplier Payables (each, a “**Designated Set-Off**”): (A) any amount owed by Supplier to any Subcontractor with respect to Supplier’s obligations under these Terms or the Contract Documents (including any subcontract); provided, further, in the event a Subcontractor of Supplier notifies Toyota Party of non-payment by Supplier and attempts to assert a claim against Toyota Party, Toyota Party shall have the right to withhold from payment to Supplier and set off against Supplier Payables the amount so claimed and make payment thereof by joint check or directly to such Subcontractor, unless (i) the claim is disputed by Supplier as required by Section 53.083 of the Texas Property Code; and (ii) said Section 53.083 applies to the GS in question; (B) the amount of any claims of Toyota Party against Supplier (including any Subcontractor) arising out of or related to their performance of Supplier’s obligations under these Terms or the Contract Documents (including any subcontract); (C) any amounts due to Toyota Party for undershipments, adjustments in invoices, credits, returns, price changes or any other similar quantity or

price reconciliation arising out of or related to the GS or Supplier's obligations under these Terms or the Contract Documents (including any subcontract); (D) the amount of any Losses incurred by any of the Toyota Indemnified Parties arising out of or related to any Default by Supplier (including by any Subcontractor) with respect to these Terms or the Contract Documents (including any subcontract); or (E) any amount owed to any third party, including government authorities, whether by or on behalf of Supplier (including any Subcontractor), which arise under or are related to these Terms or the Contract Documents (including any subcontract) or GS. THIS RESERVATION OF THE RIGHT TO SET-OFF EXPRESSLY INCLUDES TOYOTA PARTY'S RIGHT, IN ITS SOLE DISCRETION, TO SET OFF AGAINST SUPPLIER PAYABLES THE AMOUNT OF ANY INDEMNITY OBLIGATION SUPPLIER OWES TO ANY OF THE TOYOTA INDEMNIFIED PARTIES. Toyota Party shall attempt to reconcile the timing and calculation of Supplier Payables to coincide with the corresponding Designated Set-Off, and shall provide Supplier with an accounting of all calculations. To the extent the timing of payments and set-offs cannot be aligned, it may be necessary from time to time for Toyota Party to maintain a credit or debit balance for Supplier. The amounts calculated by Toyota Party, and all records maintained by Toyota Party, shall be controlling except in the case of clerical or mathematical error. The methodology used by Toyota Party for determining and implementing its set-off rights set forth in these Terms or the Contract Documents shall be determined by Toyota Party, subject to Manufacturing and Legal Requirements.

3.6 **Inspection.** Except as otherwise set forth in the Contract Documents, in conjunction with the inspection of GS, the following provisions shall apply:

(a) **Inspecting Agent.** One (1) or more Toyota Parties or their designees may, from time to time, act as agent or representative for Toyota Party for purposes of performing inspections of GS, as determined by Toyota Party.

(b) **Inspection Period.** All GS shall be received subject to Toyota Party's acceptance or rejection on or before the end of the Inspection Period, except as otherwise set forth in the Contract Documents. Payment by Toyota Party for GS under these Terms and the Contract Documents (prior to or after the end of the Inspection Period) shall not constitute its acceptance thereof, nor shall such payment remove Supplier's responsibility for any nonconforming GS. Except as otherwise set forth in the Contract Documents, "**Inspection Period**" shall mean (i) a reasonable period of time after delivery of the Goods to the destination location designated by or on behalf of Toyota Party; provided that in no event shall such period of time be less than thirty (30) days after delivery to the destination location; (ii) for those Goods whose conformity with the Contract Documents cannot be ascertained until such Goods are constructed, installed, tested, tuned, calibrated or used in trials in conjunction with other systems or assemblies, as determined by Toyota Party, the time required after receipt by Toyota Party for such construction, installation, testing, tuning, calibration or use in trials, whichever is applicable as determined by Toyota Party in its sole discretion; or (iii) with respect to Services, a reasonable period of time after completion of the Services; provided, however, that with respect to Transportation Services, matters pertaining to inspection shall be governed by **Section 2.2(b)**. Neither inspection nor failure to inspect by Toyota Party shall relieve Supplier of any obligations, representations or Supplier's Warranties.

3.7 **Rejected or Nonconforming GS.** If any GS or shipment of Goods is rejected as nonconforming by or on behalf of Toyota Party (for failure to meet Toyota Specifications or Supplier Specifications or any other reason) as of or before the end of the Inspection Period or other later period, if any, set forth in the Contract Documents (the "**Rejected GS**"), Supplier shall, at its sole cost and expense, and as directed by Toyota Party: (i) accept a Return of such Rejected GS (or other handling as set forth in the Contract Documents); (ii) repair such Rejected GS, which work shall include, but shall not be limited to, performing such additional work as is necessary to make such Rejected GS fully conforming (the "**Remedial Work**"); or (iii) replace the Rejected GS with new GS, such replacement GS to be delivered in accordance with any and all instructions provided by Toyota Party and to include at Supplier's sole cost

and expense any required installation (including removal of the Rejected GS); provided, however, that with respect to Transportation Services, matters pertaining to rejected or nonconforming Transportation Services shall be governed by **Section 2.2(b)**. Remedial Work shall also include any action required to be taken by Supplier to cause the Construction or Installation Activities to comply with the Contract Documents. For the avoidance of doubt, any actions taken by Toyota Party in accordance with this **Section 3.7** shall not be an election of remedies, nor shall such actions in any way limit the rights and remedies of Toyota Party under these Terms (including under any Contract Documents) for the breach by Supplier caused by the Rejected GS.

(a) ***Right to Return.*** In the event Toyota Party elects to return any Rejected GS as provided herein, Supplier shall accept the return of such Rejected GS during the Inspection Period or other later period, if any, set forth in the Contract Documents, and for a reasonable period of time after the end of such period (a “**Return**”), freight prepaid, for refund of the full purchase price, upon a determination by Toyota Party that such Rejected GS is nonconforming, as set forth in this **Section 3.7**. The details for the handling of returns of Goods delivered by Supplier outside of the continental United States (including within or outside U.S. possessions and territories, if applicable) shall be documented in the Contract Documents.

(b) ***Right to Perform Remedial Work.*** If Toyota Party determines in its sole discretion that Remedial Work is necessary for the repair of any Rejected GS, then Toyota Party may elect to either perform the Remedial Work itself or to have a third party perform the Remedial Work, in which case the cost of such Remedial Work shall be set off against the amounts otherwise due to Supplier for such Rejected GS or charged separately by Toyota Party to Supplier pursuant to one (1) or more Contract Documents. Further, Toyota Party may require that the Remedial Work be performed on the Toyota Premises by Supplier, at Supplier’s sole cost and expense, in which case Toyota Party shall provide Supplier with reasonable access to the Toyota Premises and otherwise assist Supplier with such arrangements as are necessary to perform the Remedial Work. With respect to any Rejected GS to be repaired, Toyota Party shall not be deemed to have accepted such GS unless and until the Rejected GS are fully repaired to the requirements of the Contract Documents and are independently accepted in writing by Toyota Party following such Remedial Work.

(c) ***Furnishing Specifications, Plans and Drawings.*** Upon the request of Toyota Party, Supplier shall provide to Toyota Party all specifications, plans and drawings relevant to the GS, all of which may be utilized for the Remedial Work or subsequent maintenance of GS. If any GS contains one (1) or more patented components, Supplier shall conspicuously label such GS (including any specifications, plans and drawings related thereto) to identify such patented component(s). Such labeling shall include the patent number, date of issue and country of origin.

(d) ***Supplier’s Use of Temporary Employees/Third Parties to Perform Remedial Work.*** Supplier may use temporary employees or a third party to perform Remedial Work only with Toyota Party’s prior written consent. At all times, such temporary employees or third parties shall be independent contractors of Supplier, and not employees of Toyota Party. Supplier (including all temporary employees, third parties and regular employees) shall comply with all of Toyota Party’s practices, policies and procedures when on the Toyota Premises to perform Remedial Work. It is Supplier’s responsibility to supervise temporary employees, third parties and regular employees of Supplier performing Remedial Work on the Toyota Premises.

(e) ***Removal of Rejected GS.*** Rejected GS, if not required to be repaired as provided by this **Section 3.7**, shall be removed by Supplier at Supplier’s sole cost and expense from the premises wherein they are located (including a destination location or the Toyota Premises) immediately after notification, and, if not so removed by Supplier, such Rejected GS may be disposed of or stored by or on

behalf of Toyota Party at Supplier's sole cost and expense in accordance with these Terms and the Contract Documents.

3.8 ***Time is of the Essence.*** Time is of the essence with respect to all of Supplier's (including its Subcontractors') obligations under these Terms or the Contract Documents.

3.9 ***Delay.***

(a) ***Notification of Delay; Substitute GS.*** If at any time Supplier has reason to believe that the delivery or performance of any GS may not be made in strict conformity with the applicable Delivery Schedules, Supplier shall immediately notify Toyota Party, setting forth the cause for the anticipated delay. Any oral communication shall be immediately confirmed in writing. During the period of any delay, Supplier shall use its best efforts to provide the GS called for in the applicable Contract Documents from other sources and reduce its deliveries or performance of the original contracted amount of GS to Toyota Party by such quantities of substituted GS, all without cost or liability to Toyota Party. Supplier shall not replace or supplement GS substituted by Toyota Party with Alternative GS in accordance with **Section 3.9(b)** without new Contract Documents from Toyota Party. If Supplier is unable to remedy such delay for the delivery or performance of GS, Supplier, upon written approval of Toyota Party, may engage a substitute provider as a Subcontractor to complete the delivery or performance of the GS. In the event that Supplier uses any such substitute providers, Supplier shall remain liable for any breach of the Contract Documents, to the same extent that Supplier would be liable if Supplier delivered or performed the GS directly. Supplier shall be solely responsible for payment of all freight charges to, and any other costs or expenses of, any such substitute providers.

(b) ***Right to Acquire Alternative GS.*** In the event of any delay, Toyota Party shall have the right to immediately acquire substitute or replacement GS from one (1) or more alternate sources ("**Alternative GS**"). Toyota Party may elect to have the quantities of GS under the applicable Contract Documents reduced by the same amount of GS as the quantity of Alternative GS, unless otherwise notified by Toyota Party in a separate Contract Document. Toyota Party shall have no obligation to pay Supplier for GS replaced by Alternative GS.

(c) ***Change, Temporary Suspension; Requested Delay.*** Toyota Party may at any time or from time to time change the quantity of GS or the time and the place of delivery or performance of the GS specified by or on behalf of Toyota Party (the "**Delivery Schedule**") or direct temporary suspension of the Delivery Schedule (a "**Delivery Change**"). Supplier shall honor all instructions from Toyota Party concerning any Delivery Change.

(d) ***Force Majeure.***

(1) **Force Majeure Event Generally.** Except as otherwise set forth in **Section 3.9(e)**, any delay or failure of either Supplier or Toyota Party to perform its obligations shall not constitute a Default under these Terms or the Contract Documents if, and only to the extent that, the delay or failure to perform is caused by unforeseen circumstances beyond the reasonable control of the party that failed to perform or whose performance was delayed, including any actions by any government authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, embargoes, acts of terrorism, sabotage, court injunction or order or other similar causes; provided that the party failing to perform timely was not a cause of such event or otherwise at fault or negligent and; provided, further, that such cause could not have been prevented or mitigated through commercially reasonable precautions (each such event, a "**Force Majeure Event**"). The party declaring a Force Majeure Event shall make all reasonable efforts to continue to meet its obligations throughout the duration of the Force Majeure Event and shall notify the other party promptly when the Force Majeure Event begins (including an explanation

of the nature of the Force Majeure Event), and when such Force Majeure Event has terminated. The suspension of any obligations shall only last during the time the Force Majeure Event continues (and such reasonable time thereafter to allow said party to respond to such Force Majeure Event). During the period of such delay or failure to perform by Supplier, the provisions of **Section 3.9(b)** shall apply.

(2) **Force Majeure Event Declared by Supplier.** If Supplier is the non-performing party and if requested by Toyota Party, Supplier shall, within ten (10) days of such request, provide adequate assurances that the delay or failure to perform shall not exceed thirty (30) days. In the event of a delay or failure of Supplier to perform its obligations as a result of a Force Majeure Event, Supplier shall use commercially reasonable efforts to provide the GS to Toyota Party, and in no event shall Supplier provide the GS to Toyota Party any later than similar goods or services, as applicable, provided by Supplier to its other customers. If the delay or failure to Supplier to perform its obligations caused by the Force Majeure Event lasts (or is reasonably believed by Toyota Party that it shall last) more than thirty (30) days or Supplier does not provide adequate assurances that the delay or failure to perform shall cease within thirty (30) days, Toyota Party may immediately, in its sole discretion, (i) cancel or modify any and all outstanding Contract Documents; or (ii) adjust, suspend (in whole or in part) or modify the performance of Supplier under the terms of outstanding Contract Documents, all in an effort to adjust the timing and quantity of GS being furnished by Supplier to Toyota Party to account for the Force Majeure Event.

(e) **Labor and Supply Problems Not a Force Majeure Event.** Notwithstanding anything in this **Section 3.9** to the contrary, no delay or failure of Supplier to perform its obligations shall be considered a Force Majeure Event, and such delay or failure to perform shall not be excused, if and to the extent that it is caused by (i) labor problems of Supplier (including its Subcontractors) such as, by way of example and not by way of limitation, lockouts, strikes and slowdowns; or (ii) the inability of Supplier (including its Subcontractors) to obtain power, material(s), labor, equipment or transportation.

(f) **No Limitation of Remedies.** It is the intention of Toyota Party to work with Supplier in the event of any delay, but such intention shall not be deemed a limitation or election of Toyota Party's remedies. If Toyota Party obtains Alternative GS, such actions shall not be an election of remedies, nor shall it in any way limit the rights and remedies of Toyota Party under these Terms (including under any Contract Documents) for the breach by Supplier caused by its delay.

3.10 **Required Changes and Adjustments.**

(a) **Required Changes.** Toyota Party reserves the right at any time and from time to time to direct changes to the GS (e.g., Toyota Specifications, engineering, design or other changes) (collectively, "**Required Changes**"), and Supplier shall make such Required Changes as directed by Toyota Party. Required Changes may also extend to drawings and specifications for the GS supplied or manufactured by Supplier, and may additionally extend to such matters as inspection, testing, quality control, transportation, storage, loading and unloading, and other matters pertaining to the production or performance of GS. Required Changes shall be evidenced by one (1) or more Contract Documents, and all Required Changes shall be made in strict conformity with such Contract Documents.

(b) **Adjustments for Required Changes.** In the event Required Changes have or shall result in a material increase or decrease in the cost of or the time for performance by Supplier, Toyota Party and Supplier shall negotiate in good faith a reasonable allocation of such costs or other equitable adjustment of the relationship between the parties. Any price or other adjustment shall be evidenced by new or revised Contract Documents. In the event the parties cannot mutually agree (even in the event of an objection) concerning Required Changes and the impact of such changes, or if Toyota Party reasonably deems it necessary to implement Required Changes without consultation, such Required Changes shall be effective as directed by Toyota Party, all as evidenced by additional Contract Documents.

3.11 **Acceleration.** Toyota Party shall have the right to direct that performance of the Services be accelerated by means of overtime, additional crews, additional shifts or re-sequencing notwithstanding that the Services are progressing without delay in accordance with the established Delivery Schedule. Supplier shall perform in such manner on the basis of the reimbursement of direct cost (i.e., premium portion of overtime pay, additional crew, shift or equipment cost and such other items of cost requested in advance by Supplier and approved in writing by Toyota Party, which approval shall not be unreasonably withheld) plus a fee in an amount and at a rate otherwise applicable to changes in performance of the Services under the Contract Documents. Supplier expressly waives any other compensation therefor unless otherwise agreed to by Toyota Party in writing in advance of performing the accelerated work. In the event of any acceleration requested pursuant to this **Section 3.11**, Supplier shall provide promptly a plan setting forth its recommendations for the most effective and economical means of accomplishing such acceleration, which shall be subject to the review and written approval of Toyota Party.

3.12 **Compliance with Applicable Laws; Testing; Certification.**

(a) **Compliance with Applicable Laws.** Supplier shall comply with (and all GS manufactured, produced, performed, acquired, delivered or supplied by or on behalf of Supplier under these Terms or the Contract Documents shall comply with) all applicable federal, international, foreign, state, local and provincial laws, statutes, acts, codes, rules, regulations, principles of common law, orders, conventions, ordinances or standards of or applicable to: (i) the United States, including the laws of each state or territory thereof, as applicable; and (ii) the other country or countries where GS are manufactured, produced, performed, acquired, delivered or supplied (including where Transportation Services are performed), in each case, including those which directly or indirectly relate to (A) the manufacture of vehicles, vehicle equipment, vehicle materials or vehicle supplies; (B) the labeling, packaging, transportation, importation, exportation, taxation, licensing, approval or certification of any GS, or vehicle incorporating any GS; (C) the transportation of any Cargo; (D) the environment, vehicle safety, or occupational health and safety; (E) wages, hours and conditions of employment, Subcontractor selection, discrimination, or immigration; (F) data protection, data handling or privacy; (G) export control, trade sanctions restrictions, the U.S. Foreign Corrupt Practices Act, and other such requirements; or (H) reporting, licensing, permitting, investigating, remediating and cleaning up in connection with any presence or release, or the threat of the same, of hazardous substances, and the generation, manufacture, processing, distribution, use, re-use, treatment, storage, disposal, transport, labeling, handling and the like of hazardous substances (“**Environmental Requirements**”) (the items in subsections (i) and (ii) above are collectively referred to herein as the “**Manufacturing and Legal Requirements**”). As part of the Manufacturing and Legal Requirements, Supplier represents, for itself and for each of its Subcontractors, that it has not and does not use slave, prisoner, child or any other form of forced or involuntary labor in the manufacture, production, performance, acquisition, delivery or supply of GS to or for Toyota Party under these Terms and the Contract Documents. Supplier shall obtain, and shall ensure that each of its Subcontractors obtains, all necessary licenses, permits and approvals and give all stipulations, certifications and representations, in each case as necessary, in connection with its performance under these Terms and the Contract Documents.

(b) **Testing; Certifications.** In order to determine that all GS comply with all Manufacturing and Legal Requirements and Toyota Specifications, Supplier shall perform (or have performed on its behalf), at its cost and in a manner satisfactory to Toyota Party, all testing, inspections, analyses, and certifications reasonably required to determine such compliance (collectively, “**Testing and Certification**”). Toyota Party reserves the right to determine with Supplier what Testing and Certification are required to ensure compliance with all Manufacturing and Legal Requirements and Toyota Specifications. Supplier shall provide to Toyota Party originals or copies, as required, of the test reports or other written materials used to obtain or maintain compliance with all Manufacturing and Legal Requirements and Toyota Specifications as soon as they are available, or as otherwise required by

Manufacturing and Legal Requirements (but in no event later than the time deadlines set forth in the Contract Documents).

(c) **Ongoing Compliance; Access.** If requested by Toyota Party, Supplier shall certify to Toyota Party in writing that Supplier is in compliance with all Manufacturing and Legal Requirements and Toyota Specifications and that all Testing and Certification have been performed and completed, and shall provide Toyota Party with copies of state, federal, international, provincial, local and applicable foreign country or other jurisdiction (e.g., state, provincial, regional, local or territorial) certifications, permits, approvals, and any other documentation that evidences that the GS (including Transportation Services) satisfies Manufacturing and Legal Requirements and Toyota Specifications.

(d) **Access to Supplier's Premises.** Toyota Party and its authorized representatives shall have the right from time to time and on reasonable notice to Supplier to access Supplier's (including any Subcontractor's) premises or any other premises on which the GS are being performed, as Toyota Party may reasonably request, to verify, validate and monitor: (i) compliance with Manufacturing and Legal Requirements; (ii) compliance with Toyota Specifications; and (iii) Supplier's performance or ability to perform under these Terms. Supplier shall have the right to limit or restrict Toyota Party's access to the extent necessary to protect confidential information of or relating to Supplier's other customers. In exercising any access rights, Toyota Party shall take commercially reasonable steps to protect the confidentiality of and not interfere with the business relationship between Supplier and any of its other customers.

3.13 **ACA Compliance.** If Supplier provides any Personnel during the term of any Contract Document, Supplier shall comply with the Patient Protection and Affordable Care Act, as may be amended or superseded from time to time ("**ACA**"), and the terms and conditions set forth in this **Section 3.13**. Throughout the term of any Contract Document during which Supplier provides any Personnel and pursuant to the requirements of the ACA, Supplier shall timely offer (or cause to be timely offered) to each full-time Personnel, and, if enrolled, provide (or cause to be provided) to such full-time Personnel and his or her dependent children group health coverage that: (i) qualifies as minimum essential coverage under an eligible employer-sponsored plan; (ii) is affordable; (iii) provides minimum value; (iv) does not impose a waiting period in excess of ninety (90) days from the date such Personnel first becomes otherwise eligible for such coverage; and (v) satisfies all requirements and terms of the employer-related group health obligations pursuant to the ACA (collectively, "**Medical Coverage**"). Supplier shall incorporate appropriate language in its agreements with its existing and future Subcontractors to ensure that all Subcontractors who provide Personnel on assignment at Toyota Party pursuant to these Terms or any Contract Document also agree to comply with this **Section 3.13** and indemnify Toyota Party, as a third party beneficiary, in the manner described in **Section 3.13(e)** hereof.

(a) **Defined Terms.** The terms "full-time," "dependent children," "eligible employer-sponsored plan," "minimum essential coverage," "affordable," "dependent" and "minimum value" shall have the meanings set forth in Internal Revenue Code Section 4980H and related United States Treasury regulations and rulings, as may be amended or superseded from time to time. The term "**Personnel**" as used in this **Section 3.13** shall mean any individual directly or indirectly hired or otherwise engaged by Supplier (or by a Subcontractor), who provides services to or for the benefit of any Toyota Party or any other related Toyota entity on the business premises of one (1) or more Toyota Parties or any other related Toyota entities under, in accordance with or pursuant to these Terms or any Contract Document. Such term shall specifically include any worker classified by Supplier or a Subcontractor as one (1) of its "employees" for payroll and employment purposes, and any worker classified by Supplier or a Subcontractor as an independent contractor.

(b) **Fees.** Supplier hereby acknowledges and agrees that a portion of the fees paid by Toyota Party to Supplier under these Terms or the applicable Contract Document substantially compensates Supplier for the direct and indirect costs of offering Medical Coverage to those full-time Personnel who are covered by this **Section 3.13**.

(c) **ACA Payment.** If and only if such full-time Personnel are performing services expressly identified in any Contract Document as being subject to this **Section 3.13(c)**, Toyota Party shall pay to Supplier (for forwarding to its Subcontractor on behalf of Toyota Party, where and as appropriate), the additional amounts, if any, specified in such Contract Document as applicable to the Personnel providing services thereunder (the "**ACA Payment**"), solely for the purpose of satisfying the safe harbor requirements set forth in 26 C.F.R. §54.4980H-4(b)(2), as may be amended or superseded from time to time (the "**ACA Safe Harbor**"). The ACA Payment, if paid, shall be deemed to compensate Supplier for the additional employer cost of providing Medical Coverage to or for the Personnel described in such Contract Document as a supplement to the payment described in **Section 3.13(b)** above.

(d) **No Co-Employment.** In no event shall the requirements set forth in this **Section 3.13** or compliance by Toyota Party and Supplier (and where applicable, a Subcontractor) with its provisions, constitute, or be treated, as an admission or an acknowledgement either by Supplier, or by an applicable Subcontractor, or by Toyota Party, that Toyota Party is, or may be considered, the "employer" or a "co-employer" or "joint employer" of any Personnel. Additionally, the sole and exclusive objectives of the obligations set forth in this **Section 3.13**, and Toyota Party's and Supplier's (and where applicable, a Subcontractor's) respective compliance therewith, is and shall be Supplier's continued compliance with the requirements of the ACA, which became effective not later than January 1, 2015, and Toyota Party's satisfaction of the ACA Safe Harbor. Both parties intend and Supplier represents, warrants and covenants that any Personnel covered by these Terms or any Contract Document or a Subcontractor agreement shall be considered to be an employee or "common law" employee solely of Supplier (or such Subcontractor) and not Toyota Party, as such terms are defined under the ACA.

(e) **INDEMNIFICATION.** IN ADDITION TO THE RIGHTS AND OBLIGATIONS SET FORTH IN **SECTION 5.10**, SUPPLIER SHALL INDEMNIFY AND HOLD TOYOTA PARTY AND ITS PARENT AND THEIR RESPECTIVE AFFILIATES, SUBSIDIARIES AND RELATED ENTITIES, AND THE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND SUCCESSORS AND ASSIGNS OF EACH OF THE FOREGOING, (COLLECTIVELY, "**ASSESSABLE PAYMENT/PENALTY TAX INDEMNITEES**") HARMLESS FROM AND AGAINST ANY AND ALL ASSESSABLE PAYMENTS, LIABILITIES OR PENALTIES (INCLUDING ANY INTEREST, EXCISE TAXES OR ATTORNEY'S FEES) THAT MAY BE IMPOSED UNDER SECTION 4980H, SECTION 4980D OR SUBTITLE F OF THE INTERNAL REVENUE CODE, AS MAY BE AMENDED OR SUPERSEDED FROM TIME TO TIME, AS A CONSEQUENCE OF SUPPLIER'S OR SUPPLIER'S SUBCONTRACTOR'S FAILURE TO COMPLY WITH AND SATISFY IN FULL THE OBLIGATIONS DESCRIBED IN THIS **SECTION 3.13** AND THESE TERMS, REGARDLESS OF WHETHER OR NOT THE LOSSES THAT ARE THE SUBJECT OF THIS OBLIGATION ARE CAUSED IN PART BY THE NEGLIGENCE OR OTHER ACT OR OMISSION OF ASSESSABLE PAYMENT/PENALTY TAX INDEMNITEES, AND FOR ANY ADDITIONAL COSTS THAT ANY OF THE ASSESSABLE PAYMENT/PENALTY TAX INDEMNITEES INCUR BY REASON OF SUCH FAILURE. NOTWITHSTANDING ANYTHING IN THESE TERMS OR ANY CONTRACT DOCUMENT TO THE CONTRARY, IN NO EVENT SHALL SUCH ASSESSABLE PAYMENT/PENALTY TAX INDEMNITEES BE SUBJECT TO ANY LIMITATION ON LIABILITY. SUPPLIER SHALL REMAIN LIABLE FOR THE ACTION OR INACTION OF ANY SUBCONTRACTOR TO WHOM SUPPLIER DELEGATES ITS OBLIGATIONS AND RESPONSIBILITIES UNDER THIS **SECTION 3.13**. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED

HEREIN, SUPPLIER'S OBLIGATION TO DEFEND ANY TOYOTA PARTY SET FORTH IN SECTION 5.10 SHALL NOT APPLY TO ANY PROCEEDING INVOLVING A GOVERNMENT, GOVERNMENTAL AGENCY OR PRIVATE PARTY ARISING OUT OF THIS SECTION 3.13; PROVIDED, HOWEVER, SUPPLIER SHALL (AND SHALL CAUSE ITS SUBCONTRACTORS TO) PROVIDE PROMPT AND FULL COOPERATION TO ANY TOYOTA PARTY IN RESPONDING TO ANY SUCH PROCEEDING.

(f) ***Audit Rights.*** In addition to the rights and obligations set forth in **Section 3.4(g)**, Toyota Party, acting through an auditor of its choosing, shall be entitled to audit Supplier's group health plans and financial records (and where appropriate, the group health plan(s) of any Subcontractor(s)) to confirm Supplier (or such Subcontractor) has offered Medical Coverage in accordance with the requirements of this **Section 3.13**, and has provided such Medical Coverage to those Personnel who qualify for such Medical Coverage and have enrolled in such Medical Coverage. Supplier shall audit its Subcontractors' group health plans and financial records to confirm that such Subcontractors are in compliance with all relevant provisions of these Terms. Toyota Party shall be entitled to receive the results of Supplier's audit of its Subcontractors conducted pursuant to this **Section 3.13(f)**.

(g) ***Returns and Reports.*** Supplier shall timely provide (or cause to be provided) to each Personnel and to the Internal Revenue Service any and all returns and reports required under Sections 6055 and 6056 of the Internal Revenue Code, as may be amended or superseded from time to time, and ensure that all Personnel are reported on either Supplier's or a Subcontractor's Form 1095-B or 1095-C, as may be amended or superseded from time to time, and such reporting and evidence of the underlying group health plan coverage shall be available for audit purposes at the request of Toyota Party.

(h) ***Proceedings.*** In furtherance of its obligations under this **Section 3.13** (including specifically **Section 3.13(e)** hereof), Supplier shall timely notify Toyota Party of the commencement or re-commencement of (i) any investigation, inquiry, audit, lawsuit, arbitration or other formal legal or equitable proceeding (collectively, "**Proceeding**") involving a government or governmental agency (and any termination, abandonment, withdrawal, settlement or discharge of any such Proceeding); or (ii) any Proceeding involving a private party (and any termination, abandonment, withdrawal, settlement or discharge of any such Proceeding); in each case, which relates or pertains to (A) the satisfaction by Supplier (or a Subcontractor, where applicable) of its duties and obligations under this **Section 3.13**; or (B) the employment status of any Personnel for ACA purposes. For purposes of the preceding sentence, notification shall be considered timely if provided to Toyota Party within five (5) days following the date Supplier first becomes aware of the commencement or re-commencement of such Proceeding or the termination, abandonment, withdrawal, settlement or discharge of such Proceeding. Supplier shall not provide any response, or take any position, which is materially inconsistent with the provisions of this **Section 3.13** (including specifically **Section 3.13(d)** hereof) without obtaining the prior written consent of Toyota Party thereto, which may be withheld in Toyota Party's sole discretion.

3.14 ***Toyota Property.***

(a) ***Definition of Toyota Property.*** All layouts, models, tools, gauges, designs, sketches, drawings, blueprints, patterns, dies, specifications, engineering data, technical or proprietary information, special appliances, other equipment or material, and any reproductions and replacements furnished to Supplier (including to any Subcontractors) by or on behalf of Toyota Party, including third party intellectual property for which Toyota Party has acquired the right to provide to Supplier (collectively, "**Toyota Property**"), or for which Supplier has been reimbursed by Toyota Party, shall be and remain Toyota Property and, as applicable, be deemed a bailment. Supplier shall bear the risk of loss of and damage to all Toyota Property and, except as otherwise set forth in **Section 3.14(d)**, all expenses associated with the storage, bailment, transport (including loading and unloading) or use of Toyota Property. All Toyota

Property shall be used solely by Supplier to perform under these Terms and the Contract Documents, and shall not be moved from Supplier's premises or possession or substituted with any other property without the prior written consent of Toyota Party (consent of which may be withheld at its sole discretion).

(b) **Identification of Toyota Property; Labeling.** Toyota Property shall be marked by Supplier as "PROPERTY OF [INSERT APPLICABLE TOYOTA PARTY NAME]," or as otherwise directed by Toyota Party, stored and maintained, at Supplier's sole cost and expense, apart from Supplier's property and in good condition, and subject to inspection by Toyota Party on demand.

(c) **No License.** Performance by Supplier under these Terms and the Contract Documents shall not transfer any rights of ownership in, nor license of, nor constitute permission granted by Toyota Party to Supplier to use (i) any Toyota Property; or (ii) any Toyota Intellectual Property, in each case except (A) if otherwise agreed upon by Toyota Party in writing; or (B) to the extent necessary for Supplier to produce or perform the GS and to fulfill its obligations required by the Contract Documents.

(d) **Delivery or Return of Toyota Property.** Unless otherwise provided under the Contract Documents, Toyota Party shall reimburse Supplier for the actual and necessary costs of transportation and delivery of Toyota Property to Supplier or a destination location designated by Supplier. Upon the request of Toyota Party, all Toyota Property (except Toyota Property that has been consumed or otherwise disposed of with Toyota Party's prior written consent) shall be immediately released to Toyota Party or delivered by or on behalf of Supplier to Toyota Party or its designee, properly packaged and marked in accordance with instructions from Toyota Party, utilizing the carrier designated by Toyota Party, and delivered to the destination location designated by Toyota Party. As more fully described in **Section 3.3**, Supplier hereby waives any Lien or other rights it may have against or in any property or rights of any of the Toyota Parties (including any Toyota Property) for work performed on any such property or otherwise. When any Toyota Property is no longer reasonably necessary for Supplier to perform under these Terms and the Contract Documents, Supplier shall return all such Toyota Property (except Toyota Property that has been consumed or otherwise disposed of with Toyota Party's prior written consent) to Toyota Party (or its designees) at Supplier's sole cost and expense.

3.15 **Non-Disclosure Agreement.** Supplier shall execute, upon request by Toyota Party, a non-disclosure agreement in a form satisfactory to Toyota Party which shall relate to any confidential or proprietary data or information to be disclosed by or on behalf of Toyota Party to Supplier (including to Subcontractors) (a "**Non-Disclosure Agreement**"). If Supplier has executed or executes a Non-Disclosure Agreement, the terms of that Non-Disclosure Agreement shall apply to these Terms and the terms of such Non-Disclosure Agreement shall be incorporated herein with respect to the information covered by such Non-Disclosure Agreement. Notwithstanding the absence of such Non-Disclosure Agreement or for all information not covered by such Non-Disclosure Agreement, the following terms shall apply to Confidential Information:

(a) "**Confidential Information**" shall be defined as: (i) any information provided to Supplier (including to Subcontractors) by or on behalf of Toyota Party, any affiliate, subsidiary or related entity of Toyota Party or any third party, or discovered or otherwise observed by Supplier (including any of its Subcontractors) relating to any operations of Toyota Party, or any affiliate, subsidiary or related entity of Toyota Party, including information relating to products and products in development or Toyota Property; and (ii) all documents, records, data, data compilations, computerized records, statements, drawings, plans, specifications, interviews, opinions or other information to which Supplier (including any of its Subcontractors) may be provided access by or on behalf of Toyota Party, any affiliate, subsidiary or related entity of Toyota Party or any third party as a result of the provision or performance of the GS.

(b) The term Confidential Information shall not include information that: (i) is or becomes available in the public domain through no wrongful act, directly or indirectly, of Supplier (or its Subcontractors); provided that specific Confidential Information shall not be deemed to be within the foregoing exception merely because (A) it is embraced by more general information in the public domain or by more general information in the possession of Supplier; or (B) all individual parts of such information are in the public domain or in the possession of Supplier; (ii) is already in Supplier's possession prior to the commencement of performance under these Terms or the Contract Documents without an obligation of confidentiality; or (iii) is independently developed by Supplier as established by documentary evidence, without access or reference to or use of, in whole or in part, any of the Confidential Information; provided, however, that with respect to personally identifiable information (as defined by Toyota Party from time to time at its sole discretion) or any of Toyota Party's employee, customer, or business partner employee names, addresses, e-mail addresses, telephone numbers, purchase dates, vehicle identification numbers, model vehicle purchased, dealer numbers and names, dealer employee names, and other similar information obtained pursuant to the provision of GS under these Terms or the Contract Documents, such information shall remain Confidential Information of Toyota Party even if known to the public. Notwithstanding the foregoing, information that becomes available in the public domain because of a cybersecurity incident sustained by Supplier (including its Subcontractors) shall remain Confidential Information of Toyota Party even if known to the public.

(c) ***Use of Confidential Information.***

(1) Except as otherwise authorized in advance and in writing by Toyota Party (which consent may be granted at its sole discretion), Supplier shall not, nor shall Supplier permit any of its directors, officers, employees, or Subcontractors, to (i) communicate, disclose, divulge, reveal or otherwise make known any Confidential Information to any person or entity not a party to a Non-Disclosure Agreement with Toyota Party pertaining to the GS provided by Supplier pursuant to these Terms and the Contract Documents or the legal documents set forth in **Section 3.15(c)(2)**; or (ii) use any Confidential Information for any purpose (A) beyond the need to perform under these Terms; or (B) which may adversely affect Toyota Party, or any respective business, operations or other business conducted by any of its subsidiaries, affiliates or related entities.

(2) Supplier shall keep the Confidential Information confidential and expressly require, through appropriate legal documents, each of its directors, officers, employees, and Subcontractors (including the Construction or Installation Subcontractors) exposed to any of the Confidential Information to keep all Confidential Information confidential. Supplier shall limit the use and circulation of Confidential Information within its organization and solely to its directors, officers, employees, and Subcontractors (including the Construction or Installation Subcontractors) to the maximum extent possible, disclosing Confidential Information to such individuals on a need to know basis only.

(3) Upon Toyota Party's request and election, Supplier shall immediately return or, if approved by Toyota Party, certify destruction of all Confidential Information in the manner approved by Toyota Party.

(d) The obligations to maintain secrecy and confidentiality set forth herein shall continue indefinitely and shall survive the termination of the Contract Documents and these Terms.

(e) Supplier shall not disclose to any third party the subject matter, or the terms and conditions of these Terms or the Contract Documents, unless otherwise agreed upon by Toyota Party, unless, and to the extent, required by applicable Manufacturing and Legal Requirements; provided, however, if Supplier (or any of its Subcontractors) becomes legally compelled to disclose any of the Confidential Information, or any of the terms of these Terms or the Contract Documents, Supplier shall

provide Toyota Party with prompt notice thereof and shall not (nor permit such Subcontractors to) divulge any such information until Toyota Party (of its designee) has had the opportunity to seek a protective order or other appropriate remedy to curtail such disclosure. If such actions by Toyota Party (or its designee) are unsuccessful, or Toyota Party otherwise fails to seek such remedies, Supplier shall disclose (and shall only permit its Subcontractors to disclose) only that portion of the Confidential Information (or Terms or Contract Documents) which Supplier (or such Subcontractor) is legally required to disclose. Notwithstanding the foregoing, if and to the extent Confidential Information is required to be disclosed pursuant to any final and non-appealable order of a court or agency of competent jurisdiction served on Supplier, provided that Supplier gives Toyota Party written notice within two (2) days of receipt of such order and at least thirty (30) days prior to the production or disclosure of any such Confidential Information, Supplier may disclose only that information that is necessary to comply with such order, subject to any protective seal; and provided, further, that if Supplier is required to file Confidential Information with any public agency as part of obtaining permits or approvals required for performance under these Terms or the Contract Documents, provided that Supplier gives Toyota Party at least thirty (30) days prior written notice of the disclosure of such information, then Supplier may disclose only that information that is necessary to obtain such permit or approval (and, if available, to do so under protective seal or other restrictive access).

(f) Supplier acknowledges that the restrictions contained in this **Section 3.15** are necessary to protect the legitimate interests of Toyota Party, its affiliates, subsidiaries or related entities and that any violation thereof would result in irreparable harm and injury to Toyota Party, its affiliates, subsidiaries or related entities. In the event of a breach or threatened breach by Supplier of any provision of this **Section 3.15**, Supplier hereby agrees that Toyota Party shall be entitled to injunctive relief, without the need to post a bond or the requirement to prove the inadequacy of monetary damages, restraining Supplier from such breach or threatened breach and to any other legal or equitable remedies available to Toyota Party, and Supplier shall not contest any such action by Toyota Party to obtain injunctive relief.

4. GENERAL COVENANTS, RIGHTS AND REMEDIES OF PARTIES.

4.1 *Toyota Party's Rules, Regulations, and Programs.* Supplier (including all Subcontractors) shall be subject to and shall conform to Toyota Party's rules, regulations, policies, procedures and programs while supplying or performing GS (including Transportation Services) to or for the benefit of Toyota Party including the following manuals and guidelines: (i) safety; (ii) security; (iii) cybersecurity; (iv) environmental management; (v) anti-harassment; (vi) supplier diversity; and (vii) corporate social responsibility. As to cybersecurity, Supplier (including all Subcontractors) shall: (A) maintain reasonable, risk-based cybersecurity programs, supported by appropriate policies and procedures, to protect the confidentiality, integrity, and availability of Confidential Information, prevent disruption of the supply or performance of GS (including Transportation Services), and respond in a timely and effective manner to a cybersecurity incident that may compromise the confidentiality, integrity, or availability of Confidential Information or disrupt supply or performance of GS (including Transportation Services); (B) notify Toyota Party of any cybersecurity incident that affects the confidentiality, integrity, or availability of Confidential Information, disrupts or threatens to disrupt supply or performance of GS (including Transportation Services), or otherwise reasonably could be expected to adversely affect Toyota Party; (C) assist Toyota Party and provide requested information to Toyota Party to the extent permitted by Manufacturing and Legal Requirements in the event of such a cybersecurity incident; (D) direct and take necessary steps to enable their respective officers, directors, employees, representatives, agents and contractors to demonstrate, in accordance with reasonable measures identified by Toyota Party, that laptop computers or other devices are configured to operate reasonable, current cybersecurity protections (e.g., an up-to-date malware client) before such devices are permitted on the Toyota Premises; (E) adopt other reasonable cybersecurity measures identified by Toyota Party in applicable Toyota Party rules, regulations, policies, procedures, and programs; and (F) upon request from Toyota Party, demonstrate compliance with the five (5) immediately preceding requirements through a third-party audit or other reasonable measure

selected by Toyota Party. Notwithstanding the foregoing, the following Toyota Party policies and procedures shall only apply while Supplier (including any Subcontractor) is on the Toyota Premises: (w) safety; (x) security; and (y) environmental management. In addition to the requirements set forth in this **Section 4.1**, Supplier shall be subject to and shall conform to its rules, regulations, policies, procedures and programs at all times while supplying or performing GS (including Transportation Services) to or for the benefit of Toyota Party.

4.2 **Independent Contractor.** Supplier is retained by Toyota Party only for the purposes and to the extent set forth in the Contract Documents. The relationship of Supplier to Toyota Party shall be that of an independent contractor. Neither Supplier nor its Subcontractors (including none of their respective officers, directors, employees, representatives, agents and contractors) shall be (i) considered employees of Toyota Party; or (ii) entitled to participate in any pension, stock bonus, profit sharing or other benefits provided to employees of Toyota Party. Nothing contained in these Terms or the Contract Documents is intended to create, nor shall it under any circumstance be construed as creating, any principal/agent, employer/employee, partnership, tenancy-in-common, joint tenancy, profit sharing arrangement or joint venture between Supplier and Toyota Party (including no such relationship between Toyota Party and any of Supplier's Subcontractors). Supplier (including its Subcontractors) shall not have any authority to execute contracts or make commitments on behalf of any of the Toyota Parties.

4.3 **Non-exclusive.** Except as otherwise set forth in the Contract Documents, nothing contained in these Terms or the Contract Documents shall be construed to create an exclusive relationship between Toyota Party and Supplier. Except as otherwise set forth in the Contract Documents, Supplier retains the right to perform work for others. Toyota Party retains the right to cause work of the same or a different kind to be performed by its own personnel, its affiliates or other contractors.

4.4 **Insurance.**

(a) Supplier (including its Subcontractors) shall, at its sole cost and expense, procure (in no event later than commencement of the performance of the GS) and maintain in full force and effect insurance with sound and reputable insurance companies of the type and in such amounts as adequate for all risks in accordance with sound and prudent business practices including (i) general liability, which shall include contractual liability; (ii) general automotive liability; (iii) public liability; (iv) workers' compensation liability; (v) property damage (fire, casualty and theft) insurance; (vi) any other insurance required under the Contract Documents; and (vii) any other insurance as it may be applicable or required by Manufacturing and Legal Requirements. Unless otherwise agreed to in writing by Toyota Party or as expressly set forth in the Contract Documents, the insurance coverage for Supplier (including its Subcontractors) required under these Terms and Contract Documents shall not fall below the following amounts:

(1) Workers' compensation or similar insurance providing statutory coverage that shall comply in all respects to the statutes of the jurisdiction, state, locality or province where GS shall be provided or performed;

(2) Employer's liability insurance in the amount of at least USD\$1,000,000 for all claims in one (1) policy period;

(3) Comprehensive general liability, including coverage for products, completed operations, contractual liability, bodily injury and property damages with limits of not less than USD\$5,000,000 (in the form of general liability or umbrella coverage) combined single limit per occurrence;

(4) Automobile or vehicle liability, including owned, non-owned and hired vehicles with limits of not less than USD\$1,000,000 for automobiles and vehicles, USD\$2,000,000 for trucks larger than pick-ups, and USD\$5,000,000 for tractor-trailer units, in each case for combined single limit per occurrence. The coverage amounts may be in the form of automobile or vehicle liability or umbrella coverage;

(5) Cargo insurance per shipment in the amount of USD\$1,000,000 or as otherwise set forth in the Contract Documents; and

(6) Insurance as otherwise set forth in the Contract Documents.

(b) The insurance of Supplier (including its Subcontractors) shall insure against any liability for loss, injury, damage or claims caused by or arising out of or in connection with the operation of Supplier's (including any Subcontractor's) business or delivery or performance of the GS, including injury to or death of Supplier's employees, Subcontractors or any other persons, or damage to or destruction of public or private property. All insurance shall be occurrence-based; provided, however, if Supplier is unable to obtain occurrence-based coverage, then the insurance shall be claims-made, and the insurance policy shall extend for at least six (6) years after the termination of these Terms or such longer period as required by applicable Manufacturing and Legal Requirements or the Contract Documents. Upon request, Supplier shall provide Toyota Party proof of insurance no later than ten (10) days after such request, which shall include Toyota Party as an additional insured and state that such insurance shall not be cancelled or materially changed without giving TEMA or TMNA, as applicable, at least thirty (30) days prior written notice. To the extent that Toyota Party has requested proof of insurance, Supplier must provide such proof of insurance, at a minimum, prior to entering the Toyota Premises; provided, however, that receipt by Toyota Party of any proof of insurance indicating that Supplier has not obtained insurance in the amounts required under these Terms or the Contract Documents shall not constitute a waiver by Toyota Party of any breach of these Terms or the Contract Documents. In the event of any Construction or Installation Activities or any other Services where Supplier is required by Toyota Party to maintain general liability and other insurances with respect to such activities or performance, Supplier shall, at the request of Toyota Party, participate in and obtain applicable insurance from an owner controlled insurance plan to insure against general liability and property damage risks during such Construction or Installation Activities or performance of other Services, all on such terms and conditions as required by Toyota Party. The insurance required under this **Section 4.4** shall be in addition to, separate from, and not limited by any obligations under any indemnity or defense obligations under these Terms or any Contract Documents.

(c) Supplier's Cargo insurance policies shall not exclude coverage for infidelity, fraud, dishonesty or criminal acts of Supplier or any Supplier Party. In the event that such policy contains such exclusions, Supplier shall immediately notify Toyota Party thereof in writing and in no event later than commencement of the performance of the Services, and obtain and furnish to Toyota Party a surety bond providing such coverage to the satisfaction of Toyota Party no later than commencement of the performance of the Services. Supplier shall deliver to Toyota Party any endorsements to its Cargo insurance policy as may be required by any applicable Manufacturing and Legal Requirements. Such endorsement shall protect Toyota Party for loss of or damage to any Cargo up to the limits of said endorsement, subject to its limitations, and not caused by the acts or omissions of Toyota Party. Except as otherwise set forth in the Contract Documents, Toyota Party shall be named as loss payee on the policy to the extent of its interests.

(d) Each policy obtained by Supplier pursuant to these Terms shall be in accordance with the above terms. If any (i) federal, international, state, provincial or local government or regulatory body (A) in the United States; or (B) any other country or countries where GS are manufactured, produced, performed or acquired; or (ii) other applicable authority, shall prescribe minimum amounts of insurance in

excess of the amounts prescribed in these Terms, including the appendices, such regulatory or other body requirements shall take precedence and Supplier shall comply therewith.

4.5 **Warranty.**

(a) **Express Warranties.** Supplier expressly warrants, on behalf of itself and its Subcontractors, that (i) all GS shall be manufactured, provided, performed, and (where applicable) transported to or for the benefit of Toyota Party to designated locations in full and complete conformity with the Contract Documents, including all manufacturing, design, quality and other requirements of Toyota Party as well as specifications, drawings, and samples or other descriptions furnished or specified by or on behalf of Toyota Party (collectively, “**Toyota Specifications**”), all specifications, drawings, and samples or other descriptions furnished or specified by or on behalf of Supplier (collectively, “**Supplier Specifications**”) but only to the extent not superseded by Toyota Specifications, and all Manufacturing and Legal Requirements; (ii) all GS shall be merchantable, of good material and workmanship, free from defects and shall be performed in a good and workmanlike manner utilizing personnel with skill levels appropriate to the task and in full and complete accordance with the Contract Documents; (iii) Supplier (including its Subcontractors) possesses the expertise, qualified personnel, facilities and equipment to properly and lawfully provide or perform the GS; (iv) Supplier (including its Subcontractors) is licensed to the extent required by Manufacturing and Legal Requirements to do business in the locations where it shall provide or perform the GS; (v) Supplier (including its Subcontractors) has in force and shall maintain (at all times during the term of these Terms) all necessary regulatory, third-party and private licenses, permits, approvals, authorizations, permissions, notices, grants and documents to provide or perform the GS; (vi) all designs within or related to GS shall be free from defects; and (vii) all GS shall be fit and sufficient for the purposes intended by Toyota Party (collectively, with all other warranties of Supplier set forth in these Terms or in the Contract Documents, the “**Supplier’s Warranties**”). Except as otherwise set forth in the Contract Documents, any period for Supplier’s Warranties shall commence upon acceptance of the GS by Toyota Party. For any GS which contain patented, trademarked, confidential or copyrighted components which are otherwise the subject of intellectual property rights held by third parties, Supplier further warrants, on behalf of itself and its Subcontractors, that Supplier (including its Subcontractors) has all rights to such intellectual property sufficient to permit its full and complete performance under these Terms and the Contract Documents and afford Toyota Party and others intended to benefit from such GS, with all of the benefits provided for herein or in the Contract Documents (whichever is the most broad). Supplier’s Warranties are in addition to all warranties implied or provided by Manufacturing and Legal Requirements.

(b) **Conformity with Quality Standards.** Supplier agrees that its Supplier’s Warranties for quality include its express warranty that all GS shall comply strictly and completely with any and all Toyota Specifications related to quality and additional quality assurance procedures for particular GS separately prescribed by Toyota Party (collectively, the “**Quality Standards**”). Toyota Party shall, in its sole discretion, decide whether the Quality Standards are being met. Supplier shall, in accordance with the Quality Standards, provide, maintain, perform and enforce all measures necessary to secure the quality of GS and the manufacturing and performance processes thereof, including quality control standards, inspection standards and specifications.

(c) **Evidence of Supplier’s Quality Assurance; Testing.** Upon Toyota Party’s request, Supplier shall deliver to Toyota Party data, records and other materials to evidence Supplier’s testing, inspection, and analysis of field quality data (or any other information or data as provided by or on behalf of Toyota Party) and such other quality assurance actions as shall validate compliance with all Quality Standards. Toyota Party (or its designee) may, upon prior notice and during normal business hours, (i) inspect the GS or work in process on the GS; and (ii) conduct quality control measures and tests at Supplier’s (including any Subcontractor’s) premises. Without cost to Toyota Party, Supplier shall provide facilities and assistance for Toyota Party’s (or its designee’s) inspections, tests and measures. Toyota Party

shall not be liable for any reduction in value of samples used, nor shall any GS rejected as a result of such inspections, tests and measures be sold to Toyota Party.

(d) **Additional Supplier's Warranties regarding Transportation Services.** In addition to the other Supplier's Warranties, this **Section 4.5(d)** applies when the GS includes Transportation Services. Supplier expressly warrants, on behalf of itself and its Subcontractors, that (i) Supplier (including its Subcontractors) shall maintain (at all times during the term of these Terms) a "Satisfactory" safety rating from the Federal Motor Carrier Safety Administration or any successor authority ("**FMCSA**") and all other satisfactory ratings from any other applicable governmental authorities (such as a satisfactory BIT rating from the California Highway Patrol or a satisfactory safety rating from the Canadian Council of Motor Transport Administrators or other ratings as required by Mexican governmental authorities), and shall provide Toyota Party with (A) written proof of such rating within twenty-four (24) hours of request of same; and (B) if at any time during the term of these Terms, Supplier's (including any Subcontractor's) safety rating becomes either "Conditional" or "Unsatisfactory" (or any other rating deemed unsatisfactory), immediate written notice of such fact, but in no event later than five (5) days after Supplier (including such Subcontractor) receives notice of same; (ii) no "serious" violation has been found by the FMCSA Safety Measurement System in the previous twelve (12) months with respect to Supplier (including any of its Subcontractors, including any of their respective employees, representatives, agents or contractors, that shall participate in the performance of the Transportation Services), and that Supplier shall immediately notify Toyota Party in writing if the FMCSA reports any serious violation by Supplier (including any of its Subcontractors, including any of their respective employees, representatives, agents or contractors); and (iii) any Subcontractor providing Transportation Services shall comply with all requirements applicable to Supplier under these Terms. Supplier (including its Subcontractors) shall be carrier members in good standing with the U.S. Environmental Protection Agency's (or any successor authority's) SmartWay Partnership Program (or any successor program) and such other programs described in the Contract Documents.

4.6 **Taxes; Duty.**

(a) **Generally.** Toyota Party shall not be liable for any federal, international, foreign, state, provincial or local taxes, including sales, use, consumption, excise, transfer, duty, value-added or any other taxes of any nature unless separately stated in the Contract Documents and billed as a separate item at the time of invoicing for the GS. No such tax shall be added to the price of GS when an exemption is indicated in the Contract Documents or when a certificate of exemption is furnished. Supplier shall timely provide Toyota Party with such documents as may be required to obtain any applicable benefits related to (i) the North American Free Trade Agreement (NAFTA) or any successor or other trade arrangements, including certificates of origin; or (ii) any other free trade agreements entered into between or among jurisdictions representing Toyota Party and Supplier. Toyota Party reserves, at its sole option, to direct entry of all Supplier shipments in bond to a foreign-trade zone or subzone instead of a consumption entry, and Supplier shall comply with such direction. In the absence of contrary instructions (including directions as set forth in the Contract Documents), Supplier shall arrange for a consumption entry prior to sale to Toyota Party. Supplier shall cooperate with Toyota Party to file timely such forms, timely provide such documents, and do all things reasonably necessary at Toyota Party's request to enable Toyota Party to claim any exemption, credit, rebate, remission, refund, reduction or other relief from taxes, customs duty or duties under any applicable legislation or treaty, or claim a foreign tax credit or other benefit or relief.

(b) **Sales Tax.**

(1) Notwithstanding any provision in these Terms to the contrary, these Terms are intended to be treated as a "separated contract" for Texas sales and use tax purposes pursuant to Title 34, Section 3.291(a)(13) of the Texas Administrative Code (a "**Separated Contract**"). Pursuant thereto,

the contract sum shall be divided into a separately stated agreed contract price for incorporated materials and a separately stated agreed contract price for skill and labor. Incorporated materials are tangible personal property that become a part of the real property plus any additional charges directly attributable to the incorporated materials. Each contract entered into by Supplier with a Subcontractor that provides skill and labor in addition to materials shall be structured as a Separated Contract. Under a Separated Contract, the incorporated materials are treated as sold by the Subcontractors to Supplier and by Supplier to Toyota Party.

(2) Supplier (including each Subcontractor) shall acquire its materials to be incorporated into the real property by preparing and issuing its own Texas Resale certificate and delivering that certificate to its suppliers. Supplier shall also prepare and issue its Texas Resale certificate to each Subcontractor. Supplier and each Subcontractor shall be treated as buying and not reselling, and the Toyota Price (unless otherwise set forth in the Contract Documents) includes sales and use tax on those unincorporated materials, supplies, tools and equipment consumed or used by Supplier (including by any of its Subcontractors) to perform the GS and includes sales and use tax on rental charges for equipment used by Supplier (including by any of its Subcontractors). If Supplier pays sales or use taxes in violation of this **Section 4.6(b)**, then Toyota Party shall not be obligated to reimburse Supplier for such tax.

(3) Toyota Party may, at its sole discretion, use, or obtain for use, where applicable, a manufacturer's sales tax exemption, a reseller's sales tax certificate or a direct payment permit for the payment of any sales or use tax in the State of Texas and provide such instrument to Supplier and, where applicable, Supplier shall not collect any state or local sales or use tax in the State of Texas from Toyota Party. Supplier shall provide Toyota Party with sufficient information and backup material to enable Toyota Party to properly determine its sales and use tax liability. In the event that Toyota Party decides to appeal any assessment, then Supplier shall cooperate with and allow (and shall cause its Subcontractors to cooperate with and allow) Toyota Party to appeal such assessment and shall provide Toyota Party with such documents or materials as may be required in relation thereof and, if necessary, to allow Toyota Party to appeal the assessment in the name of Supplier (including any of its Subcontractors). All costs of such appeal shall be borne by Toyota Party.

(4) Each application for payment shall state separate amounts for incorporated materials and skill and labor. The material amounts shown on each application shall not include any mark up. Allowed overhead and profit shall be included in the overhead and profit column of the application for payment. Each of such applications for payments is hereby incorporated into the Contract Documents by reference.

(5) Change orders including incorporated materials shall be separated for Texas sales and use tax purposes in accordance with this **Section 4.6(b)**.

(c) ***GST/HST, Value-Added Tax and PST.*** Where Supplier is required to collect from Toyota Party any applicable goods and services tax ("**GST**") or harmonized sales tax ("**HST**") imposed pursuant to the Excise Tax Act (Canada) or any similar value-added tax (Mexico) or any Canadian provincial sales tax ("**PST**") or other Manufacturing and Legal Requirements, Supplier shall timely provide to Toyota Party such documentation as is required by the Excise Tax Act (Canada), prescribed by the Input Tax Credit Information (GST/HST) Regulations, any successor provision thereto, or as required under applicable Canadian provincial law or any similar provision of any other taxing statute or other Manufacturing and Legal Requirements, or as is required (in Toyota Party's determination) in order for Toyota Party to claim an input tax credit, rebate, refund or any other form of relief or benefit in respect of such tax.

(d) ***Non-Resident Contract Rules.*** Supplier shall comply (and shall cause compliance) in a timely manner with the Manufacturing and Legal Requirements imposed on GS or

Supplier (including any Subcontractors) by all applicable governmental or other authorities, including requirements in respect of registration, payment, collection and remittance of taxes, timely filing of tax returns, and provision to the applicable taxing authority of such deposits, guarantees or other forms of securities as may be required by Manufacturing and Legal Requirements or the administration thereof, including timely payment of all applicable HST levied pursuant to the Excise Tax Act (Canada), PST and any other tax or duty imposed on the Importer of Record, and Supplier shall upon request provide Toyota Party with written proof of such compliance.

(e) **Withholding.** Toyota Party shall use commercially reasonable efforts to: (i) deduct or withhold from each payment to Supplier all taxes and any other withholdings which Toyota Party is required by Manufacturing and Legal Requirements or by the administration thereof to deduct or withhold; (ii) pay the amount withheld or deducted to the relevant governmental authority in accordance with applicable Manufacturing and Legal Requirements; and (iii) provide to Supplier a copy of the receipt of payment issued by the authority.

4.7 **Advertising.** Without Toyota Party's prior written consent in each instance, Supplier shall not use or permit use of the words "Toyota Motor Engineering & Manufacturing North America, Inc.," "Toyota Motor North America, Inc.," "Toyota Motor Sales, U.S.A., Inc.," "Toyota," "Lexus," "Scion," "TEMA," "TMNA," "TMS/USA," or any similar word or trademark of TEMA, TMNA, Toyota Motor Corporation, or any of the Toyota Parties in the description or marketing of products produced, distributed or sold (or services performed or otherwise provided) by or on behalf of Supplier (including by any Subcontractor), nor shall Supplier (including any of its Subcontractors) advertise, publicize or publish that Supplier (or any of the foregoing) has contracted to or shall furnish, or has or had furnished, GS pursuant to the Contract Documents.

4.8 **Intellectual Property.** "Intellectual Property" shall mean (collectively) for any party (i) any patent, trade secret, trademark, service mark, copyright, mask work, or other intellectual property right of such party in information (electronic or written), documents, or property; and (ii) all sketches, drawings, blueprints, CAD designs or renderings, process sheets, dimensional layouts, test and trial result data or other data that is proprietary to such party and which is used (directly or indirectly) or otherwise made available to the other party for or in connection with the manufacture, supply, performance, or production (including repair, if applicable) of any GS. Intellectual Property of any of the Toyota Parties shall be Confidential Information.

(a) **Toyota Intellectual Property.** Neither Toyota Party nor any Global Affiliate of Toyota Party grants to Supplier any rights with respect to any Intellectual Property of any of the Toyota Parties ("Toyota Intellectual Property") or any Intellectual Property of any such Global Affiliate of any of the Toyota Parties ("Global Affiliate Intellectual Property") other than: (i) in the case of Toyota Party, the limited right to use such Toyota Intellectual Property; and (ii) in the case of any Global Affiliate of Toyota Party, the limited right to use such Global Affiliate Intellectual Property (which, in each case of subsection (i) or (ii) of this **Section 4.8(a)** shall not be deemed a license) strictly and solely in conjunction with Supplier's manufacture, supply, performance, production or repair of any GS, or as otherwise set forth in the Contract Documents. For the purpose of this **Section 4.8(a)**, a "Global Affiliate" of Toyota Party shall be any entity defined as such in the Contract Documents.

(b) **Supplier Intellectual Property.** Supplier does not grant to Toyota Party any rights with respect to any Intellectual Property of Supplier ("Supplier Intellectual Property") other than (i) the right to use such Supplier Intellectual Property in connection with the intended use of such GS or as otherwise set forth in the Contract Documents; (ii) any rights granted pursuant to a Joint Development Agreement entered into pursuant to **Section 4.8(e)**; and (iii) the specific terms of a statement of work or other Contract Document specifying services to be provided to or for the benefit of Toyota Party or any

Global Affiliate of Toyota Party. Supplier hereby grants to Toyota Party a non-exclusive, royalty-free, worldwide, perpetual license, with rights to grant sublicenses to any other Toyota Party or to any Global Affiliate of Toyota Party (or respective designee), to use the Supplier Intellectual Property solely for such intended use of such GS (e.g., to obtain the benefit of the GS or to use, maintain, modify, enhance, perform, distribute, combine with others, copy or create derivative works of Toyota Intellectual Property or Global Affiliate Intellectual Property, including any deliverables), or as otherwise set forth in the Contract Documents. Notwithstanding the foregoing, unless expressly set forth in a Contract Document, nothing herein shall be deemed to grant to Toyota Party or any Global Affiliate of Toyota Party (or respective designee) with respect to any GS constituting commercially available off the shelf software (“**COTS Software**”), any right to copy (other than for the purpose of installing, operating, maintaining and backing up such COTS Software), distribute, lease, sublicense or create derivative works from such COTS Software.

(c) *Infringement.*

(1) **GENERALLY.** SUBJECT TO **SECTION 4.8(c)(2)**, SUPPLIER SHALL DEFEND, REIMBURSE, INDEMNIFY AND HOLD EACH TOYOTA PARTY AND EACH GLOBAL AFFILIATE OF TOYOTA PARTY, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS AND REPRESENTATIVES (INCLUDING ANY RESPECTIVE SUCCESSORS OR ASSIGNS) HARMLESS FROM AND AGAINST ANY AND ALL LOSSES ARISING OUT OF THE ACTUAL OR ALLEGED INFRINGEMENT OF OR BY ANY GS MANUFACTURED, PRODUCED, PERFORMED (INCLUDING REPAIRS) OR SUPPLIED BY SUPPLIER OR A SUPPLIER PARTY OF A THIRD-PARTY INTELLECTUAL PROPERTY RIGHT OR RIGHT OF CONFIDENTIALITY, PRIVACY OR PUBLICITY: (I) IN THE UNITED STATES, MEXICO, CANADA, THE EUROPEAN UNION OR JAPAN; OR (II) IN ANOTHER JURISDICTION IF SUPPLIER HAS KNOWLEDGE OR NOTICE OF THE ACTUAL OR ALLEGED INFRINGEMENT IN THAT OTHER JURISDICTION AT ANY TIME AND FAILS TO PROMPTLY DISCLOSE IT TO TOYOTA PARTY IN A MANNER AND AT A TIME WHICH SHALL ALLOW TOYOTA PARTY TO ADEQUATELY RESPOND TO ANY SUCH CLAIM. IF SUCH A CLAIM RESULTS, OR IS LIKELY TO RESULT, IN AN INJUNCTION OR OTHER ORDER THAT WOULD PREVENT SUPPLIER FROM MANUFACTURING, PRODUCING, PERFORMING OR SUPPLYING, OR TOYOTA PARTY OR ITS DESIGNEES (INCLUDING CUSTOMERS, DEALERS, DISTRIBUTORS OR AFFILIATES, INCLUDING ANY GLOBAL AFFILIATE OF TOYOTA PARTY) FROM USING, DISTRIBUTING, SELLING, LEASING, MAINTAINING, MODIFYING, COPYING OR CREATING DERIVATIVE WORKS OF, APPLICABLE GS, SUPPLIER SHALL, AT TOYOTA PARTY’S SOLE ELECTION AND AT SUPPLIER’S SOLE COST AND EXPENSE, (A) SECURE A LICENSE OF THE APPLICABLE INTELLECTUAL PROPERTY THAT PERMITS SUPPLIER TO CONTINUE MANUFACTURING, PRODUCING, PERFORMING OR SUPPLYING, OR TOYOTA PARTY AND ITS DESIGNEES (AND EACH GLOBAL AFFILIATE OF TOYOTA PARTY, IF ANY) TO CONTINUE USING, DISTRIBUTING, SELLING, LEASING, MAINTAINING, MODIFYING, COPYING OR CREATING DERIVATIVE WORKS OF, THE GS; (B) IF REQUESTED BY TOYOTA PARTY AND SOLELY IN CONFORMITY WITH ANY REQUIREMENTS OF TOYOTA PARTY, MODIFY THE GS SO THAT THEY BECOME NON-INFRINGEMENT, SO LONG AS THE MODIFICATION DOES NOT MATERIALLY ALTER THE OPERATION OR PERFORMANCE OF THE GS, AS DETERMINED BY TOYOTA PARTY IN ITS SOLE DISCRETION; OR (C) REPLACE THE GS WITH NON-INFRINGEMENT BUT PRACTICALLY EQUIVALENT GS, EQUIVALENCY TO BE DETERMINED BY TOYOTA PARTY IN ITS SOLE DISCRETION. NOTWITHSTANDING THE FOREGOING, UNLESS OTHERWISE SET FORTH IN A CONTRACT DOCUMENT, SUPPLIER DOES NOT WARRANT THAT THE DISTRIBUTION, LEASE, SUBLICENSE, MODIFICATION, CREATION OF DERIVATIVE WORKS, COPYING (OTHER THAN FOR THE PURPOSE OF INSTALLING,

OPERATING, MAINTAINING AND BACKING UP OF COTS SOFTWARE), OR COMBINATION OF COTS SOFTWARE SHALL NOT INFRINGE THE INTELLECTUAL PROPERTY RIGHTS OF ANY PERSON.

(2) **Limitations.** Supplier shall have no liability under this **Section 4.8(c)** except to the extent Toyota Party provides Supplier with (i) all reasonable and relevant information of Toyota Party and, with respect to claims by a Global Affiliate of Toyota Party, of such Global Affiliate of Toyota Party; (ii) cooperation; and (iii) assistance regarding a claim covered by this **Section 4.8(c)**. Toyota Party, in the reasonable exercise of its business judgment, shall determine if it has fully cooperated with Supplier in the event of any infringement claim. Supplier shall have no liability under this **Section 4.8(c)** if and to the extent that a claim of infringement is based on either of the following circumstances so long as Supplier has provided Toyota Party (or the applicable Global Affiliate of Toyota Party) advance written notice that the modification could be beyond the Supplier Intellectual Property: (A) a GS modification made by Toyota Party (or a Global Affiliate of Toyota Party, with respect to liability as to such Global Affiliate of Toyota Party), without Supplier's consent or approval; or (B) a GS modification made by Supplier at Toyota Party's direction (or at a Global Affiliate of Toyota Party's direction, with respect to liability as to such Global Affiliate of Toyota Party).

(d) **Other Information.** At Toyota Party's request, Supplier shall, from time to time, furnish to Toyota Party any other information and data of Supplier which is not Supplier Intellectual Property and which Toyota Party deems necessary to understand (i) the design, manufacture, engineering, transportation, operation or maintenance (including repair) of any GS, or any other aspect of the GS and its relationship to any applicable Toyota Specifications; and (ii) any technical information, drawings, documents, data or other materials produced, performed, supplied or acquired by Supplier in providing GS under these Terms (collectively, "**Other Information**"), without restrictions on disclosure or use by or on behalf of, or for the benefit of, Toyota Party (including for the customers, dealers, distributors or affiliates of Toyota Party). Supplier shall not assert any claim with respect to any Other Information in connection with Supplier's performance of these Terms that Supplier has or may disclose to Toyota Party.

(e) **Mutually Developed Design or Proprietary Product.** If a design or other proprietary product is mutually developed between Supplier and Toyota Party (including any Global Affiliate of Toyota Party, to the extent applicable and as mutually agreed by the parties) (the "**Mutually Developed GS**"), the parties agree that control of the use of the Mutually Developed GS shall be governed by a joint agreement, to be mutually agreed upon by the parties (and, if applicable, any such Global Affiliate of Toyota Party) (the "**Joint Development Agreement**"). As to any Mutually Developed GS, the parties agree that the terms of such Joint Development Agreement shall be deemed to supersede this **Section 4.8**. The parties further agree that no commercial development of any Mutually Developed GS shall occur without first entering into a mutually acceptable Joint Development Agreement.

(f) **Work Made for Hire.** Any work of authorship created by Supplier (including by any Subcontractor) which is ordered or commissioned by Toyota Party, or is a necessary part of the performance of Supplier under these Terms ("**Commissioned Work**"), shall be considered a "work made for hire" and all copyrights for such work shall belong to Toyota Party. To the extent any Commissioned Work is not eligible to be treated as a "work made for hire," Supplier hereby assigns, and to the extent necessary agrees to assign, to Toyota Party all right, title and interest in the copyright(s) to such Commissioned Work, effective upon the creation of each such work of authorship or component thereof. Supplier shall execute and deliver all instruments of assignment to effect such assignment of record and hereby authorizes Toyota Party (or its designee) to execute and deliver any and all applications for registration of the subject copyrights in the Copyright Office of the United States. Toyota Party may determine in its sole discretion whether to file in any other jurisdictions. Supplier shall not register any copyrights in any jurisdiction, without the prior written consent of Toyota Party, which may be refused for

any or no reason (and Supplier shall not use same except to the extent to perform in accordance with these Terms and Contract Documents). To the extent that such an assignment cannot be effected, Supplier hereby grants to Toyota Party, to the maximum extent legally permissible, an exclusive, royalty-free, worldwide, perpetual license, with rights to grant sublicenses for such Commissioned Work to any other Toyota Party or to any Global Affiliate of Toyota Party (or respective designee), for any purpose, and in any and all media now or hereafter known, including all rights to use, maintain, modify, enhance, copy, distribute, make derivative works from, display, combine with others, or publicly perform such Commissioned Work, or as otherwise set forth in the Contract Documents. Supplier shall, at no additional cost to Toyota Party, furnish to Toyota Party, prior to or together with the delivery of any deliverables which are comprised in a Commissioned Work, valid and adequate (i) waivers in writing of any and all claims that Supplier may now have or hereafter may have in any jurisdiction to so-called “moral rights” or “droits morals,” including the right to attribution of authorship, the right to restrain any distortion, mutilation or other modification of such work, and the right to prohibit any use of such work in association with a product, service, cause or institution that might be prejudicial to such individual’s honor or reputation, that such individual, as author of any work of authorship, from any person whose copyrighted or copyrightable work is incorporated or used in the deliverables; and (ii) releases in writing necessary for the unrestricted use and reproduction of the deliverables, including model and property releases and consents relating to the deliverables, from any person or entity whose pictures, names, voices, likenesses or other identifiable characteristics are incorporated or used in the deliverables, in each case in form satisfactory to Toyota Party.

Federal law provides certain protections to individuals who disclose a trade secret to their attorney, a court, or a government official in certain, confidential circumstances. Specifically, federal law provides that an individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret under either of the following conditions: (A) where the disclosure is made (x) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (y) solely for the purpose of reporting or investigating a suspected violation of law; or (B) where the disclosure is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. See 18 U.S.C. § 1833(b)(1). Federal law also provides that an individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual (1) files any document containing the trade secret under seal; and (2) does not disclose the trade secret, except pursuant to court order. See 18 U.S.C. § 1833(b)(2). Nothing in these Terms or the Contract Documents is intended to limit any rights under such federal law.

(g) ***Inventions.*** With respect to inventions which Supplier conceives or first reduces to practice in the course of Supplier’s activities under Contract Documents (which Contract Documents were issued by Toyota Party with the intent of having Supplier conceive and develop such inventions), Supplier hereby grants to Toyota Party a royalty-free, nonexclusive, worldwide, perpetual license, with a right to sublicense to others (including any Global Affiliate of Toyota Party), to make, have made, use, or have used any such inventions (whether patented or not) in any manufacturing, performance, distribution or production (including any repair) processes, or as otherwise set forth in the Contract Documents.

(h) ***License of Intellectual Property; Section 365(n).*** All licenses granted under or pursuant to these Terms (including the Contract Documents) by Supplier to Toyota Party (if any) are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the United States Bankruptcy Code (the “**Bankruptcy Code**”), licenses to rights to “intellectual property” as defined under the Bankruptcy Code. The parties agree that Toyota Party, as licensee of such rights under these Terms, shall retain and may fully exercise all of its rights and elections under the Bankruptcy Code, or the applicable bankruptcy laws that may apply to Supplier, including Canada’s Bankruptcy and Insolvency Act and the Companies’ Creditors Arrangement Act. The parties further agree that, in the event of the commencement of a bankruptcy

proceeding by or against Supplier under the Bankruptcy Code, Toyota Party shall be entitled to retain all of the rights under these Terms.

4.9 *Term and Termination.*

(a) **Term.** Unless otherwise provided for in the applicable Contract Document, the term of such Contract Document shall be for the duration (as determined solely by Toyota Party) of the intended performance by Supplier with respect to the GS.

(b) **Termination by Toyota Party.** Toyota Party may, at its sole option, immediately terminate all or any part of a Contract Document, at any time and for any reason or no reason, by giving written notice to Supplier as provided for in these Terms.

(c) **Obligations of Supplier on Termination.** Upon receipt of a notice of termination, Supplier shall, unless otherwise directed by Toyota Party: (i) promptly terminate all work in progress under any Contract Documents; (ii) inform Toyota Party of the extent to which performance has been completed through such date; (iii) transfer to Toyota Party any raw materials, inventory and such other materials or Intellectual Property which Supplier produced, performed (including repaired), supplied, manufactured or acquired under these Terms or the Contract Documents; (iv) take all actions reasonably necessary to protect any Toyota Property and GS in the possession or control of Supplier (including by its Subcontractors) until it has received written instructions from Toyota Party regarding such property (including, if requested by Toyota Party, any assignment of contracts to Toyota Party (or its designees)); and (v) immediately return or, if approved by Toyota Party, certify destruction of all Confidential Information and Toyota Property in the manner approved by Toyota Party. The foregoing shall be in addition to any other requirements set forth in these Terms and the Contract Documents relating to the obligations of Supplier upon termination of any Contract Documents or part thereof.

(d) **Obligations of Toyota Party on Termination.**

(1) **Generally.** Upon termination by Toyota Party under this **Section 4.9**, Toyota Party shall pay to Supplier (i) the prevailing Toyota Price for all conforming GS provided to Toyota Party (or to other designated locations as approved by Toyota Party); (ii) the actual cost to Supplier for all work in process, raw materials fabricated or procured by Supplier, and finished goods inventory to the extent such costs and quantities are reasonable in amount and are proportional and properly allocated to the terminated portion of the Contract Documents; (iii) fees for Transportation Services properly performed prior to the date of such termination; and (iv) the actual cost incurred by Supplier in protecting any Toyota Property or GS in accordance with these Terms and the Contract Documents (collectively, a “**Termination Payment**”). Toyota Party shall make no payment to or for the benefit of Supplier for work in process, raw materials fabricated or procured by Supplier and finished goods inventory in amounts in excess of those authorized in Contract Documents or in amounts inconsistent with releases or the general course of dealing between the parties concerning the quantity of GS generally purchased by Toyota Party at the time of termination. Payment for fixed price GS shall be on a pro rata basis, based on the GS completed or otherwise in accordance with a schedule of payment to be included in the Contract Documents.

(2) **Calculation.** Supplier shall furnish its written claim for a Termination Payment to Toyota Party within thirty (30) days of the effective date of a termination, consisting exclusively of the costs outlined in this **Section 4.9(d)**. The Termination Payment paid to Supplier under this **Section 4.9(d)** shall not exceed the aggregate Toyota Price payable to Supplier for the quantity of conforming GS that would have been manufactured, produced, performed, acquired or supplied by Supplier under the Contract Documents outstanding at the date of termination of the Contract Documents. Subject to audit and review by Toyota Party, and verification of amounts in any claim for a Termination Payment, Toyota

Party shall pay the undisputed Termination Payment within sixty (60) days after the claim is received. In addition to Toyota Party's set-off rights set forth in **Section 3.5**, Toyota Party reserves the right to set off against any Termination Payment (i) any costs or other expenses related to any termination under this **Section 4.9**; (ii) any amounts otherwise owed by or on behalf of Supplier to Toyota Party; or (iii) for amounts owed for prior performance, acts or omissions of Supplier not in conformance with these Terms or any of the Contract Documents.

(3) **Limitations.** Unless otherwise set forth in the Contract Documents, Toyota Party shall not be liable for and shall not be required to make payment to Supplier of any amount for claims by Supplier arising out of or related to Subcontractor or other third party claims, labor or employee benefit charges, professional or other fees, loss of anticipated profit, overhead, interest, product development or engineering and design costs, equipment or facilities costs, general and administrative burden, or operating costs of any kind related to the termination of the Contract Documents.

(e) **Default.** Toyota Party shall have no obligation to Supplier under **Section 4.9(d)** if Toyota Party terminates the Contract Documents because of Supplier's Default as set forth in **Section 4.10**.

4.10 **Default; Remedies.**

(a) **Default.** The following events shall constitute a default (a "**Default**") under these Terms and the Contract Documents:

(1) If Supplier repudiates, breaches or threatens to breach any provision of these Terms or the Contract Documents, or fails to timely perform or deliver GS as specified by Toyota Party;

(2) If at any time a material adverse change in the business, operations or property and assets of Supplier occurs, the consequence of which is a substantial likelihood that performance under these Terms or the Contract Documents shall be imminently interrupted, all as determined by Toyota Party in its sole discretion;

(3) If at any time there is a material adverse change in the financial condition of Supplier, all as determined by Toyota Party in its sole discretion; or

(4) If Supplier fails to timely provide Toyota Party with adequate and reasonable assurance of Supplier's ability to perform timely any of Supplier's obligations under these Terms or the Contract Documents.

(b) **Remedies in Event of Default.** Upon the occurrence of a Default by Supplier, Toyota Party's remedies shall be cumulative, shall include the following, and shall be in addition to any and all remedies provided to Toyota Party at law or in equity:

(1) Canceling the Contract Documents, in whole or in part, which cancellation shall be effective immediately on the date of the notice of cancellation;

(2) Upon demand, Supplier shall grant Toyota Party and its representatives access to the premises of Supplier to allow Toyota Party to pursue its remedies, and if requested, immediately return Toyota Property pursuant to written instruction from Toyota Party regarding such Toyota Property, such return to be at Supplier's sole cost and expense;

(3) Purchasing any and all GS, work in process, raw materials and inventory from Supplier by making a Termination Payment to Supplier (provided that Supplier has complied with **Section 4.9(c)**) and setting off against any Termination Payment any Losses that Toyota Party may have under these Terms and the Contract Documents;

(4) Dealing directly with any applicable Subcontractor, including the following actions: (i) to assume the subcontract or to contract independently with the Subcontractor for completion or performance of the GS; and (ii) to make payments to Subcontractor and require that all amounts paid to Subcontractor be credited against any amounts still due and owing to Supplier, provided that Subcontractor completes or performs the GS and is paid in full for such work by Toyota Party. Supplier hereby agrees that the payments to Subcontractor shall fully satisfy and discharge any additional amounts due to Supplier, irrespective of the original agreed-upon price or the actual amount paid to Subcontractor, and if Subcontractor completes or performs the GS as a result of Supplier's Default and, in order to complete or perform the GS, Toyota Party is required to pay an amount in excess of the original agreed-upon price, Supplier shall reimburse Toyota Party for such differential in price;

(5) Pursuant to **Section 5.9**, bringing suit or otherwise seeking all rights and remedies to which it may be entitled, including all Losses, under law or equity, including the Uniform Commercial Code, the applicable Canadian provincial Sale of Goods Act or laws of Mexico, as a buyer of goods;

(6) Requiring Supplier to accept a Return or demanding that Supplier provide Toyota Party with Remedial Work or replacement GS in conformity with the Contract Documents; and

(7) Setting off against any amounts owed to Supplier and costs incurred in Toyota Party's exercise of its rights under these Terms and the Contract Documents prior to or as a result of Supplier's Default.

(c) **No Election.** The remedies reserved in these Terms shall be cumulative and additional to any other remedies elsewhere in these Terms or as provided by law or equity. Resort to any remedy by Toyota Party, as set forth in these Terms or otherwise, shall not be deemed an election of remedies or a waiver of any breach or remedies.

(d) **No Waiver.** No waiver of a breach of any provision of these Terms shall constitute a waiver of any other breach or of such provision in any other situation. Any failure by Toyota Party to insist on strict performance by Supplier of any term or condition contained in these Terms or any Contract Documents shall not be deemed a waiver of Toyota Party's rights under these Terms or such Contract Document, as applicable. No waiver shall be effective unless in writing, and executed by the party granting such waiver.

(e) **Taxes.** If Toyota Party receives from or on behalf of Supplier any payment in respect of a Default by Supplier where the payment is subject to GST/HST/PST levied under the applicable Manufacturing and Legal Requirements (such as the Excise Tax Act (Canada)) or is deemed by the applicable Manufacturing and Legal Requirements (such as Excise Tax Act (Canada)) to be inclusive of GST/HST/PST or is subject to any other tax (including the Mexican Value Added Tax Law), Supplier shall be liable for and shall pay to Toyota Party, in addition to the payment, an amount equal to the GST/HST/PST or other tax payable in connection with the payment and such additional amount including any interest and penalty imposed thereon. Any payment received by Toyota Party from Supplier shall be in an amount equal to the agreed amount in addition to any applicable taxes and duties that may be applicable to such payment.

5. MISCELLANEOUS.

5.1 **Order of Precedence.** Notwithstanding anything to the contrary in any other Contract Documents, if there is any conflict, inconsistency or incompatibility between or among the terms and conditions of any Contract Documents, the order of precedence, from the document that takes the highest precedence to the document which takes the lowest precedence, is as follows: (i) Specific Contract Documents; (ii) these Terms; then (iii) Generic Contract Documents.

5.2 **Governing Law; Choice of Forum.** Subject to and in accordance with the terms and conditions contained in **Section 6**, for all GS to be delivered or performed in the United States or Canada as designated by or on behalf of Toyota Party, and for all GS which originate other than in Mexico but which are delivered in Mexico as designated by or on behalf of Toyota Party, these Terms and the Contract Documents and the rights and obligations of the parties under these Terms and the Contract Documents shall not be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods (“**CISG**”) or the United Nations Convention on the Limitation in the International Sale of Goods (“**LISG**”), as amended; rather, this requirement and the rights and obligations of the parties under these Terms and the Contract Documents shall be governed by the laws of the State of Texas, U.S.A., including its provisions of the Uniform Commercial Code, codified in Title I of the Texas Business and Commerce Code, without regard to its conflict of laws rules or principles which might refer such construction to the laws of another jurisdiction. Subject to and in accordance with the terms and conditions contained in **Section 6**, for all GS as designated by or on behalf of Toyota Party, which: (i) originate in Mexico and which are delivered or performed in Mexico; or (ii) originated other than in Mexico but require some performance in Mexico (with respect to such performance by Supplier); the Contract Documents shall not be governed by the provisions of the CISG or LISG, as amended; rather, this requirement and these rights and obligations shall be governed by the laws of Mexico (and applicable Mexican state, provincial or local laws), without regard to its conflicts of laws rules and shall include the additional provisions set forth in **Section 6.7**.

5.3 **Assignment; Subcontracts.** Supplier may not assign its rights or obligations under these Terms or the Contract Documents, whether by operation of law or otherwise, without Toyota Party’s prior written consent (which consent may be withheld at its sole discretion). Any attempt to assign or delegate in violation of this **Section 5.3** is void in each instance. A Change of Control of Supplier shall be deemed an assignment by Supplier, whether control is acquired, directly or indirectly, in a single transaction or series of related transactions, or all or substantially all of the assets of Supplier are acquired, by any Person, or Supplier is merged with or into another Person. For purposes of this **Section 5.3**, (i) a “**Change of Control**” means (A) a consolidation or merger with or into any other Person; (B) a sale, transfer or other disposition of all or substantially all of the assets of any Person; or (C) an acquisition by any Person (or group of Persons acting in concert) of beneficial ownership of more than fifty percent (50%) (or such lesser percentage that constitutes power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities (or other ownership interest), by contract or otherwise) of the outstanding voting securities or other ownership interests of a Person; and (ii) a “**Person**” means any entity, corporation, company, association, joint venture, joint stock company, partnership, trust, organization, individual (including personal representatives, executors and heirs of a deceased individual), nation, state, governmental authority, trustee, receiver or liquidator. Notwithstanding anything to the contrary in these Terms, Toyota Party may assign these Terms, any Contract Document, or any of its rights and obligations under these Terms or any Contract Document, (i) to any other Toyota Party; or (ii) in connection with any merger, consolidation, reorganization, or sale or transfer of all or substantially all of its assets or equity interests or any other similar transaction. Unless otherwise set forth in these Terms or any Contract Document, Supplier may, as it deems necessary, engage Subcontractors in rendering GS, provided that such Subcontractors are subject to agreements that give effect to all of the rights and obligations of Supplier under these Terms and the Contract Documents, including all provisions of these

Terms relating to confidentiality and assignment of ownership of Intellectual Property rights, and provided, further, that Supplier must retain responsibility and liability for any and all acts and omissions of such Subcontractors. Upon request, Supplier must provide Toyota Party copies of the agreements with Subcontractors (which agreements must satisfy all of the requirements under these Terms). Toyota Party has the right to require Supplier to change any of Supplier's Subcontractors at any time upon at least thirty (30) days' notice; provided, however, that Supplier shall have at least fifteen (15) days to remedy any inadequacy Toyota Party perceives regarding an applicable Subcontractor.

5.4 **Notices.** Notices required under these Terms and the Contract Documents must be in writing and must be sent by one (1) of the following means: personal delivery, regular mail (postage pre-paid, certified and return receipt requested), a nationally recognized overnight courier service, or by facsimile transmission; provided, however, with respect to facsimile transmission, delivery is deemed to have occurred upon receipt of confirmation of successful facsimile transmission, and should a transmission be completed after regular business hours of the recipient of such transmission, such notice shall be deemed to have been received on the next day; and provided, further, however, to the extent a notice under these Terms or the Contract Documents is permitted or required to be delivered by e-mail communication, such notice is permitted for the limited purpose allowed, but, at a minimum, any notice of Default must be provided by written notice sent by personal delivery, regular mail (postage pre-paid, certified and return receipt requested), a nationally recognized overnight courier service, or facsimile transmission. Notices by Supplier shall be sent to Toyota Party to the address designated by Toyota Party on the Contract Documents with a concurrent copy to Toyota Motor North America, Inc., 6565 Headquarters Drive, Plano, Texas, 75024, Attention: General Counsel, and shall refer to such Contract Documents. Notices by Toyota Party shall be sent to Supplier to such address (and to the attention of such department or individual) as is maintained in Toyota Party's files concerning notices to Supplier. Either party may change its notice address by a notice given to the other in the manner provided for in this **Section 5.4**.

5.5 **Battle of the Forms Not Applicable.** The parties have agreed and it is their intent that the battle of the forms section of Uniform Commercial Code § 2-207 shall not apply to the Contract Documents or to any invoice or acceptance form of Supplier relating to the Contract Documents. The parties intend that these Terms and the Contract Documents shall exclusively control the relationship of the parties with respect to all GS being purchased, performed or procured pursuant to these Terms and the Contract Documents and in the event of any inconsistency between any invoice or acceptance form sent by Supplier to Toyota Party and these Terms and the Contract Documents, these Terms and the Contract Documents shall control.

5.6 **Entire Agreement; Amendments.** These Terms and the Contract Documents constitute the entire agreement between the parties, and supersede all prior and contemporaneous agreements, representations and understandings of the parties with respect to the delivery or performance of the GS by Supplier under these Terms and the Contract Documents. The captions and headings in these Terms are inserted only as a matter of convenience and for reference and in no way define the scope or content of these Terms or the construction of any provision hereof or of any document or instrument referred to herein. Except as set forth in **Sections 1.2, 1.4 and 1.5**, or as otherwise specifically set forth in the Contract Documents, these Terms may not be modified or extended except by a written agreement signed by an authorized representative of each party; provided, however, if either party elects to use an electronic signature system to complete the execution process by the parties to an agreement (including any modification, amendment or supplement thereto), each party hereto agrees that it shall not challenge or otherwise refute the legal effect, admissibility, validity or enforceability of that agreement or the execution thereof because the agreement (including any modification, amendment or supplement) (i) used electronic signature or electronic record in its formation; (ii) solely is retained, or was communicated, in electronic form; or (iii) does not satisfy the requirements of the business records exception of the hearsay rule or the best evidence rule for purposes of submission of copies thereof in any legal or other proceeding. Supplier

acknowledges that Toyota Party's methods of storing, maintaining and retrieving any electronic communication, including any electronic signatures associated with such electronic communication, maintains the integrity of the electronic communication such that the electronic communication may be subsequently accessed and retrieved while maintaining the integrity of the information contained therein. If, for any reason, the electronic communication stored in Toyota Party's data systems differs from Supplier's, Supplier acknowledges and agrees that Toyota Party's data systems maintain the integrity of the electronic communication, including any electronic signature associated with such electronic communication, such that the version stored on Toyota Party's data systems shall prevail over any inconsistency.

5.7 Survival. Sections 3.4, 3.5, 3.14, 3.15, 4.4, 4.5, 4.8, 4.9(c), 4.9(d), 5.2, 5.4, 5.8, 5.9, 5.10, this Section 5.7 and any other provision of these Terms or the Contract Documents which by its nature extends beyond the expiration, termination or cancellation shall remain in full force and effect until fulfilled or performed and shall inure to the benefit of and be binding upon Supplier and Toyota Party and their respective permitted successors and assigns.

5.8 Certain Matters of Construction.

(a) In the event of an ambiguity or question of intent or interpretation arises, these Terms (and any Contract Documents) shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument (or any portion thereof) to be drafted.

(b) Unless the context otherwise requires, references herein: (i) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (ii) to a Manufacturing and Legal Requirement means such Manufacturing and Legal Requirement as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder.

(c) Definitions shall be equally applicable to both the singular and plural forms of the terms defined, and references to the masculine, feminine or neuter gender shall include each other gender.

(d) Whenever the words "include," "includes" or "including" are used in these Terms (and any Contract Documents), they shall be deemed to be followed by the words "without limitation."

(e) Unless a specific provision herein specifically refers to a Business Day, any reference herein to "day" shall mean a calendar day. The term "**Business Day**" shall mean any day other than a Saturday, Sunday, any day on which banks in Dallas, Texas are permitted or required to be closed, or any day on which TMNA's headquarters in Plano, Texas is closed.

(f) To the extent that a jurisdictional provision set forth in **Section 6** conflicts with a provision contained in **Section 1, 2, 3, 4** or **5** of these Terms, such jurisdictional provision shall control over the references to Texas law contained in the applicable **Section 1, 2, 3, 4** or **5** of these Terms.

(g) Unless the context otherwise requires, whenever the word "or" is used in these Terms, it shall be deemed to be used in the inclusive sense.

5.9 Alternative Dispute Resolution. Any and all disputes, claims or causes of action arising out of or relating to these Terms or the GS (including any alleged violation of these Terms or any Contract Documents, any controversy relating to the interpretation or enforceability of this **Section 5.9**, the

arbitrability of any dispute, or any claim that these Terms (or any part thereof) is invalid, illegal or otherwise voidable (or void)) (collectively, “**Dispute**”) shall be resolved in accordance with the procedures specified in this **Section 5.9**, as follows, which shall be the sole and exclusive procedures for the resolution of any such Disputes:

(a) **Negotiation.** The parties shall attempt promptly and in good faith to resolve any Dispute arising out of or relating to these Terms by negotiation.

(b) **Mediation.** If any Dispute should arise between the parties which cannot be resolved through negotiation, the parties shall endeavor to settle the Dispute by mediation. Either party may request in writing that the other party mediate the Dispute; such notice shall set forth the subject of the Dispute and the relief requested (“**Dispute Notice**”). Unless the parties otherwise agree, the mediation shall be conducted by a mediator affiliated with and under the rules of: ADR Services, JAMS or the International Institute for Conflict Prevention and Resolution (formerly known as the CPR Institute for Dispute Resolution) (“**CPR**”). The selection of an organization by the parties shall be made within ten (10) Business Days after a party requests mediation of a Dispute pursuant to this provision. If an organization/judge and applicable rules have not been agreed upon within such ten-day period, then the Dispute shall be mediated in accordance with the CPR Mediation Procedure and a single mediator shall be chosen by CPR.

(c) **Arbitration.** If within ninety (90) days of the date of the Dispute Notice the Dispute is not resolved, either party may serve the other party with a written notice of binding arbitration. Unless the parties otherwise agree, the arbitration shall be conducted by and under the commercial arbitration rules of the same organization that conducted the mediation. The arbitration shall be conducted by a panel of three (3) arbitrators. The party initiating the arbitration shall designate its selected arbitrator in its notice of arbitration. The other party shall have ten (10) Business Days to designate its party-selected arbitrator. The arbitrators selected by the parties shall then agree upon a third arbitrator within fifteen (15) Business Days of the selection of the second arbitrator. If either party fails to appoint an arbitrator, or if the party-selected arbitrators cannot agree on the third arbitrator, then the dispute resolution service whose rules govern the arbitration shall appoint the arbitrator.

(d) **Damages.** The arbitrators are not empowered to award damages in excess of those permitted under these Terms or the applicable Contract Document and attorneys’ fees and legal costs and expenses.

(e) **Provisional Remedies; Legal Action.** Notwithstanding the provisions of this **Section 5.9**, a party may file a complaint limited to seeking provisional judicial relief pending the outcome of the mediation and/or arbitration provided by this **Section 5.9**. If any legal action or proceeding becomes necessary to seek provisional equitable relief, or to enforce the provisions of this **Section 5.9** or to enforce the award of the arbitration, such legal action or proceeding shall be brought exclusively either (i) in any state court of competent jurisdiction located in Collin County, Texas; (ii) in the United States District Court for the Northern District of Texas, Dallas Division; or (iii) in a jurisdiction outside of the U.S.A. mutually agreed upon in writing by the parties, and the parties expressly consent, and waive any objections, to subject matter jurisdiction, personal jurisdiction and venue in such courts. **THE PARTIES EXPRESSLY AGREE THAT, NOTWITHSTANDING THE DESIGNATION OF BOTH STATE AND FEDERAL COURTS FOR JURISDICTION AND VENUE, NEITHER PARTY IS WAIVING ITS RIGHT, AS PERMISSIBLE UNDER 28 U.S.C. SECTION 1441 (A)-(F), TO REMOVE MATTERS ORIGINALLY FILED IN STATE COURT TO FEDERAL COURT, AS SPECIFIED IN THIS SECTION 5.9(E). THE PARTIES FURTHER ACKNOWLEDGE AND AGREE THAT, SHOULD A MATTER BE FILED IN STATE COURT IN COLLIN COUNTY, TEXAS, AND SUCH MATTER IS PROPERLY REMOVABLE UNDER SECTION 1441, NO PARTY SHALL OBJECT TO THE REMOVAL AND TRANSFER OF THE MATTER PURSUANT TO 28 U.S.C. SECTION 1404 TO**

THE U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION. Furthermore, the parties expressly consent, and waive any objection, to being served with process of any such legal action or proceeding in accordance with the notice provisions of **Section 5.4**.

(f) **Governing Law.** The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. Section 1 et seq., to the exclusion of state laws inconsistent therewith and judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof.

(g) **Venue.** The place of arbitration shall be Dallas, Dallas County, Texas.

(h) **Confidentiality.** All negotiations and proceedings pursuant to this **Section 5.9** are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and any additional confidentiality protections provided by the Manufacturing and Legal Requirements.

5.10 SUPPLIER'S LIABILITY AND INDEMNITY OF TOYOTA PARTY.

(a) **ASSUMPTION OF RISKS.** SUPPLIER ASSUMES ALL RISKS OF INJURIES, DEATH, SICKNESS, OR DISEASE TO PERSONS, OR DAMAGE TO PROPERTY WHEREVER LOCATED, ARISING OR INCURRED IN CONNECTION WITH THE GS OR SUPPLIER'S PERFORMANCE UNDER THESE TERMS OR THE CONTRACT DOCUMENTS, INCLUDING THOSE ARISING OR INCURRED IN CONNECTION WITH THE NEGLIGENT PERFORMANCE, WILLFUL MISCONDUCT OR BREACH OF THESE TERMS OR THE CONTRACT DOCUMENTS BY SUPPLIER (INCLUDING ANY OF ITS SUBCONTRACTORS) OR THE DIRECTORS, OFFICERS, MEMBERS, MANAGERS, EMPLOYEES, AGENTS, OR REPRESENTATIVES OF ANY OF THE FOREGOING (EACH SUCH PARTY A "SUPPLIER PARTY" AND ALL SUCH PARTIES COLLECTIVELY REFERRED TO AS THE "SUPPLIER PARTIES").

(b) **INDEMNITY.** IN ADDITION TO SUPPLIER'S INDEMNIFICATION OBLIGATIONS OTHERWISE SET FORTH IN THESE TERMS, INCLUDING AS SET FORTH IN SECTION 3.13(E) AND SECTION 4.8(C), SUPPLIER SHALL DEFEND, REIMBURSE, INDEMNIFY AND HOLD EACH OF THE TOYOTA PARTIES, AND ITS RESPECTIVE OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES, CONTRACTORS, EMPLOYEES, CONSULTANTS, SUCCESSORS AND ASSIGNS (EACH, A "TOYOTA INDEMNIFIED PARTY" AND COLLECTIVELY, THE "TOYOTA INDEMNIFIED PARTIES") HARMLESS FROM AND AGAINST ANY AND ALL CONTRACTUAL AND NON-CONTRACTUAL LIABILITIES, LOSSES, CLAIMS, DEMANDS, CAUSES OF ACTION, DAMAGES, FINES, PENALTIES, INTEREST, DEFICIENCIES, AWARDS, AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, CONSULTANT FEES, LEGAL EXPENSES AND COSTS TO ENFORCE THESE TERMS OR THE CONTRACT DOCUMENTS, CIVIL CLAIMS, CRIMINAL CLAIMS, ADMINISTRATIVE CLAIMS, LABOR, SOCIAL SECURITY AND EMPLOYMENT CLAIMS, AND ALL CLAIMS FOR PERSONAL INJURY AND PROPERTY DAMAGE (BOTH TANGIBLE AND INTANGIBLE) (EACH A "LOSS" AND COLLECTIVELY "LOSSES"), BASED UPON, RELATING TO, ARISING FROM, OR WHICH ARE ALLEGED TO HAVE BEEN CAUSED BY SUPPLIER OR A SUPPLIER PARTY IN CONNECTION WITH, ANY OF THE FOLLOWING:

(1) THE GS PROVIDED OR PERFORMED BY SUPPLIER OR A SUPPLIER PARTY;

(2) PERFORMANCE OR NON-PERFORMANCE OF ANY OBLIGATION, INCLUDING ANY BREACH OR DEFAULT, UNDER THESE TERMS OR THE CONTRACT DOCUMENTS;

(3) USE OF THE TOYOTA PROPERTY;

(4) OCCUPANCY OF THE TOYOTA PREMISES;

(5) NON-COMPLIANCE WITH OR VIOLATION OF ANY MANUFACTURING AND LEGAL REQUIREMENTS IN THE COURSE OF CARRYING OUT ITS OBLIGATIONS UNDER THESE TERMS OR THE CONTRACT DOCUMENTS OR ANY CLAIM ARISING OUT OF ANY NONCOMPLIANCE WITH OR VIOLATION OF THE MANUFACTURING AND LEGAL REQUIREMENTS;

(6) DAMAGE TO PUBLIC UTILITIES, TRANSPORTATION PIPELINES OR UNDERGROUND LINES DURING PERFORMANCE OF THE SERVICES, INCLUDING CONSTRUCTION OR INSTALLATION ACTIVITIES;

(7) FAILURE TO REMIT OR PAY ANY FOREIGN, INTERNATIONAL, FEDERAL, STATE, PROVINCIAL, OR LOCAL SALES, USE, VALUE ADDED, EXCISE DUTY, OR ANY OTHER TAXES OR CONTRIBUTIONS OF ANY NATURE, AS AND WHEN DUE, OR FAILURE TO FILE ANY RETURN, FORM, OR INFORMATION THAT SUPPLIER OR ANY SUPPLIER PARTY MAY BE REQUIRED TO FILE WITH ANY GOVERNMENT AGENCY PURSUANT TO APPLICABLE MANUFACTURING AND LEGAL REQUIREMENTS, IN EACH CASE TO THE EXTENT SUCH FAILURE RESULTS IN TAXES, CONTRIBUTIONS, INTEREST, OR PENALTIES ASSESSED AGAINST A TOYOTA INDEMNIFIED PARTY;

(8) FOR SERVICES THAT CONSTITUTE TRANSPORTATION SERVICES, IN THE EVENT ANY FINE OR PENALTY IS LEVIED AGAINST TOYOTA PARTY, SUPPLIER OR ANY SUPPLIER PARTY OR ANY GS FOR VIOLATION OF ANY MANUFACTURING AND LEGAL REQUIREMENTS PERTAINING TO THE TRANSPORTATION OF CARGO, OR ANY COSTS PERTAINING TO RESPONSE, REMEDIATION OR CLEAN-UP INCURRED FOR ANY EVENT ASSOCIATED WITH THE TRANSPORTATION OF CARGO;

(9) FOR SERVICES THAT CONSTITUTE TRANSPORTATION SERVICES, ANY DAMAGE TO OR LOSS OF CARGO, REGARDLESS OF WHETHER SUCH DAMAGE OR LOSS IS CAUSED BY A FORCE MAJEURE EVENT; OR

(10) LABOR AND EMPLOYMENT CLAIMS OR ALLEGATIONS MADE BY ANY SUPPLIER PARTY, INCLUDING THOSE INVOLVING OR BASED ON (I) PAYMENT WHEN DUE OF WAGES AND BENEFITS; (II) WITHHOLDING OF ALL PAYROLL TAXES, INCLUDING UNEMPLOYMENT INSURANCE, WORKERS' COMPENSATION, THE FEDERAL INSURANCE CONTRIBUTIONS ACT (FICA) AND THE FEDERAL UNEMPLOYMENT TAX ACT (FUTA); (III) COMPLIANCE WITH THE U.S. IMMIGRATION REFORM CONTROL ACT; (IV) COMPLIANCE WITH ANY APPLICABLE MANUFACTURING AND LEGAL REQUIREMENTS RELATING TO EMPLOYMENT OR HIRING BY SUPPLIER OR ANY SUPPLIER PARTY IN CONNECTION WITH ANY GS; AND (V) CO-EMPLOYMENT OR JOINT EMPLOYMENT IN CONNECTION WITH ANY GS.

IT IS THE INTENT OF THE PARTIES THAT SUPPLIER SHALL REIMBURSE AND INDEMNIFY THE TOYOTA INDEMNIFIED PARTIES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE MANUFACTURING AND LEGAL REQUIREMENTS REGARDLESS OF WHETHER THE LOSS THAT IS THE SUBJECT OF THIS OBLIGATION IS CAUSED IN PART BY THE NEGLIGENCE, STRICT LIABILITY, OR OTHER ACT OR OMISSION OF ANY TOYOTA INDEMNIFIED PARTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS SECTION 5.10 COMPLIES WITH THE REQUIREMENTS, KNOWN AS THE EXPRESS NEGLIGENCE RULE, TO EXPRESSLY STATE IN A CONSPICUOUS MANNER TO AFFORD FAIR AND ADEQUATE NOTICE THAT THESE TERMS HAVE PROVISIONS REQUIRING ONE PARTY TO BE RESPONSIBLE FOR THE NEGLIGENCE OF ANOTHER PARTY.

(c) *Third Party Claims.*

(1) If a Toyota Indemnified Party becomes aware of any dispute, action or suit involving a third party (each, a “**Third Party Claim**”) with respect to which such Toyota Indemnified Party reasonably believes Supplier shall have an obligation pursuant to **Section 5.10(b)** to defend, reimburse, indemnify or hold such Toyota Indemnified Party harmless, then the Toyota Indemnified Party shall notify Supplier of the Third Party Claim; provided that any delay or failure to notify Supplier shall not relieve Supplier of its obligations under these Terms or the Contract Documents. Following delivery of the notice, Supplier shall notify the Toyota Indemnified Party as to whether Supplier elects to conduct and control the defense or resolution of the Third Party Claim; provided that such election by Supplier shall serve as an affirmation that Supplier accepts responsibility to defend, reimburse, indemnify and hold the Toyota Indemnified Party harmless from the Losses. Upon request Supplier shall provide evidence acceptable to the Toyota Indemnified Party that Supplier has adequate financial resources to fulfill its obligations under this **Section 5.10**.

(2) Unless and until Supplier delivers the foregoing notice that it elects to conduct and control the defense or resolution of the Third Party Claim, the Toyota Indemnified Party shall have the right to defend, contest, settle or compromise such Third Party Claim in the exercise of its sole discretion and such defense or settlement shall be subject to, and the Toyota Indemnified Party shall receive reimbursement and indemnification as set forth in, the provisions of this **Section 5.10(c)**. If Supplier provides the foregoing notice, then, subject to Toyota Indemnified Party’s right to assume sole control of the resolution or defense of the Third Party Claim as set forth in **Section 5.10(c)(4)** below, Supplier shall have the right to conduct and control, at its sole cost and expense and with counsel of its choice (which counsel must be reasonably satisfactory to the Toyota Indemnified Party), the defense or resolution of such Third Party Claim, and the Toyota Indemnified Party shall reasonably cooperate in connection therewith. If Supplier elects to assume the defense of a Third Party Claim, Supplier shall diligently conduct the defense and keep the Toyota Indemnified Party fully apprised of the status thereof. The Toyota Indemnified Party may participate in the defense of such Third Party Claim that is defended by Supplier with counsel of its choice, and the fees and expenses of the Toyota Indemnified Party’s counsel shall be paid or reimbursed by Supplier as set forth in the provisions of this **Section 5.10(c)**.

(3) Subject to **Section 5.10(c)(4)** below, Supplier shall not have any right or authority to compromise or settle such Third Party Claim without the Toyota Indemnified Party’s prior written consent unless (i) the compromise or settlement would not involve any finding or admission of any violation by the Toyota Indemnified Party of any Manufacturing and Legal Requirements or any rights of any person or entity, or admission of guilt, wrongdoing or culpability; (ii) the Toyota Indemnified Party receives a full and unconditional release of and from all claims that may be made against any of the Toyota Indemnified Parties by the third party asserting the Third Party Claim with respect to, related to, or arising

out of the asserted facts on which the Third Party Claim is based; and (iii) the sole relief provided is monetary damages that are paid in full by Supplier (and there is no imposition of any obligation on any of the Toyota Indemnified Parties, nor any limit on the ability of any of the Toyota Indemnified Parties to conduct its business). No Toyota Indemnified Party shall have any liability with respect to any compromise or settlement of such claims effected without its prior written consent.

(4) Notwithstanding the foregoing, the Toyota Indemnified Party may, by notice to Supplier, assume the exclusive right to defend, compromise, settle or resolve such Third Party Claim, at Supplier's sole cost and expense, if (i) the Toyota Indemnified Party determines in good faith that defense of the Third Party Claim by counsel selected by Supplier would be inappropriate for reasons of existing or potential conflict of interest or because the Toyota Indemnified Party has defenses available to it that are distinct from or in conflict with defenses available to Supplier or another Toyota Indemnified Party; (ii) the Toyota Indemnified Party determines that there is a reasonable possibility that the Third Party Claim may adversely impact it, including damage to reputation, brand or business prospects; or (iii) the Third Party Claim is asserted by or on behalf of a person or entity that is a, direct or indirect, supplier or customer of the Toyota Indemnified Party or seeks an injunction or other equitable relief.

(5) Supplier shall pay or reimburse the applicable Toyota Indemnified Party on a monthly basis for the costs of investigation and defense, including reasonable attorney's fees and other costs actually incurred. Any indemnification for Losses shall be made promptly upon request therefor by a Toyota Indemnified Party.

(d) **Direct Claims.** If a Toyota Indemnified Party has a claim for indemnification against Supplier that does not involve a claim instituted by or against a third party (a "**Direct Claim**"), the Toyota Indemnified Party shall deliver notice in writing of such Direct Claim (the "**Direct Claim Notice**") to Supplier describing the Direct Claim in reasonable detail. Supplier shall have a period of thirty (30) days within which to respond in writing to such Direct Claim. If Supplier does not so respond within such thirty (30) day period, Supplier shall be deemed to have accepted such Direct Claim, in which event the Toyota Indemnified Party shall be free to pursue such remedies as may be available to the Toyota Indemnified Party. If an objection is timely received by the Toyota Indemnified Party from Supplier, then Supplier and the Toyota Indemnified Party shall discuss such objection in good faith for a period of thirty (30) days from the date the Toyota Indemnified Party receives such objection (such period, or such longer period as agreed in writing by the parties, is referred to herein as the "**Discussion Period**"). If the Direct Claim that is the subject of the Direct Claim Notice has not been resolved prior to the expiration of the Discussion Period, Supplier and the Toyota Indemnified Party may submit the dispute for resolution in accordance with **Section 5.9** and each shall be free to pursue such remedies as may be available to them on the terms and subject to the provisions of these Terms.

(e) **Limitations not Applicable.** The obligations under this **Section 5.10** shall (i) be in addition to, separate from, and not limited by any insurance required under these Terms or any other defense and indemnification obligations under these Terms or the Contract Documents; and (ii) not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Supplier or a Supplier Party under any applicable Manufacturing and Legal Requirements, including labor and employment laws, workers' compensation acts, disability benefit acts, or other employee benefit acts.

5.11 **Severability.** If any provision of these Terms or the Contract Documents is held to be invalid, prohibited or unenforceable in any applicable jurisdiction, then as to such jurisdiction, and provided the essential terms of these Terms and the Contract Documents for Toyota Party remain valid, binding and enforceable, these Terms and the Contract Documents shall be ineffective only to the extent of such invalid, prohibited or unenforceable provisions without invalidating the remaining provisions of these Terms or the Contract Documents or affecting the validity or enforceability of such provisions in any other jurisdiction.

6. **PROVISIONS APPLICABLE TO CERTAIN JURISDICTIONS.** Supplier acknowledges that the following jurisdictional provisions are applicable when (i) the Construction or Installation Activities are to be performed in the designated state, province or country; (ii) any other aspect of the performance of the Services is required by the Manufacturing and Legal Requirements of any of the following states, provinces or countries to be controlled by the Manufacturing and Legal Requirements of such state, province or country; or (iii) as otherwise required pursuant to these Terms or the Contract Documents. To the extent the following provisions conflict with any other provisions of the Terms, the following provisions shall control (otherwise these terms supplement these Terms and the Contract Documents).

6.1 *Alabama.*

(a) **Supplier Compliance with Licensing Requirements.** Supplier shall comply with the requirements of Section 34-8-1 et seq., of the Code of Alabama (1975), including the following:

(1) Pursuant to Section 34-8-6(b) of the Code of Alabama (1975), every person, firm or corporation licensed pursuant to the Code of Alabama Title 34, Chapter 8 shall include his or her license number in all construction contracts, subcontracts, bids and proposals.

(2) Pursuant to Section 34-8-7(c)(5) of the Code of Alabama (1975), every Subcontractor shall be licensed with the Alabama Licensing Board for General Contractors prior to beginning work on the GS.

(b) **Subcontractor Compliance.** Supplier (including its Subcontractors) shall maintain all registrations and licenses required by the authorities having jurisdiction over the GS and shall, upon request, furnish Toyota Party with evidence of same.

(c) **Tax Abatement Requirements.** The following are the procedures for qualifying purchases of GS for sales tax abatements granted to Toyota Motor Manufacturing, Alabama, Inc. ("**TMMAL**") by The Industrial Development Board of the City of Huntsville. It is imperative that these procedures are followed and that all purchases of construction-related materials for the GS are tax exempt:

(1) Each Supplier (including any Subcontractor) purchasing tangible personal property for the GS must submit to the Alabama Department of Revenue (for purposes of this **Section 6.1(c)**, the "**Department**") an application for Sales and Use Tax Certificate of Exemption for an Industrial or Research Enterprise Project. The Department shall subsequently issue to the qualified applicant (herein referred to as the "**Certificate Holder**") a certificate of exemption (Form STE-2).

(2) A prime contractor applying for a Form STE-2 must submit with its application written confirmation from TMMAL that it is authorized to make purchases of tangible personal property to be incorporated into the GS specified on the application.

(3) A Supplier (including any Subcontractor) applying for a Form STE-2 must submit with its application written confirmation from TMMAL or the prime contractor that it is authorized to make purchases of tangible personal property to be incorporated into the GS specified on the application.

(4) Upon receipt of Form STE-2, the Certificate Holder must copy, complete and provide the certificate to each vendor as documentation for the tax exempt status of the Certificate Holder's qualifying purchases of tangible personal property. The following information should also be provided by the Certificate Holder on the certificate copy given to the vendor: (i) name and address of the vendor to whom the certificate copy is provided; (ii) date the certificate is provided; and (iii) Certificate Holder's signature and title.

(5) A Certificate Holder regularly making tax exempt purchases may furnish a properly executed certificate to the seller specifying that all tangible personal property subsequently purchased shall be for the purpose shown on the certificate and thus be relieved of the burden of executing a separate certificate for each individual tax-exempt purchase as long as the tangible personal property qualifies for the abatement.

(6) The Certificate Holder must maintain a list of all vendors to whom a copy of the certificate of exemption is furnished. The list must be maintained in the Certificate Holder's records for purposes of inspection by the Department and should contain the name, address and type of business of each vendor to whom the Certificate Holder provided a copy of the certificate.

(7) Certificate Holders are responsible for reporting and remitting non-abatable sales and use taxes due on all purchases for which they use the certificate to purchase tangible personal property without the payment of tax to the vendor or supplier.

(8) The Certificate Holder must notify the Department immediately upon any change in name or mailing address.

(9) The Certificate Holder must return the certificate to the Department after the GS have been placed in service.

(10) The certificate of exemption may only be used by the person or entity to which it is issued by the Department.

(11) Supplier (including each Subcontractor) must obtain a certificate of exemption before making purchases for the GS and must use the certificate in accordance with the procedures outlined above in order to ensure that all purchases of property qualify for the abatement of taxes.

(d) Supplier acknowledges and agrees that for purposes of these Terms and the Contract Documents, it is providing materials that may be included in automobiles which shall be sold in interstate commerce.

6.2 *Arizona.*

(a) ***Compliance with Lien Waiver Requirements.*** Supplier (including its Subcontractors) shall comply in all respects with the lien waiver requirements set forth in Arizona Revised Statutes (A.R.S.) § 33-981 et seq.

(b) ***Defense of Action on Claim of Lien.*** Supplier shall comply in all respects with requirements set forth in A.R.S. § 33-995:

(1) When a Lien is recorded or notice given by any person other than Supplier (in its capacity as a contractor), Supplier shall defend any action brought thereon.

(2) During pendency of such action Toyota Party may withhold the amount sued for, and if judgment is given upon the Lien, Toyota Party may deduct from any amount due or to become due from Toyota Party to Supplier the amount of the judgment and costs.

(3) If Toyota Party has settled with Supplier in full, or if such an amount is not owing to Supplier, Toyota Party may recover back from Supplier the amount so paid by Toyota Party, and for which Supplier was the party originally liable.

(4) Any Subcontractor or other person who is obligated by statute, contract or agreement to defend, remove, compromise or pay any claim of Lien or action and who undertakes such activity has the rights of Toyota Party and beneficial title holder against all persons concerning such activity, as specified in A.R.S. §§ 33-420 and 33-994.

6.3 ***British Columbia, Canada.***

(a) ***Supplier Liability to Pay Taxes.*** Supplier shall comply in a timely manner with the requirements imposed on Supplier by all applicable taxing statutes, including requirements in respect of registration, payment, collection and remittance of taxes and provision to the applicable taxing authority of such deposits, guarantees or other forms of securities as may be required by law or the administration thereof, including payment of the GST/HST imposed pursuant to the Excise Tax Act (Canada), PST imposed pursuant to the Provincial Sales Tax Act (B.C.) and any other tax or duty imposed on the Importer of Record, and shall, upon request, provide Toyota Party with written proof of such compliance. Supplier shall indemnify and reimburse Toyota Party (and any other Toyota Indemnified Parties) for any amounts assessed against Toyota Party (or any other Toyota Indemnified Party) arising from Supplier's failure to so comply.

(b) ***GST/PST.*** Where required by law, there shall be added to each amount to be paid by Toyota Party to Supplier under these Terms or the Contract Documents all applicable GST and PST. Supplier shall provide to Toyota Party such documentation as is required (i) by the Excise Tax Act (Canada) and prescribed by the Input Tax Credit Information (GST/HST) Regulations, including any successor or similar provision thereto; (ii) under the Provincial Sales Tax Act (B.C.) and its regulations; and (iii) in order for Toyota Party to claim an input tax credit, rebate or refund in respect of such tax. Supplier shall cooperate with Toyota Party to file such forms, provide such documents and do all things reasonably necessary at Toyota Party's request to enable Toyota Party to claim any exemption, credit, rebate, remission, refund, reduction or other relief from taxes, customs duty or duties under any applicable legislation or treaty or claim a foreign tax credit.

(c) ***Indemnity Payment.*** If an indemnity or reimbursement payment made by Supplier to Toyota Party (or any other Toyota Indemnified Party) is subject to GST or is deemed by the Excise Tax Act (Canada) to be inclusive of GST, or is subject to any other tax, Supplier shall be liable for and shall pay to Toyota Party (and any other Toyota Indemnified Party), in addition to the indemnity or reimbursement payment, an amount equal to the GST or other tax payable in connection with the indemnity or reimbursement payment and such additional amount, including any interest and penalty imposed thereon.

(d) ***Non-Resident Supplier.*** For Canadian projects, unless Supplier provides Toyota Party with appropriate documentation or certificates to the satisfaction of Toyota Party, Toyota Party shall deduct or withhold from each payment to Supplier all taxes or other withholdings which Toyota Party is required by law or by the administration thereof to deduct or withhold, shall pay the amount withheld or deducted to the relevant governmental authority in accordance with applicable Manufacturing and Legal Requirements, and provide to Supplier a copy of the receipt of payment issued by that authority.

(e) ***Waiver of Moral Rights.*** In relation to any works of authorship which are to be owned by Toyota Party, Supplier shall, in writing (and in a form satisfactory to Toyota Party acting reasonably), expressly and irrevocably confirm that Supplier has obtained from each and every individual working for or on behalf of Supplier a waiver of any and all moral rights arising under the Copyright Act

(Canada) as amended (or any successor legislation) or at common law that such individual, as author of the deliverable or software, as the case may be, has with respect to any copyrighted or copyrightable portion thereof prepared by such individual including the right to attribution of authorship, the right to restrain any distortion, mutilation or other modification of the deliverable or software, and the right to prohibit any use thereof in association with a product, service, cause or institution that might be prejudicial to such individual's honor or reputation.

(f) ***Builders Lien Act (British Columbia)***. In the performance of its obligations under these Terms and the Contract Documents, Supplier shall comply with the provisions of the Builders Lien Act (British Columbia) or any successor legislation, as amended from time to time. Without limiting the generality of the foregoing, in making an application for partial or final payment, Supplier shall be required to submit to Toyota Party a sworn statement, in a form satisfactory to Toyota Party, that all accounts for labor, Subcontractors, products, materials and other indebtedness which may have been incurred by Supplier in the performance of its obligations under these Terms and the Contract Documents and for which Toyota Party may in any way be held responsible have been paid in full. In addition, Supplier shall use its best efforts to ensure that no claim of lien, certificate of pending litigation or lien shall be filed in respect of any work performed or products or material supplied by or on behalf of Supplier (collectively, the "**Work**"). If a claim of lien, certificate of pending litigation or lien shall be filed in respect of the Work, Supplier shall promptly take all necessary steps to have the claim of lien, certificate of pending litigation or lien cancelled and discharged from title to the place of Work within fifteen (15) days of the date of filing of the claim of lien, certificate of pending litigation or lien, and Supplier shall indemnify, reimburse and hold Toyota Party (and all other Toyota Indemnified Parties) harmless from any and all Losses (including losses, costs, expenses, damages, liabilities, claims, demands, actions, suits, remedies or proceedings (including actual legal expenses)) whatsoever arising out of or in connection with such claim of lien, certificate of pending litigation or lien. Toyota Party in addition to any other right or remedy, shall have the right, but shall not be obliged, to discharge any claim of lien, certificate of pending litigation or lien from title to the place of Work by paying the amount claimed to be due or by procuring a discharge of such claim of lien, certificate of pending litigation or lien by deposit of holdback monies or other security in the appropriate court, and in any such event Toyota Party shall be entitled, if it so acts, to expedite the prosecution of any action for the enforcement of such claim of lien, certificate of pending litigation or lien by the lien claimant and to pay the amount of the judgment, if any, in favor of the lien claimant with interest and costs. In any such event, Supplier shall forthwith pay to and reimburse Toyota Party for all money expended by Toyota Party and all costs and expenses incurred by Toyota Party. Notwithstanding the foregoing, if Toyota Party becomes aware that a claim of lien, certificate of pending litigation or lien is threatened against title to the place of Work, Toyota Party may withhold out of any monies payable to Supplier such amounts as Toyota Party reasonably considers necessary in order to secure the discharge of the claim of lien, certificate of pending litigation or lien should any of the foregoing be filed.

(g) ***Compliance with Applicable Immigration Laws and Policies***. Supplier acknowledges and agrees that it shall be responsible for complying with the Immigration and Refugee Protection Act of Canada with respect to its employees and its Subcontractors. If Toyota Party becomes aware of any information, which, based upon a reasonable interpretation of such events or information, supports the conclusion that Supplier may be out of compliance with applicable immigration laws, Supplier shall, at the option of Toyota Party: (i) provide written certification that Supplier is in compliance with all applicable immigration laws; or (ii) upon prior notice, allow for an independent auditor, selected and paid for by Toyota Party, to conduct a full review or audit of records relating to the Immigration and Refugee Protection Act of Canada. If the audit discloses one (1) or more failures of Supplier's compliance with the Immigration and Refugee Protection Act of Canada, Supplier shall assume responsibility for all cost associated with the audit. Furthermore, such disclosure, or Supplier's failure to otherwise adhere to the terms of this provision may, at Toyota Party's sole discretion, be deemed a material breach and be grounds for immediate termination of the Contract Documents. Supplier shall indemnify, reimburse and hold

Toyota Party (and all other Toyota Indemnified Parties) harmless from and against any and all Losses (including claims, demands and actions and any liabilities, damages or expenses resulting therefrom, including court costs and reasonable legal fees) arising out of or relating to noncompliance with this provision by Supplier (including by any of its Subcontractors).

(h) **Employee Relations Training.** All of Supplier's employees and Subcontractors assigned to provide services pursuant to the Contract Documents shall have been trained and be provided on-going training in employee relations, equal opportunity and other employment laws, including the British Columbia Human Rights Code and any corresponding or similar laws.

(i) **Indemnity.** The indemnity and reimbursement obligations set forth in **Section 5.10(b)(10)** include, but are not limited to, any violation or alleged violation of British Columbia's Employment Act, 1996, as the same may be amended.

6.4 **California.**

(a) **INDEMNIFICATION BY SUPPLIER.** IN ANY AND ALL INSTANCES UNDER THESE TERMS OR THE CONTRACT DOCUMENTS WHERE SUPPLIER IS REQUIRED TO INDEMNIFY, REIMBURSE OR HOLD TOYOTA PARTY OR OTHER INDEMNITEES (INCLUDING TOYOTA INDEMNIFIED PARTIES) HARMLESS, SUCH OBLIGATION OF SUPPLIER SHALL APPLY REGARDLESS OF WHETHER OR NOT THE LOSSES (INCLUDING CLAIMS, DAMAGES, LOSSES, LIABILITIES OR EXPENSES) THAT ARE THE SUBJECT OF SUCH OBLIGATION ARE CAUSED IN PART BY THE NEGLIGENCE OR OTHER ACT OR OMISSION OF TOYOTA PARTY OR ANY OTHER PARTY INDEMNIFIED, REIMBURSED OR HELD HARMLESS BY SUPPLIER.

(b) **Environmental Activity and Requirements.** Section 3.12(a) of these Terms is hereby modified to add the following laws to the definition of Environmental Requirements: "Sections 117690, 25115, 25117, 25122.7, 25140, 25249.8(a), 25281, 25316, 25501, 25501.1, 114960 et seq. 39655 or 44321 of the California Health and Safety Code, portions of Chapter 11 of Title 22 of the California Code of Regulations which list or define "Hazardous Waste," "Extremely Hazardous Waste" or "Acutely Hazardous Waste," and the California Occupational Safety and Health Act, California Labor Code §§ 6300 et seq."

(c) **Retainage.** Toyota Party may withhold any retention amount set forth in the Contract Documents for up to forty-five (45) days after the date of completion as such term is defined in Section 3260 of the California Civil Code; provided that Toyota Party may continue to withhold 150% of any disputed amount until the dispute is resolved. Toyota Party and Supplier agree that the retainage shall be subject to all other provisions of Section 3260 of the California Civil Code.

(d) **Lien Waivers.** Section 2.2(c)(12)(i) of these Terms is hereby modified to require that the forms of waiver of mechanic's lien identified therein shall be substantially consistent with the applicable forms set forth in Section 3262(d)(1)-(4) of the California Civil Code.

(e) **Confidential Information.** The obligation of Supplier and each of its directors, officers, employees, and Subcontractors to maintain the secrecy of the trade secrets that constitute Confidential Information shall survive for so long as such trade secret remain protectable under California law.

(f) **1542 Waiver.** With respect to Supplier's waivers pursuant to **Section 2.2(c)(12)** of these Terms, Supplier hereby expressly waives and relinquishes all rights and benefits pursuant to Section 1542 of the California Civil Code, and does so understanding and acknowledging the significance

and consequence of such specific waiver of Section 1542 that reads: “Section 1542. [CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE.] A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

(g) **Equal Opportunity.** The following shall be applicable to these Terms. “Supplier shall have a policy to ensure equal opportunity without regard to race, color, national origin, sex, religion, handicap, marital status, gender, ancestry, medical condition, sexual orientation or status as a disabled or Vietnam veteran, and shall cause its Subcontractors to have a substantially similar policy.”

6.5 **Indiana.**

(a) **Tax Abatement Requirements.** Supplier shall comply with all state and local requirements necessary to ensure any qualifying purchases are exempt from sales tax under any tax abatement programs granted by state or local governmental entities.

(b) **Liens.** Supplier shall indemnify, reimburse and hold Toyota Party (and all other Toyota Indemnified Parties) harmless from all Losses (including liabilities, costs and expenses, including all attorney’s fees) to: (i) discharge (by bond or otherwise) or to defend any lawsuit brought to enforce any mechanic’s or materialmen’s lien, rights or claims to a lien, bond claims, personal liability notices pursuant to Indiana Code § 32-28-3-9, or any other claim for payment relating to labor or materials covered by the payment and all prior payments; or (ii) satisfy any claims or demands arising out of, due or which may be made, directly or indirectly attributable to Supplier or any work performed or supplies furnished by or through Supplier.

(c) **Governing Law.** The Governing Law; Choice of Forum provision contained in **Section 5.2** of the Terms shall control except with respect to the rights and obligations of the parties that relate to and arise from a contract for the improvement of real estate located in the State of Indiana. If the rights and obligations of the parties under these Terms or the Contract Documents relate to and arise from a contract for the improvement of real estate located in the State of Indiana, then (i) the rights and obligations of the parties shall be governed by the laws of the State of Indiana; and (ii) any action or proceeding relating to the rights and obligations of the parties shall be brought in any court with jurisdiction located in the State of Indiana.

6.6 **Kentucky.**

(a) **Waiver of Escrow Account for Retainage.** Supplier expressly waives the application of KRS § 371.160 to any retainage withheld by Toyota Party under the Contract Documents.

(b) **Retainage.** Until the Construction or Installation Activities are fifty percent (50%) complete, Toyota Party can retain up to ten percent (10%) of any undisputed payment in accordance with the terms and conditions set forth in KRS § 371.410. After fifty-one percent (51%) of the Construction or Installation Activities are completed, the maximum retainage is five percent (5%) of the Toyota Price in accordance with the terms and conditions set forth in KRS § 371.410. Within thirty (30) days after substantial completion of the Construction or Installation Activities, Toyota Party shall release the retainage amount less an amount equal to two hundred percent (200%) of Toyota Party’s reasonably estimated cost of the uncompleted Construction or Installation Activities under the Contract Documents, in accordance with the terms and conditions of KRS § 371.410.

(c) **Delays Within the Control of Toyota Party.** Notwithstanding anything to the contrary contained in **Section 3.9**, Supplier may be permitted to recover certain costs, additional time or damages, for delays performing the Construction or Installation Activities that are, in whole or part, within the direct control of Toyota Party, pursuant to the terms and conditions set forth in KRS § 371.405(2)(c).

(d) **Prompt Payment.**

(1) **Payments to Supplier.** The payments to Supplier by Toyota Party under the Contract Documents shall be made in accordance with the terms and conditions of these Terms and as set forth in KRS § 371.405(5) and (6), as applicable.

(2) **Payments to Subcontractors.** Supplier (including its Subcontractors) shall comply with the terms and conditions of these Terms and as set forth in KRS § 371.405(8), (9) and (10), as applicable, when making payments to their respective Subcontractors.

(e) **Equal Opportunity.** The following shall be applicable to these Terms. “Supplier shall have a policy to ensure equal opportunity without regard to race, color, national origin, sex, religion, handicap, or status as a disabled or Vietnam veteran, age (40 or older), or because the individual is a smoker or nonsmoker, as long as the person complies with any workplace policy concerning smoking.”

(f) **Wage and Hour.** The following sentence shall be added to **Section 3.12(a)** of these Terms: “Supplier (including all Subcontractors performing the Services on the Toyota Premises, or providing materials or equipment to be used in the performance of the Contract Documents) shall comply with the terms and conditions set forth in KRS § 337.050, and shall be held responsible for compliance, and shall indemnify and reimburse Toyota Party (and any other Toyota Indemnified Parties) for any noncompliance.”

(g) **Occupational Safety and Health Standards.** The following sentence shall be added to the end of **Section 3.12(a)** of these Terms: “Supplier further agrees that all GS provided under these Terms and the Contract Documents shall be provided in compliance with KRS Chapter 338, including all regulations adopted pursuant thereto in effect at the time of delivery or performance of the GS.”

6.7 **Mexico.** Supplier acknowledges and agrees that Mexican law shall govern these Terms pursuant to the terms and conditions set forth in **Sections 5.2** and **6** of these Terms and as otherwise set forth in the Contract Documents. Additionally, the following terms and conditions shall apply as set forth below:

(a) **Arbitration.** All disputes arising out of or in connection with these Terms or the Contract Documents shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (the “**Rules**”) by one (1) or more arbitrators appointed in accordance with the Rules and the arbitrators shall have ultimate authority to resolve all matters in the arbitration, including disputes over the enforceability of this arbitration provision or claims of unconscionability. The arbitration, including the rendering of the arbitral award, shall take place in Mexico City, Mexico and the arbitration shall be conducted in English. The prevailing party shall be entitled to an award of attorney’s fees.

(b) **Payment Terms by Toyota Parties located in Mexico.** Notwithstanding anything contrary contained in these Terms or the Contract Documents, all payments for or on behalf of Toyota Motor Manufacturing de Baja California, S. de R.L. de C.V., Toyota Motor Manufacturing de Guanajuato S.A. de C.V., TMMGT Servicios, S.A. de C.V. or any other Mexican Toyota Party (each, a “**Mexican Toyota Party**”) shall be deemed at all times being made by each applicable Mexican Toyota Party

regardless of the origination of funds or another Toyota Party acting as purchasing agent on behalf of the Mexican Toyota Party.

(c) ***Additional or Specific Representations and Warranties of Mexican Resident Supplier.*** The following are special representations and warranties that are made: (i) by any Supplier who is duly organized and in operation pursuant to the laws of Mexico; and (ii) by any other Supplier who is qualified to do business in Mexico and whose performance under any of the Contract Documents shall be performed in Mexico. These representations and warranties shall be continuing and shall be updated in writing by Supplier from time to time as needed to remain accurate and in full force and effect, or as requested by Toyota Party.

(1) Supplier is a Mexican company, duly organized and in operation pursuant to the laws of Mexico, as set forth in a duly recorded public instrument which has been duly registered with the appropriate Public Registry of Property and Commerce (the “**Public Instrument**”). An authenticated copy of the Public Instrument has been furnished to Toyota Party, as recorded. Supplier has granted ample powers and authority to enter into the Contract Documents, powers that have not been amended, restricted or revoked as of the effective date of the Contract Documents, as set forth in the Public Instrument.

(2) The acceptance by performance (or otherwise) of the Contract Documents by Supplier is within Supplier’s corporate purpose.

(3) Supplier shall take all necessary steps to maintain sufficient economic resources and capital to comply with all of its labor obligations with its employees, including fringe benefits and any other applicable legal benefits (“**Employee Obligations**”). Supplier shall also take the necessary steps in order to be certain that any Subcontractor that performs with or on behalf of Supplier under these Terms or the Contract Documents also complies with all of its Employee Obligations.

(d) ***Additional or Specific Representations and Warranties of non-Mexican Resident Suppliers.*** The terms and conditions set forth below shall apply to all GS acquired, supplied, manufactured, performed, purchased, shipped, transported, or otherwise provided from a non-Mexican resident Supplier by or on behalf of the Mexican Toyota Party:

(1) The transfer of ownership of, and title to, Goods shipped to Mexican Toyota Party shall be perfected by Supplier prior to the entry of the Goods into Mexico, as defined by the Mexican Federal Tax Code and Mexican Customs Laws. The agreed upon Incoterms shall be deemed applicable only in connection with the “risk of loss” of the Goods and general terms of the sale; provided that the transfer of ownership of, and title to, such Goods shall be perfected prior to the entry of the Goods into Mexico in accordance with this **Section 6.7(d)**, regardless of the content and characteristics of the applicable Incoterms.

(2) **Section 2.1(b)** of these Terms is hereby modified to require that each Mexican Toyota Party shall be the Importer of Record for all Goods or other cargo of a Toyota Party which originate in a country other than Mexico and are delivered or performed in Mexico for or on behalf of such Mexican Toyota Party.

(3) **Section 4.6(b)** of these Terms is hereby modified to require that each Mexican Toyota Party and Supplier shall be directly liable for the applicable taxes, duties and governmental fees payable under the applicable Mexican legal statute, and in each case the prices agreed to by the parties shall be deemed to include the total amounts payable by Mexican Toyota Party to Supplier. Supplier shall be responsible for determining the specific requirements, taxes, duties and governmental fees applicable to each shipment of Goods to Mexican Toyota Party into Mexico.

(4) Prior to shipping any Goods into Mexico, Supplier shall provide all documents required for such shipment, including any bill of lading, invoice, title of transfer of ownership or similar documents, certificates of origin applicable under any free trade agreement entered into between Mexico and Supplier's jurisdiction, cost lists as requested by Mexican Toyota Party, and any other documents necessary for the shipment of goods into Mexico.

(5) Supplier shall be responsible for correctly determining the origin of the Goods shipped to Mexican Toyota Party into Mexico, and Supplier shall be responsible for paying any assessment imposed by a Mexican authority in the event any such determination of origin by Supplier is deemed incorrect.

(6) Any amounts paid by Supplier to Mexican Toyota Party under these Terms or any Contract Document shall be inclusive of the applicable taxes and duties that may be payable by Mexican Toyota Party in Mexico.

6.8 *Michigan.*

(a) ***Compliance with the Construction Lien Act.*** Supplier shall comply and shall cause all of its Subcontractors to comply in all respects with the Michigan Construction Lien Act, MCL 570.1101 et seq. (the "**Act**") when performing Construction or Installation Activities on the Toyota Premises. Supplier's failure to comply with the Act shall result in Toyota Party having the right to make payments of any claims directly to any Subcontractor. Supplier shall comply with the foregoing and include a provision in each of its subcontracts incorporating this provision and requiring compliance with the Act, which apply to the Subcontractor.

(b) ***Michigan Builders Trust Fund Act.*** Supplier shall receive each payment from Toyota Party to be held in trust in accordance with the terms and conditions of the Michigan Builders Trust Fund Act, MCL 570.151 et seq. (the "**Trust Fund Act**") and make all disbursements to Subcontractors as required to comply with the Trust Fund Act. Upon Supplier's failure to comply with the Trust Fund Act, Toyota Party shall have the right to make payments of any claims directly to any Subcontractor.

(c) ***Bond.*** If a construction lien is filed or is attempted to be filed in connection with the Construction or Installation Activities or on any Toyota Premises, Supplier shall, at the option and election of Toyota Party, furnish a bond to remove the construction lien from the Toyota Premises in accordance with the requirements of MCL 570.1116 within fifteen (15) days of Toyota Party's written request. Supplier shall pay all costs and expenses to bond off the construction lien in accordance with such statute.

(d) ***Indemnification by Supplier.*** In any and all instances under these Terms or the Contract Documents where Supplier is required to indemnify, defend, reimburse or hold Toyota Party (or any other Toyota Indemnified Parties) harmless, such obligation by Supplier shall apply regardless of whether or not the Losses (including any claim, damage, loss, liability or expense) that is the subject of such obligation is caused in part by the negligence or other act or omission of Toyota Party or any other party indemnified, reimbursed or held harmless by Supplier, but shall not extend to Losses incurred by that particular Toyota Indemnified Party which are caused by the sole negligence of such Toyota Indemnified Party otherwise entitled to indemnity, reimbursement or defense.

6.9 **Mississippi.**

(a) **Supplier Licensing Requirements.** Supplier shall comply with the requirements of Miss. Code Ann. § 31-3-1, et seq., if and to the extent that such statutory provisions are applicable to Supplier's performance of the Construction or Installation Activities.

(b) **Subcontractor Compliance.** Supplier shall ensure that all of its Subcontractors secure and maintain all registrations and licenses required by the authorities having jurisdiction over the Construction or Installation Activities, including a current certificate of responsibility issued by the Mississippi State Board of Contractors to the extent required for the particular Subcontractor.

(c) **Stop Payment Notices.** In the event Supplier receives a Stop Payment Notice pursuant to Miss. Code Ann. § 85-7-181, Supplier shall take any and all necessary steps to secure the release of the Stop Payment Notice within five (5) days. In the event Supplier fails to do so, Toyota Party may take whatever action it deems necessary or appropriate to secure the release of the Stop Payment Notice, including payment of the amount claimed to be due. Toyota Party shall be entitled to deduct from the amounts due to Supplier under the Contract Documents any and all costs and expense incurred in securing the release of the Stop Payment Notice, including the amount paid to secure such release and attorney's fees and expenses incurred in the process.

(d) **Payment to Subcontractors.** Supplier shall comply with Miss. Code Ann. § 87-7-5 in making payments to its Subcontractors with respect to the Construction or Installation Activities.

(e) **Indemnification by Supplier.** In any and all instances under these Terms or the Contract Documents where Supplier is required to indemnify, reimburse or hold Toyota Party or other indemnitees (including other Toyota Indemnified Parties) harmless, Supplier shall have no obligation to indemnify, reimburse or hold any such Toyota Indemnified Party harmless from such Toyota Indemnified Party's own negligence to the extent that Miss. Code Ann. § 31-5-41 is applicable and would render such an obligation void and unenforceable.

6.10 **Ontario, Canada.**

(a) **Supplier Liability to Pay Taxes.** Supplier shall comply in a timely manner with the requirements imposed on Supplier by all applicable taxing statutes, including requirements in respect of registration, payment, collection and remittance of taxes and provision to the applicable taxing authority of such deposits, guarantees or other forms of securities as may be required by law or the administration thereof, including payment of the GST/HST imposed pursuant to the Excise Tax Act (Canada) and any other tax or duty imposed on the Importer of Record, and shall, upon request, provide Toyota Party with written proof of such compliance. Supplier shall indemnify and reimburse Toyota Party (and any other Toyota Indemnified Parties) for any amounts assessed against Toyota Party (or any other Toyota Indemnified Party) arising from Supplier's failure to so comply.

(b) **GST/HST.** Where required by law, there shall be added to each amount to be paid by Toyota Party to Supplier under these Terms or the Contract Documents all applicable GST/HST or any similar tax. Supplier shall provide to Toyota Party such documentation as is required by the Excise Tax Act (Canada) and prescribed by the Input Tax Credit Information (GST/HST) Regulations, any successor or similar provision thereto and as is required in order for Toyota Party to claim an input tax credit, rebate or refund in respect of such tax. Supplier shall cooperate with Toyota Party to file such forms, provide such documents and do all things reasonably necessary at Toyota Party's request to enable Toyota Party to claim any exemption, credit, rebate, remission, refund, reduction or other relief from taxes, customs duty or duties under any applicable legislation or treaty or claim a foreign tax credit.

(c) **Indemnity Payment.** If an indemnity or reimbursement payment made by Supplier to Toyota Party (or any other Toyota Indemnified Party) is subject to GST/HST or is deemed by the Excise Tax Act (Canada) to be inclusive of GST/HST, or is subject to any other tax, Supplier shall be liable and shall pay to Toyota Party (and any other Toyota Indemnified Party), in addition to the indemnity or reimbursement payment, an amount equal to the GST/HST or other tax payable in connection with the indemnity or reimbursement payment and such additional amount, including any interest and penalty imposed thereon.

(d) **Non-Resident Supplier.** For Canadian projects, unless Supplier provides Toyota Party with appropriate documentation or certificates to the satisfaction of Toyota Party, Toyota Party shall deduct or withhold from each payment to Supplier all taxes and other withholdings which Toyota Party is required by law or by the administration thereof to deduct or withhold, shall pay the amount withheld or deducted to the relevant governmental authority in accordance with applicable Manufacturing and Legal Requirements, and provide to Supplier a copy of the receipt of payment issued by that authority.

(e) **Construction Lien Act (Ontario).** The requirements for lien waivers are subject to lien legislation applicable to the location of the Work. Where lien waivers are not permitted, Supplier shall be required, in making an application for partial and final payment, to provide statutory declarations declaring that payment has been made in full to Supplier's Subcontractors (including material suppliers) in the form of a CCDC 9A – 2001 or CCDC 9B form or in such other form satisfactory to Toyota Party.

(f) **Waiver of Moral Rights.** In relation to any works of authorship which are to be owned by Toyota Party, Supplier shall, in writing, and in a form satisfactory to Toyota Party acting reasonably, expressly and irrevocably confirm that it has obtained from each and every individual working for Supplier a waiver of any and all moral rights arising under the Copyright Act (Canada) as amended (or any successor legislation) or at common law that such individual, as author of the deliverable or software, as the case may be, has with respect to any copyrighted or copyrightable portion thereof prepared by such individual including the right to attribution of authorship, the right to restrain any distortion, mutilation or other modification of the deliverable or software, and the right to prohibit any use thereof in association with a product, service, cause or institution that might be prejudicial to such individual's honor or reputation.

(g) **Compliance with Applicable Immigration Laws and Policies.** Supplier acknowledges and agrees that it shall be responsible for complying with the Immigration and Refugee Protection Act of Canada with respect to its employees and Subcontractors. If Toyota Party becomes aware of any information, which, based upon a reasonable interpretation of such events or information, supports the conclusion that Supplier may be out of compliance with applicable immigration laws, Supplier shall, at the option of Toyota Party: (i) provide written certification that Supplier is in compliance with all applicable immigration laws; or (ii) upon prior notice, allow for an independent auditor, selected and paid for by Toyota Party, to conduct a full review or audit of records relating to the Immigration and Refugee Protection Act of Canada. If the audit discloses one (1) or more failures of Supplier's compliance with the Immigration and Refugee Protection Act of Canada, Supplier shall assume responsibility for all cost associated with the audit. Furthermore, such disclosure, or Supplier's failure to otherwise adhere to the terms of this provision may, at Toyota Party's sole discretion, be deemed a material breach and be grounds for immediate termination of the Contract Documents. Supplier shall indemnify, reimburse and hold Toyota Party (and all other Toyota Indemnified Parties) harmless from and against any and all Losses (including claims, demands and actions and any liabilities, damages or expenses resulting therefrom, including court costs and reasonable legal fees) arising out of or relating to noncompliance with this provision by Supplier (including its Subcontractors).

(h) **Employee Relations Training.** All of Supplier's employees and Subcontractors assigned to provide services pursuant to the Contract Documents shall have been trained and be provided on-going training in employee relations, equal opportunity and other employment laws, including the Ontario Human Rights Code and any corresponding or similar laws.

(i) **Indemnity.** The indemnity and reimbursement obligations set forth in **Section 5.10(b)(10)** include, but are not limited to, any violation or alleged violation of Ontario's Employment Standards Act, 2000, as the same may be amended.

6.11 **Tennessee.**

(a) **Tax Abatement Requirements.** Supplier shall comply with all state and local requirements necessary to ensure any qualifying purchases are exempt from sales tax under any tax abatement programs granted by state or local government entities.

(b) **Indemnification by Supplier.** In any and all instances under these Terms or the Contract Documents where Supplier is required to indemnify, reimburse or hold Toyota Party or other indemnitees (including Toyota Indemnified Parties) harmless, Supplier shall have no obligation to indemnify, reimburse or hold any particular Toyota Indemnified Party harmless from such Toyota Indemnified Party's own negligence to the extent that T.C.A. § 62-6-123 is applicable and would render such an obligation void and unenforceable.

(c) **Retainage.** Sums otherwise payable to Supplier in connection with the Construction or Installation Activities shall be subject to five percent (5%) retainage pursuant to T.C.A. § 66-34-103. Such sums shall be retained by Toyota Party during the progress of the Construction or Installation Activities and for ninety (90) days after the earlier to occur of (i) the completion of the Construction or Installation Activities; or (ii) substantial completion of the project for work completed. The foregoing retainage shall be withheld under each application for payment, against both the original contract sum and against change order amounts increasing the contract sum. Retained amounts shall be deposited in a separate interest bearing escrow account with a third party pursuant to T.C.A. § 66-34-104.

(d) **Payments to Subcontractors.** Supplier shall pay all money properly due and unpaid to Subcontractors within ten (10) days after receipt of payment from Toyota Party.

(e) **Bond.** In the event any mechanic's and materialmen's lien is filed or is attempted to be filed in connection with any labor or material furnished to Toyota Party or for any Toyota Premises, Supplier shall, at the option and election of Toyota Party, furnish a bond to remove the mechanic's and materialmen's lien from the Toyota Premises in accordance with the T.C.A. § 66-11-142 within ten (10) days of Toyota Party's written request. Supplier shall pay all costs and expenses to bond off the mechanic's and materialmen's lien in accordance with such statute and Supplier shall reimburse Toyota Party for all monies paid by Toyota Party in the releasing, satisfying and discharging such liens, including reasonable attorney's fees and court costs. Supplier shall indemnify, reimburse and hold Toyota Party (and all other Toyota Indemnified Parties) harmless from all Losses (including liabilities, costs and expenses, including all attorney's fees) to: (i) discharge (by bond or otherwise) or to defend any lawsuit brought to enforce any mechanic's or materialmen's lien, rights or claims to a lien, bond claims, or any other claim for payment relating to labor or materials covered by the payment and all prior payments; or (ii) satisfy any claims or demands arising out of, due or which may be made, directly or indirectly attributable to Supplier or any work performed or supplies furnished by or through Supplier.

(f) **Notice of Completion.** Supplier shall, at the option and election of Toyota Party, assist or join Toyota Party in preparing and filing a Notice of Completion in compliance with T.C.A. § 66-11-143.

6.12 **West Virginia.**

(a) **Payment Bond for Wages.** Supplier shall at all times post and maintain any payment bond for wages required by the West Virginia Payment and Collection Act (W.Va. Code § 21-5-1, et seq.) and shall furnish Toyota Party with evidence of same or any documentation of any waiver of the bond requirement from the West Virginia Commissioner of Labor pursuant to W. Va. Code § 21-5-14(b), upon request.

(b) **Withholding from Final Payment.** Notwithstanding anything herein to the contrary, Toyota Party shall, if required by W.Va. Code § 11-10-11(b)(1) and (2), withhold six percent (6%) of the contract sum from Supplier at the time of final payment until receipt of a tax certificate as required by law.

(c) **Workers' Compensation Insurance Coverage.** Prior to commencing work, Supplier shall furnish to Toyota Party proof of workers' compensation insurance coverage from an insurance company authorized to sell workers' compensation insurance by the West Virginia Office of the Insurance Commissioner for itself and for all Subcontractors. Following commencement of the Work, Supplier (including any Subcontractor) shall furnish quarterly updates confirming such continued workers' compensation insurance coverage.

(d) **Supplier Licensing Requirements.** Supplier shall comply with the requirements of W.Va. Code § 21-11-6 et seq., if and to the extent that such statutory provisions are applicable to Supplier's performance of the Construction or Installation Activities.