

ZEF™ Elevated Flare System

Firm Technical and Commercial Proposal

Prepared for:

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of
Weaver Consultants Group**

**For:
Camelot Landfill, Lewisville, TX**

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John Zink reference number: 202005-130253-REV3

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EXECUTIVE SUMMARY

Scope:..... John Zink ZEF™ Elevated Flare and Blower
(technical information and scope of supply follow)

Price: \$146,364

Submittal Schedule:..... 8 weeks after purchase order acceptance

Customer Approval Schedule: 1 week after receipt of submittals

Fabrication Schedule: 18 weeks after receiving approved submittal

INTRODUCTION

To satisfy your landfill gas flare requirements per your recent request, John Zink Company is pleased to offer a firm quote for our **ZEF™ Elevated Flare System**.

For over 80 years, the John Zink brand has ensured quality, innovative technology, and worldwide service in the combustion industry. John Zink has supplied **over 800 flare systems** for the biogas industry, giving us unparalleled expertise. Each flare system is made in our own 330,000 square foot manufacturing facility; and **we possess the resources to care for your flare at every stage of life:** from installation and startup of new flares, to repair and retrofits of existing flares. Our national network of sales representatives and field technicians means you will always have someone available to assist you in any issues that may arise with your flare, and our portable rental units and spare parts inventory can ensure continued compliance and quick turnaround in case of flare shutdown.

John Zink offers a range of features and options as listed in this proposal. Our intent is to supply the safest, most reliable and economical system available that will also allow you to customize your system to meet your specific needs. After reviewing the proposal, please let us know if there are any additional options you would like to pursue.

We look forward to working with you on this project, and if you require any additional information please do not hesitate to contact me at (918) 234-2917.

DESIGN CRITERIA

Flare Gas Stream (per flare)

Type: landfill gas
Composition:..... 50% CH₄ (design); 30 to 60% CH₄ (range)
balance CO₂, air, inerts, less than 5% O₂
Lower Heating Value: 455 BTU/SCF (design)
275 BTU/SCF to 545 BTU/SCF (range)
Temperature: 100 °F
Flow Rate: 5,500 SCFM (design normalized at 50% CH₄)
550 SCFM
Heat Release:.....150.6 MMBTU/hr (design at 50% CH₄)

NOTE: *Hydrogen sulfide concentrations greater than 1,000 ppm may require special materials with potential commercial impact.*

Mechanical

Design Wind Speed (ASCE 7-95; EXP C):..... 110 mph
Design Seismic (UBC-1994): Zone 4
Ambient Temperature: 32 °F to 100 °F
Ambient Pressure: 14.4 psia
Elevation: 463 feet above sea level
Electrical Area Classification: non-hazardous

NOTE: *Heat tracing and insulating (by others) recommended to protect against freezing.*

Process

Smokeless Capacity: 100%
Required Flame Arrester Inlet Pressure:..... 5 inches of H₂O (design)

NOTE: *Low methane concentrations may require auxiliary fuel to initiate combustion and maintain temperature.*

Utilities

Pilot Gas (intermittent):..... 22 SCFH of propane at 7-10 psig (or)
50 SCFH of natural gas at 10-15 psig
Compressed Air (or Nitrogen): 100 PSIG (regulated, clean and dry)
Electricity:..... 480 V, 3 phase, 60 Hz for motor control;
transformer provided for 120 V, single phase
for control system components
Auxiliary Fuel:..... none (pilot only)

EQUIPMENT DETAILS

FLARE

Quantity: one (1)
Material:
 Riser: carbon steel
 Flare Tip: 304 stainless steel (top 5 feet)
 Windshield: 310 stainless steel
Nominal Diameter: 16 in.
Nominal Stack Height: 45 ft.
Inlet Diameter: 14 in.
EEP Pilot Ignition:..... 6000 V electronic spark ignitor;
 NEMA 4 ignition panel
Pilot Confirmation:..... one (1) type K thermocouple
Main Flame Confirmation:..... two (2) type K thermocouples
Structural Anchoring:..... AISC continuous base plate
Lifting Lugs:..... two (2)

SHIPPED LOOSE EQUIPMENT

Blower:

Quantity: one (1)
Manufacturer:..... Atlas Copco (HSI)
Flow at design pressure: 2000 SCFM each
Inlet Suction:..... -60 inches of H₂O
Outlet Pressure: 10 inches of H₂O
Motor Power: 60 HP
Motor Enclosure: TEFC (NEMA)
Motor Control:..... variable frequency drive
 (see below for additional details)

Inlet Attachments:

Manual butterfly valve:

Quantity:..... one (1) per blower inlet
Diameter: 8 in.
Style:..... wafer
Body material:..... ductile iron
Disk: nickel plated ductile iron
Seat: nitrile
Manufacturer:..... Center Line (or equal)

Flexible expansion joint..... one (1) per blower inlet

Outlet Attachments:

Manual butterfly valve:

Quantity:..... one (1) per blower inlet
Diameter: 8 in.

Style:..... wafer
Body material:..... ductile iron
Disk: nickel plated ductile iron
Seat: nitrile
Manufacturer:..... Center Line (or equal)
Flexible expansion joint:..... one (1) per blower outlet
Check Valve: one (1) per blower outlet
Vibration Sensor: one (1) per blower outlet

Note: Controls engineering hours included for additional programming associated with the addition of this 3rd blower on existing control panel associated with SO# 9037581.

Flame Arrester:

Quantity:..... one (1)
Manufacturer:..... Enardo (or equal)
Diameter: 14 in.
Style:..... eccentric
Housing material: aluminum
Internals material: aluminum
Internals monitoring:
 Thermocouple..... one (1) type K thermocouple for high temperature shutdown
 Differential Pressure Gauge: one (1)

Automatic Block Valve:

Quantity:..... one (1)
Diameter: 14 in.
Style:..... wafer
Actuator:..... pneumatic, fail closed
Body material:..... carbon steel
Disk:..... stainless steel
Seat: PTFE
Manufacturer:..... Xomox (or equal)

Motor Starter Panel:

Quantity..... one (1) 60 HP per blower
Enclosure NEMA 3R

Ancillary Equipment:

Pilot Train Components:..... one (1) including: 1/2" piping, solenoid valve, pressure regulator, manual valve, pressure gauge
Thermocouple Wire:..... 400 ft.
Ignition Wire: 50 ft.

Included Shipping and Handling:

Incoterms:..... CPT - Jobsite
Legal Loads:..... two (2) total: one (1) from Tulsa, OK to Jobsite and one
(1) from Houston, TX to jobsite

Included Field Service:

Technicians:..... one (1)
Trips: one (1), lasting for two (2) 8-hr days

JOHN ZINK FABRICATION STANDARDS

Paint

Flare exterior protected with a commercial blast surface preparation (SSPC-SP-6) and one coat of inorganic zinc rich primer (one coat, 2.0-4.0 mil DFT).

Purchased components protected with factory product coating only. None required for stainless steel surfaces.

Operations & Maintenance Manual

John Zink will provide an operations & maintenance (O&M) manual available via the John Zink FTP site. The O&M manual will include essential operating instructions, appropriate vendor literature on instrumentation and drawings.

ESTIMATED EQUIPMENT DIMENSIONS AND WEIGHTS

ZEF1645 Elevated Flare:.....26” (baseplate diameter) x 51’ (height)
3,600 lb in weight

PERFORMANCE

Expected Emission Range (Design Flow)⁽¹⁾

Overall Destruction Efficiency ⁽²⁾	98%
NOx, lb / MM BTU ⁽³⁾	0.068
CO, lb / MM BTU ⁽⁴⁾	0.31
VOC, lb /MM BTU ⁽⁵⁾	98% DRE

(1) Emissions and destruction efficiency stated are based on EPA 40 CFR 60.18 and AP-42 5th edition, Section 13.5.

(2) Typical sulphur containing compounds are expected to have greater than 98% oxidation efficiency.

(3) Excludes NOx from fixed nitrogen.

(4) Excludes CO contribution present in the gas.

(5) VOC emissions will be the lesser of 98% DRE or 0.66 lbs/MMBTU.

NOTE: *Destruction efficiency, NOx, and CO emissions shown are valid for combustion of specified gas only. Expected emissions are not guaranteed unless expressly stated elsewhere in this proposal.*



RECOMMENDED OPTIONAL EQUIPMENT

Item 1, Standard Communications

John Zink has currently not included provisions for controls communications. If communications are required John Zink can provide our standard communications list (see below).

Communication..... via dry contact
signals:..... remote start/stop (discrete signal)
gas flow in SCFM (analog signal)
flare temperature in degrees F (analog signal)

If additional signals are desired, please let us know what specific signals are needed so that we can evaluate commercial impact.

Item 2, InSite - John Zink Remote Monitoring System

InSite is a proprietary remote monitoring system that utilizes a cellular signal to transmit flare operations data to end users regardless of their proximity to the flare. Will provide alerts if an alarm is triggered, minimizing potential downtime. Includes one year of cellular service.

Item 3, 2" Continuous Biogas Pilot

This continuous biogas pilot will allow for steadier and improved flare operation in locations with variable gas content and inclement weather. Includes one 1" manual block valve, one 1" solenoid valve, a flow meter, one 2" *Enardo* brand eccentric flame arrester and one 2" biogas burner.

PROCESS DESCRIPTION

Operation begins when power is applied to the system. First, gas flows to the pilot and a spark is generated to ignite the pilot flame. The automatic mode attempts to light the pilot three times. At the end of these three attempts "Pilot Failure" lamp will be illuminated and the operator will have to press the reset push-button to restart the unit. Upon proving the pilot flame with the thermocouple, the automatic block valve is opened and the gas blower is started, allowing gas flow to the flare. A thermocouple at the flare tip proves the main flame is lit.

After the automatic block valve is opened, the pilot gas is discontinued after a timed delay to limit utility gas usage. If the main flame is detected at the flare tip, the system continues operation otherwise it is shut down by flame failure. To prevent the potential of flashback beyond the flare system, a high temperature detected by the temperature switch located at the flare inlet also discontinues system operation

Due to the presence of an open flame, the flare system typically is located in an electrical area classified "non-hazardous".

PRICING

Firm Price for Quoted Scope:	\$137,100
<i>(does not include shipping, taxes, or field services)</i>	
Field Service:	\$4,764
Shipping and Handling:	\$4,500
Total Price:	\$146,364
<i>(does not include taxes)</i>	

Recommended Optional Equipment Pricing

1. Standard Communications	price available upon request
2. One (1) InSite – John Zink Remote Monitoring System	\$6,000
3. One (1) Continuous Biogas Pilot	\$8,500

John Zink Field Service for start-up, training, or testing assistance is available per the attached rate sheet.

PAYMENT AND TERMS SUMMARY

This offer is valid for a period ending 30 days from the offer’s date and is contingent upon the attached John Zink Standard Terms and Conditions of Sale.

The shipping terms are CPT-Jobsite point of manufacture. The price does not include any shipping and handling, customs, duties, or any taxes other than John Zink’s contributions for unemployment insurance, old age retirement benefits, pensions, and annuities.

The price is based on the following terms of payment (all payments NET 30):

- 15% of order invoiced upon acceptance of the order
- 50% of order price invoiced upon issuance of general arrangement drawings
- 35% of order price **due** upon notification of availability for shipment*

*This payment is required in full prior to shipment or secure with a bank letter of credit. Payment is required in United States currency. A guaranteed form of payment acceptable to John Zink, such as, corporate or personal guarantees, payment by a confirmed, irrevocable letter of credit, or by three-party check may be required by John Zink.

DELIVERY SCHEDULE

Based on a release to purchase major materials at the time an order is accepted, John Zink offers the following delivery schedule:

Initial general arrangement drawing submittal:	8 weeks after acceptance of the order
Customer approval:	1 week for review and approval, after receipt of submittals
Completion of fabrication:	16-18 weeks after drawing approval

An improved schedule may be arranged based on specific project requirements.

Shipping will be via common carrier. Portions of the unit will be shipped loose to reduce shipping costs and damage to the unit.

OTHER CONDITIONS

Title of Goods

Title to the goods and services subject of this order shall pass to the Buyer only when John Zink Company receives payment in full therefor. The Buyer shall cooperate, if requested, in proper filings and other procedures necessary to assure that John Zink Company shall retain perfected security interest in the goods and services.

Changes to the Scope of Work

Price is based on the inquiry design information. In the event of a process change, John Zink reserves the right to alter the equipment design in order to maintain safe engineering practices. If additions or deletions to the scope of work are required after an order is received, John Zink will submit a price summary to the customer for approval. Equipment dimensions, sizes, and sub-vendors offered in this quotation shall be subject to change after the design is finalized.

Design changes after receipt of the order will result in a reschedule of the equipment ship date. Late drawing approval will result in a reschedule of the equipment ship date which will be based on John Zink's production forecast upon receipt of drawing approval, and will not necessarily be a day-for-day tradeoff.

Field Service

Start-up and training services are not included unless specifically noted above. If field service is requested, it shall be performed according to the terms of the attached John Zink Technical Assistance Agreement.

Software

John Zink may provide [Customer] with software or firmware (collectively, "Software") pursuant to this proposal. Such Software is provided is "as-is" and under a non-exclusive, non-transferable license only. [Customer] will have no ownership rights in the Software.

General Scope of Work

John Zink will furnish the labor, materials, and equipment necessary to fabricate the system offered.

For the purpose of clarification, the supplies to be delivered will include general bolts, nuts, washers, gaskets, and similar fasteners associated with the assembly of the system supplied by John Zink.

OWNER REQUIREMENTS

- All civil works including creation of a suitable skid and stack foundation. John Zink will supply the data necessary to design such civil works by providing loading information for the system, including anchor bolt arrangement.
- Erection of system or installation of piping or electrical supply or instruments. John Zink, if requested, can supply turnkey installations.
- The supply or installation of fireproofing materials, personnel protection, lightning protection, heat tracing, external insulation, electrical/thermocouple wire, conduit, piping, finish paint, and other miscellaneous hardware unless specifically noted.
- Permits, licenses, and approval by and from authorities to install, test, and operate the system.
- Preparation of drawings, forms and/or data for approval by state or local agencies of the design of the system, unless otherwise noted.
- Compliance with state, local, or municipal codes, except as specifically identified. John Zink will design the system to applicable national codes and standards. However, John Zink has numerous similar systems operating in many of the states and is knowledgeable in coordinating with the respective regulatory authorities and, if requested, can comply with the agreed upon local requirement.
- Field alignment for rotating equipment, if applicable, by others.
- Non-destructive examination (NDE) or pressure testing.

CLARIFICATIONS

- A minimum undisturbed distance is required for proper installation and performance of the flow meter. A distance of approximately ten pipe diameters of straight pipe is required before the flow meter and approximately five pipe diameters of straight pipe after the flow meter.

ATTACHMENTS

- Standard Terms and Conditions of Sale
- Domestic Technical Assistance Agreement

GENERAL TERMS AND CONDITIONS OF SALE

(GOODS AND SERVICES)

1. **APPLICATION.** These General Terms and Conditions of Sale (“**Terms and Conditions**”) will apply to all quotations and sales for goods, material, equipment and services by John Zink Company, LLC (“**Seller**”) and are hereby incorporated into the purchase order, quotation, invoice or other document to which they are attached (“**Order**”) and, together with the Terms and Conditions, the “**Contract**”). All purchases by customer, owner or its agent (“**Buyer**”) are expressly limited and conditioned upon acceptance of the Terms and Conditions. Seller objects to and rejects any provision additional to or different from the Terms and Conditions that may appear in Buyer’s purchase order, acknowledgement, confirmation, writing, or in any other prior or later communication from Buyer to Seller, unless such provision is expressly agreed to by Seller in a writing signed by Seller. For the purposes of these Terms and Conditions, the term “**Goods**” shall refer to the goods, material and equipment listed on the Order as well as all equipment or other materials provided in connection with any Services, and the term “**Services**” shall refer to the services listed on the Order. Terms not defined herein shall have the meanings set forth in the Order.
2. **PRICE AND OTHER CHARGES.** Unless otherwise stated in the Order, the Contract price does not include any packaging, transportation, duties, taxes or other charges (collectively, “**Additional Charges**”). Buyer shall be responsible for all applicable Additional Charges.
3. **PAYMENT TERMS.** (a) Unless otherwise stated in the Order, payment is due thirty (30) days after the invoice date. (b) All payments shall be made in USD unless otherwise specified in the Order. (c) Interest may be charged on all past due amounts owed by Buyer hereunder at an interest rate equal to the prevailing LIBOR rate of interest, expressed as an annual percent, plus three percent (3%) from the payment due date until paid in full, or the highest interest rate allowed by applicable law, whichever is less. Payments must be made via a financial institution that is not subject to the sanctions laws of the United States, the European Union, or other applicable jurisdictions.
4. **CREDIT TERMS.** If, in Seller’s judgment, the creditworthiness or future performance of Buyer is or may become impaired or unsatisfactory, Seller may suspend performance hereunder and seek adequate assurances from Buyer. Buyer shall pay (or otherwise reimburse) Seller for any costs associated with such suspension (including charges for reactivation). Without limiting the foregoing, Seller may, for any reason, (a) require prepayment by wire transfer at least two (2) business days prior to a scheduled shipment of Goods or provision of Services, and/or (b) require Buyer to issue letter(s) of credit in a form, and from an issuing bank, acceptable to Seller at least three (3) business days prior to a scheduled shipment of Goods or provision of Services.
5. **DELIVERY.** (a) Unless otherwise stated in the Order, delivery of the Goods shall be EXW (Incoterms®2010 International Chamber of Commerce (ICC) publication) Seller’s designated manufacturing facility. (b) If Buyer has not issued inspection and shipping instructions by the time the Goods are available to Buyer, Seller may, at its sole discretion, (i) store the Goods at Buyer’s risk of loss and cost, or (ii) select any reasonable method of shipment, without liability by reason of its selection, costs of shipment and risk of loss to be the responsibility of Buyer. (c) Shipments or Goods in storage may be insured at Buyer’s expense.
6. **TITLE/RISK OF LOSS.** Unless otherwise stated in the Order, title in the Goods shall pass to Buyer upon payment in full. The risk of loss or damage to the Goods shall pass to Buyer upon delivery in accordance with the Contract or as otherwise provided in the Delivery section.
7. **INSPECTION/REJECTION OF GOODS.** All Goods shall be received subject to Buyer’s reasonable inspection and rejection. Buyer may only reject Goods that do not conform in all material respects to the specifications contained in the Contract. Rejected Goods will be held at Seller’s risk for a reasonable time, to be returned or disposed of by Buyer at Seller’s written instruction and at Seller’s sole cost and expense. A failure by Buyer to reject nonconforming Goods in writing within thirty (30) days after receipt shall constitute an unqualified acceptance of such Goods by Buyer and a waiver by Buyer of all claims with respect thereto. Thereafter, nonconforming Goods shall be subject to the Warranty section.
8. **WARRANTY.** (a) Seller warrants that (i) the Goods shall be new and good quality and shall conform to the specifications specifically set forth in the Order and title to the Goods shall be free from any security interest, lien or encumbrance upon Seller’s receipt of full payment for the Goods, and (ii) Seller shall perform the Services in a workmanlike manner in accordance with the specifications specifically set forth in the Order. (b) The foregoing warranties will last for the following period (the “**Warranty Period**”): (i) for Goods, eighteen (18) months after the date that the Goods are available for shipment or one (1) year after first start-up, whichever occurs first; and (ii) for Services, three (3) months after completion of the Services. If during the Warranty Period any Goods or Services prove not to meet the warranties set forth above, Seller will repair the Goods or supply identical or substantially similar replacement Goods EXW Seller’s manufacturing facility, at Seller’s sole discretion, or re-perform the Services (as applicable). Any replacement Goods or re-performed Services will be warranted for the unexpired portion of the Warranty Period applicable to the particular Goods or Services. (c) Seller will not be responsible for transportation costs or for the costs of removal, installation, re-installation or making of access of any Goods or other items, where such transportation, removal, installation, re-installation or making of access is required to repair or replace any defective Goods or to re-perform Services. Furthermore, Seller will not be responsible for and assumes no liability for materials or workmanship, labor costs or other related expenses for any work performed by Buyer or third parties (not authorized by Seller) in the repair or replacement of defective Goods or the re-performance of Services. (d) Seller’s warranties will be voided if (i) the Goods or the subject of the Services have not been stored, installed, maintained or operated in accordance with accepted industrial practice or any specific instructions provided by Seller; (ii) the Goods or the subject of the Services have been subjected to any accident, misapplication, environmental contaminant, corrosion, damage, debris, improper passivation, abuse or misuse; (iii) Buyer has modified the Goods or the subject of the Services without Seller’s prior written consent; (iv) Buyer has used or repaired the Goods or the subject of the Services after discovery of the defect without Seller’s prior written consent; (v) Buyer or any third party refuses to permit Seller to examine the Goods or the subject of the Services and operating data to determine the nature of the defect claimed; or (vi) Buyer fails to meet its financial obligations under the Contract. (e) Goods not manufactured by Seller are subject only to warranties of Seller’s vendors and Seller hereby assigns to Buyer all rights in such vendors’ warranties, however, Seller shall furnish to Buyer reasonable assistance in enforcing such rights. (f) Inexpensive items requiring repair or replacement and routine maintenance-related or consumable items shall be outside the scope of these limited warranties. (g) Seller’s performance guarantees, if any, shall be deemed to be met by a satisfactory demonstration of the guaranteed performance parameters during a performance test, which shall be the responsibility of Buyer and is to be based on test procedures as specified in the Order or, if not specified in the Order, to be based on test procedures mutually agreed upon by Seller and Buyer. In the absence of a performance test within sixty (60) days of delivery, unless otherwise specified in the Order, Seller’s performance guarantees are deemed to have been met. (h) ALL WARRANTIES OR REPRESENTATIONS NOT SPECIFICALLY INCLUDED IN THESE TERMS AND CONDITIONS, INCLUDING THOSE WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WHETHER EXPRESSED, IMPLIED, STATUTORY OR ARISING FROM A COURSE OF DEALING, USAGE OF THE TRADE OR OTHERWISE WITH RESPECT TO ANY GOODS OR SERVICES, ARE EXPRESSLY EXCLUDED. NO EXPRESS OR IMPLIED WARRANTY IS GIVEN AS TO THE CAPACITY, EFFICIENCY OR PERFORMANCE OF ANY GOODS, EXCEPT AS MAY BE PROVIDED IN A SEPARATE WRITTEN AGREEMENT SIGNED BY SELLER. (i) BUYER’S REMEDIES ARE SPECIFICALLY LIMITED TO THE REPAIR OR REPLACEMENT OF THE GOODS OR THE REPERFORMANCE OF THE SERVICES, AS APPLICABLE, DURING THE WARRANTY PERIOD, AND ARE EXCLUSIVE OF ALL OTHER REMEDIES. SHOULD THESE REMEDIES BE FOUND INADEQUATE OR TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE FOR ANY REASON WHATSOEVER, BUYER AGREES THAT RETURN OF THE AMOUNT PAID BY BUYER TO SELLER FOR THE GOODS INVOLVED SHALL PREVENT THE REMEDIES FROM FAILING OF THEIR ESSENTIAL PURPOSE AND SHALL BE CONSIDERED BY BUYER AS A FAIR AND ADEQUATE REMEDY.
9. **BACKCHARGES.** No backcharges will be paid or allowed by Seller unless (i) Seller is notified in writing of Buyer’s intent to incur costs and (ii) Seller provides prior written approval of such backcharges.
10. **OBLIGATIONS OF BUYER.** Buyer is solely responsible for identifying and defining all processes, mechanical considerations, and site requirements, which may affect the performance, reliability or operation of the Goods or Seller’s performance of Services. Buyer represents that all information and data provided to Seller by or for Buyer is current, complete, and accurate. Buyer represents and warrants to Seller that Buyer has all necessary rights and permissions to provide all information provided by or on behalf of Buyer to Seller and shall indemnify Seller from any third party with respect to Seller’s use of such information in connection with the Contract.
11. **INDEMNITY.** In the event that Seller performs onsite services at Buyer’s facility, (i) Seller shall defend, indemnify and hold harmless Buyer against all damages, losses, costs, claims, liabilities, and expenses (including reasonable attorneys’ fees), resulting from bodily injury, including death, or damage to tangible property to a Third Party, to the extent caused by the negligent acts or omissions of Seller, its officers, directors, employees or agents (“**Seller Group**”); and (ii) Buyer shall defend, indemnify and hold harmless Seller against all damages, losses, costs, claims, liabilities and expenses (including reasonable attorneys’ fees), resulting from bodily injury, including death, or damage to tangible property to a Third Party, to the extent caused by the negligent acts or omissions of Buyer, its officers, directors, employees or agents (“**Buyer Group**”). All liability, losses, damages, costs or expenses resulting from bodily injury, including death, or damage to tangible property to a Third Party, caused by the joint or concurring acts of Buyer Group and Seller Group, shall be borne by Buyer and Seller to the extent each is determined negligent either by agreement of the parties or by a court of competent jurisdiction. The term “**Third Party**” shall mean any person or entity that is not a member of Seller Group, Buyer Group, the end user of the Goods or subject of the Services, or any of its respective affiliates, parent(s), subsidiaries or any of their respective officers, directors, employees, agents, or subcontractors.
12. **DEFAULT.** Upon the occurrence of any of the following events: (i) Seller has not received a payment due from Buyer hereunder by the date such payment is due under the Contract, and such failure remains uncured for a period of ten (10) business days after Buyer’s receipt of written notice from Seller of such non-payment; (ii) Seller is unable to meet its warranty obligations and fails to commence to cure within ten (10) business days after Seller’s receipt of written notice from Buyer of such uncured obligation; or (iii) Seller or Buyer fail to perform other material obligations in the Contract and such failure remains uncured for a period of thirty (30) business days after receipt of written notice

from the other party of such uncured obligation, or if cure is not possible within that period, the defaulting party fails to make continuous and diligent efforts to cure, then the non-defaulting party, in its sole discretion and without prior notice (other than as provided above) to the defaulting party, may do any one or more of the following: (a) suspend performance under the Contract; or (b) terminate the Contract, whereby any and all obligations of the defaulting party will, at the option of the non-defaulting party, become immediately due and payable or deliverable, as applicable. In the event of default by Buyer, Seller shall have the right to withhold delivery and/or sell the Goods to a third party and deduct from proceeds of such sale the purchase price and all reasonable costs resulting from the default. The prevailing party shall be entitled to recover all court costs, reasonable attorneys' fees and expenses incurred by the prevailing party in connection with the default, and interest on past due amounts as set forth in the payment terms of the Contract.

13. INTELLECTUAL PROPERTY. (a) Seller retains all intellectual property rights, whether registered or un-registered, including trademarks, patents, and copyright of all documents, drawing rights, design rights, developed programs, software, models and other data provided or developed in the course of the Contract ("Seller IP"), and hereby grants Buyer a non-exclusive, non-assignable royalty free license to use Seller IP delivered to Buyer or embodied in the Goods or related deliverables only for the purposes of Buyer's installation, operation and maintenance the Goods. (b) Seller will defend and indemnify Buyer from any claim, suit or proceeding brought against Buyer based on a claim that the Goods as manufactured and furnished by Seller and used in the manner for which it was intended and sold to Buyer constitutes an infringement of any United States, Canadian or European Union-member patent, if Seller is notified promptly in writing and given authority, information and assistance for the defense of such claim, suit or proceeding. All aspects of the defense and settlement of any such claim, suit or proceeding shall be within Seller's sole discretion. Buyer remains solely responsible for its own costs, including all fees and expenses of its own counsel, if any, or its personnel, which are incurred in conjunction with the defense of such claim, suit or proceeding. Should it be held that the Goods constitute an infringement and the use of the Goods is enjoined, Seller will, at its sole discretion and at its own expense, either procure for Buyer the right to continue using the Goods, replace the Goods with non-infringing goods, modify the Goods to become non-infringing or refund the purchase price for the infringing Goods. Seller's obligations to defend, and indemnify Buyer shall not apply to any liability for infringement (i) of any method patent where the Goods are used with other apparatus for carrying out a process resulting in a combination of steps which is deemed to infringe a method patent or patent directed to a combination of steps, (ii) where the Goods are modified by Buyer, (iii) where the Goods are used by Buyer in a manner different than the use communicated to and understood by Seller at the time the Goods were sold to Buyer and such use constitutes infringement, or (iv) with respect to claims of infringement where the Goods were designed and manufactured in accordance with the design or specifications furnished or required by Buyer. (c) Buyer will indemnify and hold harmless Seller from any suit or proceeding brought against Seller by any third party based on claims resulting from exceptions (i), (ii), (iii) or (iv) as stated above.

14. DELIVERY DATE. If the Order specifies a delivery date, Seller shall use commercially reasonable efforts to meet the requested date.

15. CANCELLATION FEE. Buyer may not cancel any part of the Contract except upon written notice and payment to Seller for (a) all Goods or Services completed prior to cancellation, (b) all costs incurred by Seller prior to cancellation, (c) all reasonable costs arising due to the cancellation, (d) unavoidable third party charges, and (e) a cancellation fee in the amount of twenty percent (20%) of the total price of the Contract. The parties agree that Seller's damages following a termination of any part of the Contract by Buyer are difficult to determine and that the cancellation fee provided by this provision is a genuine pre-estimate of loss and not a penalty and is reasonable in light of the circumstances. Seller shall be entitled to the payments set forth above if Seller cancels or terminates the Contract pursuant to the Default and Suspension sections. Title to all works in progress and all materials not delivered to Buyer prior to the date of cancellation will remain with Seller.

16. SUSPENSION. (a) Buyer may only suspend the Order upon written notice to Seller, subject to payment of Seller's costs. (b) If Buyer or any of its agents delays Seller's performance due to failure to promptly approve drawings or procedures or due to any other action or non-action on part of Buyer or its agents: (i) Buyer shall reimburse Seller for all costs incurred up to the date of suspension and as a result of such delay (including costs of reactivation), (ii) the delivery time shall be adjusted, and (iii) milestone payments (if applicable) will be adjusted to keep Seller whole for costs incurred up to the date of delay or suspension. (c) If, due to any action or non-action on the part of Buyer or its agents, Seller is delayed for more than forty-five (45) days, or such longer period of time as deemed reasonable by Seller in its sole discretion, Seller may elect to cancel the Order.

17. FORCE MAJEURE. Force Majeure means any circumstances beyond the reasonable control of either party, including acts of God, fire, explosion, breakdown of machinery or equipment, third party supplier plant shutdown, strikes or other labor disputes of Seller's suppliers or subcontractors, acts of terrorism or war, riots or other civil disturbances or voluntary or involuntary compliance with any law, order, regulation, recommendation or request of any governmental authority, inability to obtain materials necessary for manufacture of the Goods, total or partial failure of any of Seller's usual means of transportation of the Goods, or for failure to obtain necessary governmental approvals, permits or licenses. Neither party will have any liability, other than for the payment of monies owing, for their failure to perform any of their contractual obligations arising out of or in connection with events of Force Majeure.

18. ASSIGNABILITY. The rights and duties under the Contract are not assignable or transferable by Buyer or Seller, in whole or in part, by operation of law or otherwise, without the prior written consent of the non-assigning party, which consent may not be unreasonably withheld, delayed, or conditioned. Notwithstanding, upon written notice, Buyer or Seller may assign this Contract in whole or in part to any of its affiliates which are as equally creditworthy and provided such affiliate is compliant with all applicable laws. Any assignment or attempted assignment in contravention of the foregoing shall be null and void. Any assignee is subject to all of the obligations, liabilities, waivers and limitations of this Contract.

19. GOVERNING LAW. The Contract, and its execution, performance, interpretation, construction and enforcement, shall be governed by the law, both procedural and substantive, of the State of Texas, without regard to its conflicts of law rules; and all claims relating to or arising out of the Contract, including breach, and formation, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the State of Texas, excluding choice-of-law principles. Any action or proceeding between Buyer and Seller relating to the Contract shall be commenced and maintained exclusively in the State or federal courts in Harris County, Houston, Texas; and, Buyer waives all venue and inconvenience of forum challenges and irrevocably submits itself unconditionally and irrevocably to the personal jurisdiction of such courts. BUYER AND SELLER EACH WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY SUIT, ACTION, CLAIM OR PROCEEDING RELATING TO THE CONTRACT.

20. NOTICE. All official notices, made under this Agreement must be made via certified or registered mail with return receipt, postage prepaid addressed to the party to whom such notice is given at the address of such party stated in the Contract. All other communications or transmittals under the Contract shall be in writing and shall be deemed received on the day of delivery if personally hand delivered or sent by facsimile or electronic transmission (with written confirmation of the completed transmittal).

21. ENTIRE AGREEMENT; AMENDMENT; WAIVERS. This Contract supersedes all prior negotiations, discussions, and dealings concerning the subject matter hereof, and shall constitute the entire agreement between Seller and Buyer concerning the subject matter hereof. There are no understandings, inducements, commitments, conditions, representations or warranties of any kind, whether direct, indirect, collateral, express or implied, oral or written, from either party to the other, other than as contained in this Contract. No party shall claim any amendment, modification or release of any provisions hereof unless the same is in writing and signed by Buyer and Seller. No waiver by Buyer or Seller of any breach of any terms, conditions or obligations under the Contract shall be deemed a waiver of any continuing or subsequent breach of the same or any other terms, conditions or obligations hereunder.

22. ELECTRONIC TRANSACTIONS. The Contract may be digitally copied and stored on electronic storage media or devices (the "Imaged Agreement"). The Imaged Agreement (once digitally regenerated to paper form), and any facsimile, and all computer records of the foregoing, if introduced as evidence in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form and neither party shall object on the basis that such business records were not originated or maintained in documentary form under any rule of evidence.

23. COMPLIANCE. Buyer and Seller shall: (i) comply fully with all applicable laws and regulations in their respective performances of the Contract; and, (ii) shall neither take nor refrain from taking any action that could result in liability for either party under applicable law, including the U.S. Foreign Corrupt Practices Act, the OECD Anti-Bribery Convention or any other applicable anti-bribery law or treaty, or those regulations maintained by the U.S. Treasury Department's Office of Foreign Assets Control (31 C. F. R. Chapter V) or the U.S. Commerce Department's Bureau of Industry and Security (15 C.F.R. Parts 730 et. Seq.). Buyer shall comply as follows: (i) Buyer acknowledges that any distribution, sale, transfer or re-export of the Goods is governed by and subject to the trade control laws of the United States; (ii) Buyer shall not distribute, sell, transfer or re-export the Goods, except in conformance with United States law; and, (iii) If Buyer knows or has reason to know that any of its customers intend to distribute, sell, transfer or re-export the Goods, either directly or through incorporation into other products, then Buyer shall inform its customer that the customer is responsible for obtaining any licenses or other approvals from the U.S. Government before such distribution, sale, transfer or re-export, by including the following language in Buyer's purchase order acknowledgement or other appropriate documentation to its customer: *NOTICE: The products, technical data, and/or software included in this Order were provided in compliance with the laws and regulations of the United States. Customer is responsible for obtaining all licenses, permits or other approvals that may be necessary under the laws of the United States before any distribution, sale, transfer or re-export of such items and for ensuring that the end-user and end use of these products are permitted under U.S. law. Re-export, diversion, transshipment, or use contrary to U.S. law is prohibited and is cause for cancellation of this [purchase order].* Nothing in this Contract shall require Buyer or Seller to take or

refrain from taking any action impermissible or penalized under United States or other applicable laws. A Party's breach of this Section shall constitute cause for immediate termination of the Contract.

24. **INDEPENDENT CONTRACTORS.** Seller and Buyer are independent contractors only and are not partners, master/servant, principal/agent or involved herein as parties to any other similar legal relationship with respect to the transactions contemplated under the Contract or otherwise, and no fiduciary, trust, or advisor relationship, nor any other relationship imposing vicarious liability shall exist between the parties under the Contract or otherwise at law.

25. **NO THIRD PARTY BENEFICIARIES.** The Contract is solely for the benefit of, Buyer and Seller, and shall inure to the benefit of, Buyer and Seller, and shall not otherwise be deemed to confer upon or give to any third party any right, claim, cause of action or other interest herein.

26. **SEVERABILITY.** The invalidity or unenforceability of any provision of the Contract shall not affect the validity or enforceability of its other provisions and the remaining provisions shall remain in full force and effect.

27. **CONFIDENTIALITY.** Except as provided in a separate written confidentiality agreement, all information that Buyer acquires from Seller hereunder, directly or indirectly, and all information that arises out of the sale of the Goods and/or Services hereunder, concerning such Goods, Services, and/or proprietary processes involved, including, but not limited to, information concerning Seller's current and future business plans, information relating to Seller's operations, know-how, and other Seller-furnished information shall be deemed Seller's "**Proprietary Information**". Buyer shall (a) hold Seller's Proprietary Information in strictest confidence, (b) not disclose it to others and (c) use it solely for purposes of the Contract.

28. **INSURANCE.** In the event the Seller performs onsite services at Buyer's facility, Seller shall maintain the following insurance coverage during the term of the Contract and, at Buyer's request, shall provide Buyer with a certificate evidencing such coverage: (a) Statutory Workers' Compensation and Employer's Liability Insurance, with limits of Five Hundred Thousand USD (\$500,000.00) each accident, Five Hundred Thousand USD (\$500,000.00) disease each employee, and Five Hundred Thousand USD (\$500,000.00) disease policy limit; (b) Commercial General Liability Insurance, with a combined single limit for bodily injury and property damage of One Million USD (\$1,000,000.00) per occurrence and in the aggregate; and (c) Automobile Liability Insurance, with a combined single limit for bodily injury and property damage of One Million USD (\$1,000,000.00) per accident.

29. **SURVIVAL.** The provisions addressing indemnity, confidentiality, limitation of liability, and all other provisions which by their nature are intended to survive, shall survive expiration or termination of the Contract.

30. **MISCELLANEOUS.** The captions and section headings set forth in the Contract are used for convenience only and shall not be used in defining or construing any of the terms and conditions set forth in the Contract. The term "**days**", as used herein, shall mean actual days occurring, including, Saturdays, Sundays and holidays where banks are authorized to be closed in the city where Seller's chief executive office is located. The term "**business days**" shall mean days other than Saturdays, Sundays and holidays where banks are authorized to be closed in the city where Seller's chief executive office is located. The term "**including**" or any variation thereof means "**including, without limitation**" and shall not be construed to limit any general statement that it follows to the specific items immediately following it. Unless the context indicates otherwise, words importing the singular number shall include the plural and vice versa, and words importing person shall include firms, association, partnerships and corporations, including public bodies and governmental entities, as well as natural persons, and words of masculine gender shall be deemed to include correlative words of the feminine gender and vice versa as the circumstances may require. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

31. **LIMITATION OF LIABILITY.** (A) NO PARTY SHALL BE LIABLE FOR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, REVENUES, OR OTHER ECONOMIC LOSSES WHETHER DEEMED DIRECT OR CONSEQUENTIAL, ARISING UNDER ANY CAUSE OR COMBINATION OF CAUSES, INCLUDING ANY THEORIES OF CONCURRENT OR JOINT LIABILITY. (B) THE LIABILITY OF SELLER AND ITS AFFILIATES IS LIMITED TO THE PRICE ALLOCABLE TO THE GOODS OR SERVICES DETERMINED TO BE DEFECTIVE, AND IN NO EVENT WILL THE CUMULATIVE LIABILITY OF SELLER AND ITS AFFILIATES BE IN EXCESS OF THE TOTAL PAYMENTS RECEIVED FROM BUYER UNDER THE ORDER REGARDLESS OF CAUSE OR ANY COMBINATION OF CAUSES WHATSOEVER. ALL INSURANCE, BOND AND BANK GUARANTEE OR LETTER OF CREDIT PROCEEDS WHICH MAY BE PAID BY THE INSURERS, SURETIES OR BANKS OF SELLER OR ITS AFFILIATES WILL BE CREDITED AGAINST THE LIMITATION STATED ABOVE AND SHALL REDUCE THE AMOUNT OF THE CUMULATIVE LIABILITY OF SELLER AND ITS AFFILIATES. (C) BUYER'S REMEDIES ARE LIMITED TO THOSE REMEDIES EXPRESSLY STATED IN THIS CONTRACT. (D) THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FUNDAMENTAL BREACH OR FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

[End of General Terms and Conditions of Sale]

SOFTWARE LICENSE AGREEMENT

THESE TERMS AND CONDITIONS (THE “**AGREEMENT**”) SUPPLEMENT THE PURCHASE ORDER TERMS AND CONDITIONS ENTERED INTO BY AND BETWEEN YOU (“**LICENSEE**”) AND JOHN ZINK COMPANY, LLC. (“**JOHN ZINK**”). THIS AGREEMENT IS SPECIFIC TO THE INSITE SUBSCRIPTION SOFTWARE HOSTED BY JOHN ZINK AND EWON COMMUNICATION DEVICE FIRMWARE. PLEASE CAREFULLY READ THIS AGREEMENT. YOU AGREE TO BE BOUND BY THESE ADDITIONAL TERMS AND CONDITIONS OF THIS AGREEMENT BY CONTINUED USE OF THE SUBSCRIPTION SOFTWARE.

1. Definitions.

- (a) “**Affiliate**” means any entity, directly or indirectly, controlling, controlled by, or under common control with, John Zink.
- (b) “**Authorized Users**” means: (i) Licensee’s employees; and (ii) contractors authorized by Licensee to access the Subscription Software who, prior to obtaining access to the Subscription Software, have executed a non-disclosure agreement with Licensee that protects John Zink’s Confidential Information to the same extent as this Agreement.
- (c) “**Confidential Information**” Confidential Information of John Zink includes, without limitation, the Documentation and the Subscription Software, including any software code and all algorithms, methods, techniques, and processes revealed or utilized therein. Confidential Information of Licensee includes Licensee Data. Confidential Information does not include Information that: (i) is or becomes known to the public without fault or breach of the Recipient; (ii) the Discloser regularly discloses to third parties without restriction on disclosure; (iii) the Recipient obtains from a third party without restriction on disclosure and without breach of a non-disclosure obligation known to Recipient; or (iv) is independently developed by the Recipient without use of Confidential Information.
- (d) “**Customizations**” means any components deployed in the hosted environment for the Subscription Software other than the generally available Subscription Software or components that Licensee may deploy via the standard user interface or tools included in the generally available Subscription Software. Customizations may include, without limitation, code, databases or third party extensions that are not included in the generally available Subscription Software.
- (e) “**Deployment Date**” means the date upon which all equipment, hardware, and software that is necessary to implement the Subscription Services is installed and operational.
- (f) “**Deployment Fees**” means the fees for deployment of the equipment, hardware, and software that is necessary to implement the Subscription Services, as set forth on the applicable Purchase Order.
- (g) “**Discloser**” means the party providing Confidential Information to the Recipient.
- (h) “**Documentation**” means John Zink-provided documentation relating to the features, functions, and use of the Subscription Software.
- (i) “**Documented Defect**” means a material deviation between the then-current, general release version of the Subscription Software and its Documentation.
- (j) “**Effective Date**” means the date upon which the Licensee accepts this Agreement by executing the applicable Purchase Order.
- (k) “**Equipment ID**” means a unique equipment identification credential used in combination with a unique password to access the Subscription Services.
- (l) “**Ewon Device**” means the communication device provided by John Zink that contains or facilitates access to the Ewon Software and Subscription Services.
- (m) “**Ewon Software**” means collectively or individually the computer software programs contained on the Ewon Device.
- (n) “**Initial Subscription Term**” means the initial subscription period, which will begin on the date indicated in the Purchase Order and continue for the period specified in the Purchase Order.
- (o) “**Intellectual Property Rights**” means any and all rights in patents, copyrights, trademarks and service marks.
- (p) “**Licensee Data**” means information provided, entered or uploaded for use by or with the Subscription Software by the Licensee or its Authorized Users.
- (q) “**License Restriction**” means any limitation on the use of the Subscription Software identified in a Purchase Order (e.g., number of Authorized Users, locations, connections).
- (r) “**Nonconformity**” or “**Nonconformities**” means any failure or failures of the Subscription Software to conform to the requirements of this Agreement or Purchase Order, including any applicable documentation.
- (s) “**Purchase Order**” means each Purchase Order between the Parties that incorporates this Agreement by reference, which shall contain, without limitation, a list of the Subscription Software and associated quantity and License Restriction.
- (t) “**Personal Information**” means Information provided to John Zink by or at the direction of Licensee, or to which access was provided to John Zink in the course of John Zink’s performance under this Agreement that: (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, e-mail addresses and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, financial account numbers, credit report Information, biometric or health data, answers to security questions and other personal identifiers). Personal Information shall include any non-public personal information regarding any individual that is subject to applicable national, state, regional, and/or local laws and regulations governing the privacy, security, confidentiality and protection of non-public Personal Information.
- (u) “**Recipient**” means the party receiving Confidential Information of the Discloser.
- (v) “**Renewal Term**” means any renewal or extension of Licensee’s license to use the Subscription Software following the expiration of the Initial Subscription Term.
- (w) “**Residual Knowledge**” shall mean ideas, concepts, know-how or techniques related to the Discloser’s technology and Confidential Information that are retained in the unaided memories of the Recipient who had rightful access to Confidential Information.
- (x) “**Service Level Description**” means the Service Level Description applicable to the Subscription Services (as set forth in Section 5(e)).
- (y) “**Subscription Fees**” means the fees for the Subscription Services set forth on the applicable Purchase Order.
- (z) “**Subscription Services**” means the Subscription Software-related application hosting services and Support (as defined in Sections 3(c) and 3(f)) that John Zink provides Licensee under this Agreement.
- (aa) “**Subscription Software**” means collectively or individually the computer software programs identified in the applicable Purchase Order for which John Zink is providing the Subscription Services.
- (bb) “**Subscription Term**” means the Initial Subscription Term or any Renewal Term, as applicable.
- (cc) “**Third Party Licensor**” means a third party whose software products (“**Third Party Products**”) have been made available to John Zink for distribution and licensing under the terms of its agreement with John Zink (a “**Third Party Agreement**”).
- (dd) “**Updates**” means generally available updates, enhancements or modifications to the then-current, general release version of the Subscription Software that are not separately priced or licensed as new products.

2. **License.** Subject to the terms and conditions of this Agreement and the applicable Purchase Order, John Zink hereby grants to Licensee: (i) a non-exclusive, non-transferable, limited license (without the right to sublease or sublicense) to access and use the Subscription Software and the Subscription Services, during the Subscription Term, in an operating environment hosted by John Zink, for Licensee’s own internal use; and (ii) a non-exclusive, transferable (only to subsequent purchasers of the Ewon Device), limited license to use the Ewon Software. Any rights not expressly granted in this Agreement are expressly reserved.

(a) **Documentation.** Licensee may make a reasonable number of copies of the Documentation for the Ewon Software and Subscription Software for its internal use in accordance with the terms of this Agreement.

(b) **License Restriction.** Licensee’s use of the Ewon Software and Subscription Software and Subscription Services is subject to any License Restriction specified in the applicable Purchase Order.

(c) **Additional Restrictions on Use of the Ewon Software, Subscription Software and Subscription Services.** In no event shall Licensee access the Subscription Software on any environment outside the hosted environment selected by John Zink as part of the Subscription Services. In no event shall Licensee or its Authorized Users possess or control the Ewon Software, Subscription Software or any related software code. Licensee is prohibited from causing or permitting the reverse engineering, disassembly or de-compilation of the Ewon Software or Subscription Software. Except as expressly provided by this Agreement, Licensee is prohibited from using the Subscription Software to provide service bureau services to third parties. Licensee will not allow the Subscription Software to be used by, or disclose all or any part of the Subscription Software to, any person except Authorized Users. Licensee acknowledges and agrees that U.S. export control laws and other applicable export and import laws govern its use of the Ewon Software and Subscription Software and Licensee will neither export or re-export, directly or indirectly, the Ewon Software and Subscription Software, nor any direct product thereof in violation of such laws, or use the Ewon Software and Subscription Software for any purpose prohibited by such laws.

(d) **Intellectual Property Rights Notices.** Licensee is prohibited from removing or altering any of the Intellectual Property Rights notice(s) embedded in the Ewon Software and Subscription Software or that John Zink otherwise provides with the Subscription Services. Licensee must reproduce the unaltered Intellectual Property Rights notice(s) in any full or partial copies that Licensee makes of the Documentation.

(e) **Ownership.** Use of the Ewon Software, Subscription Software and Subscription Services does not grant any ownership rights in or to the Ewon Software, Subscription Software, the Subscription Services, or the Documentation. Licensee Data shall be the sole property of Licensee. John Zink will collect data related to or including Licensee Data or use of the Ewon Software, Subscription Software and Subscription Services, (collectively “**Collected Data**”), and such Collected Data (which in no event will include Personal Information) shall be the sole property of Licensee. Licensee hereby grants John Zink, a fully paid-up, royalty-free, non-exclusive, worldwide, perpetual right and license to the Collected Data for: (1) use in satisfying its obligations under this Agreement and any Purchase Order, (2) for use in improving and developing the Ewon Software, Subscription Software, Subscription Services, and other software and hardware technologies; and (3) other uses so long as the Collected Data is anonymized and doesn’t identify Licensee.

3. **Subscription Services.**

(a) **Hosted Environment.** John Zink will provide the application hosting environment, including the hardware, equipment, and systems software configuration on which John Zink supports use of the Subscription Software and Subscription Services, on servers located at a facility selected by John Zink.

(b) **Support.** John Zink shall (a) provide Licensee with access (via the internet, telephone or other means established by John Zink) to John Zink’s support helpline, (b) install, when and if generally

available, Updates; and (c) use reasonable efforts to correct or circumvent any material deviation between the then-current, general release version of the Subscription Software and its Documentation (the foregoing referred to collectively as “**Support**”). Support does not include engineering support or professional services, which may be the subject of a separate agreement. Support is included in the Subscription Fee.

(c) **Equipment Accounts.** Licensee is responsible for maintaining its own Authorized Equipment, EquipmentIDs and passwords which can be managed through the Subscription Software interface. Licensee is responsible for maintaining the confidentiality of Licensee’s EquipmentIDs and passwords and shall cause its Authorized Users to maintain the confidentiality of the EquipmentIDs and passwords. Licensee is responsible for all uses of and activities undertaken with EquipmentIDs registered on Licensee’s account. Licensee agrees to immediately notify John Zink of any unauthorized use of Licensee’s EquipmentIDs of which Licensee becomes aware.

(d) **Authentication of Equipment Accounts.** John Zink may contract with a third-party (e.g. PingID, Auth0) to provide services related to the Equipment Accounts authentication onto the Hosted Environment and Subscription Software. Licensee hereby grants John Zink a limited license to use and transfer Personal Information, including but not limited to, EquipmentIDs and passwords, to such third-party solely for authentication services. Such license will terminate at the end of the Subscription Term.

(e) **Connectivity.** John Zink will be responsible for maintaining connectivity from its network to the Internet which is capable of servicing the relevant Internet traffic to and from the hosted environment. Licensee is responsible for providing connectivity to the Internet for itself and its Authorized Users. Licensee shall also be responsible for ensuring that latency and available bandwidth from the user’s desktop to John Zink’s hosted routers is adequate to meet Licensee’s desired level of performance. If Licensee requires a VPN or private network connection to the Subscription Services, Licensee is responsible for all costs associated with any specialized network connectivity required by Licensee. Unless otherwise agreed in any applicable purchase order, Licensee shall be responsible for and pay for its use of cellular data. If the Parties agree in writing that John Zink is responsible for cellular data services, John Zink will charge back such cellular fees to Licensee.

(f) **Restrictions.** John Zink shall have no obligation to correct a problem caused by Licensee’s negligence, Licensee’s equipment malfunction or other causes beyond the control of John Zink.

(g) **Customizations.** Customizations are not permitted absent John Zink’s prior written consent. If permitted, Customizations may only be created and deployed by John Zink, and shall be documented in a separate agreement between John Zink and Licensee. Support or other services for Customizations are not available under this Agreement or included as part of the Subscription Fees and may only be purchased pursuant to a separate agreement between John Zink and Licensee.

(h) **Updates.** John Zink will provide periodic Updates to the Subscription Software. John Zink will notify Licensee at least five (5) business days prior to installing the Updates; such notice will include the type of Update and anticipated downtime of the Subscription Software.

4. **Payment and Taxes.**

(a) **Payment.** Licensee shall pay John Zink the fees set forth on the Purchase Order according to the applicable terms and conditions.

5. **Limited Warranties, Disclaimer of Warranties, and Remedies.**

(a) **Right to Grant License.** John Zink warrants that that it owns all right, title and interest in and to the Ewon Software, Subscription Software or has obtained rights in such Subscription Software sufficient to grant the licenses granted to Licensee under this Agreement. Licensee’s exclusive remedy, and John Zink’s exclusive obligation, for a breach of this warranty is set forth in Section 7 (Indemnity).

(b) No Personal Information. Licensee warrants that the Licensee Data contains no Personal Information.

(c) Limited Subscription Software Warranty by John Zink and Remedy For Breach. John Zink warrants that the Subscription Software will operate without a Documented Defect during the Initial Subscription Term. John Zink’s sole obligation with respect to a breach of the foregoing warranty shall be to repair or replace the Subscription Software giving rise to the breach of warranty. If John Zink is unable to repair or replace such Subscription Software within a reasonable period of time, then, subject to the limitations set forth in Section 14 of this Agreement, Licensee may pursue its remedies at law to recover direct damages resulting from the breach of this warranty. The remedies in this Section 5(c) are exclusive and in lieu of all other remedies, and represent John Zink’s sole obligations, for a breach of the foregoing warranty. Licensee must provide notice to John Zink of any warranty claim within the warranty period. For clarity, Licensee’s entitlement to Support (as defined in Section 3(b)) in connection with any Documented Defect shall continue throughout the Subscription Term.

(d) Malicious Code. John Zink represents that it has used commercially reasonable best efforts utilizing generally accepted industry tools and practices to provide Ewon Software and Subscription Software that does not contain any “time bombs,” “worms,” “viruses,” “Trojan horses,” “protect codes,” “data destruct keys,” or other programming devices that are intended to access, modify, delete, damage, deactivate or disable the Subscription Services (“**Malicious Code**”). As Licensee’s sole remedy for breach of this representation, John Zink shall take action immediately to investigate, identify and remove such Malicious Code from the Subscription Software.

(e) Limited Services Warranty and Remedy For Breach. John Zink warrants to Licensee that, John Zink will render the Subscription Services with commercially reasonable care and skill. John Zink further warrants that the hosted environment will be available at all times throughout the Subscription Term, subject to the exceptions and allowances described in the Availability section of the applicable Service Level Description. The level of unavailability shall not exceed one half of one percent (0.5%) per month, excluding Scheduled Maintenance as described in the applicable Service Level Description (the “**Down Time Warranty**”). In the event of a breach of the foregoing warranty John Zink shall apply service level credits based on the actual availability measure for the applicable period as follows:

<u>Availability</u>	<u>Service Level Credit</u>
99.500% or greater	No Service Level Credit
99.499% - 99.000%	5% of the monthly prorated subscription fee
98.999% - 98.500%	15% of the monthly prorated subscription fee
98.499% - 95.000%	25% of the monthly prorated subscription fee
Below 95.000%	35% of the monthly prorated subscription fee

Service level credits for Subscription Fees paid on an annual basis shall be based on a monthly equivalent fee. For example, a 5% service level credit on an annual subscription fee shall be 5% of 1/12 of the annual fee. Service level credits shall be applied to Licensee’s next invoice or, if Licensee has paid the final invoice under this Agreement, service level credits shall be paid to Licensee within thirty (30) calendar days following the determination that the credit is due. In the event availability for the production environment falls

below 95% for any three consecutive months or any four months in a rolling 12 month period (a “Triggering Event”), Licensee may, within sixty (60) days of such Triggering Event, terminate this Agreement, in which case, in lieu of service level credits, Licensee shall receive a refund, on a pro rata basis, of any prepaid Fees applicable to the unused portion of the then-current Term following the effective date of termination of the Agreement. The service level credit is the exclusive remedy and is in lieu of all other remedies for breach of the Down Time Warranty.

(f) Disclaimer of Warranties. The limited warranties in this Section 5 are made to Licensee exclusively and are in lieu of all other warranties. **JOHN ZINK MAKES NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO THE EWON SOFTWARE, SUBSCRIPTION SOFTWARE AND SUBSCRIPTION SERVICES PROVIDED UNDER THIS AGREEMENT AND/OR ANY PURCHASE ORDER, IN WHOLE OR IN PART. JOHN ZINK EXPLICITLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. JOHN ZINK EXPRESSLY DOES NOT WARRANT THAT THE EWON SOFTWARE, SUBSCRIPTION SOFTWARE OR SUBSCRIPTION SERVICES, IN WHOLE OR IN PART, WILL BE ERROR FREE, OPERATE WITHOUT INTERRUPTION OR MEET LICENSEE’S REQUIREMENTS.**

(g) Abrogation of Limited Warranty. John Zink will have no obligation under this Section 5 to the extent that any alleged breach of warranty is caused by any modification of the Ewon Software or Subscription Software not performed by or on behalf of John Zink. To the extent that an alleged breach of warranty concerns a Third Party Product that is subject to a more limited warranty under a Third Party Agreement than specified in Section 5 above, John Zink’s obligations hereunder will be further limited accordingly.

(h) **FAILURE OF ESSENTIAL PURPOSE. THE PARTIES HAVE AGREED THAT THE LIMITATIONS SPECIFIED IN SECTIONS 5 AND 14 WILL SURVIVE AND APPLY EVEN IF ANY REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, AND REGARDLESS OF WHETHER LICENSEE HAS ACCEPTED ANY EWON SOFTWARE, SUBSCRIPTION SOFTWARE OR SUBSCRIPTION SERVICE UNDER THIS AGREEMENT.**

(i) **HIGH RISK ACTIVITIES. THE EWON SOFTWARE, SUBSCRIPTION SOFTWARE MAY BE USED AS ON-LINE CONTROL EQUIPMENT, HAZARD PREDICTION, OR ENVIRONMENTAL MONITORING EQUIPMENT WITHOUT HUMAN OVERSIGHT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF INDUSTRIAL EQUIPMENT, IN WHICH THE FAILURE OF THE EWON SOFTWARE OR SUBSCRIPTION SOFTWARE COULD LEAD DIRECTLY TO DEATH OR PERSONAL INJURY, OR SEVERE PHYSICAL, ENVIRONMENTAL, PROPERTY OR OTHER DAMAGE (“HIGH RISK ACTIVITIES”). JOHN ZINK DISCLAIMS AND LICENSEE AGREES TO WAIVE ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES. LICENSEE AGREES THAT JOHN ZINK SHALL NOT BE LIABLE AND HEREBY INDEMNIFIES JOHN ZINK AGAINST ANY CLAIMS OR DAMAGES ARISING FROM OR RELATED TO THE USE OF THE EWON SOFTWARE OR SUBSCRIPTION SOFTWARE IN SUCH APPLICATIONS.**

6. Confidential Information.

(a) Confidentiality. The Confidential Information disclosed under this Agreement may be used, disclosed or reproduced only to the extent necessary to further and fulfill the purposes of this Agreement. Except as otherwise permitted under this Agreement, the Recipient will not knowingly disclose to any third party, or make any use of the Discloser’s Confidential Information. The Recipient will use at least

the same standard of care to maintain the confidentiality of the Discloser's Confidential Information that it uses to maintain the confidentiality of its own Confidential Information, but in no event less than reasonable care. The non-disclosure and non-use obligations of this Agreement will survive in perpetuity with respect to each item of Confidential Information. Each of Licensee and John Zink shall be responsible for the breach of the confidentiality terms contained in this Section 6 by any of its directors, officers, employees, Authorized Users, agents, accountants and advisors. Notwithstanding the foregoing, this Section is not intended to prevent (a) a Recipient from using Residual Knowledge, subject to any Intellectual Property Rights of the Discloser, or (b) John Zink from using Collected Data. If the Recipient should receive any legal request or process in any form seeking disclosure of Discloser's Confidential Information, or if the Recipient should be advised by counsel of any obligation to disclose such Confidential Information, the Recipient shall (if allowed by law) provide the Discloser with prompt notice of such request or advice so that the Discloser may seek a protective order or pursue other appropriate assurance of the confidential treatment of the Confidential Information. Regardless of whether or not a protective order or other assurance is obtained, the Recipient shall furnish only that portion of the Discloser's Confidential Information which is legally required to be furnished and to use reasonable efforts to assure that the Information is maintained in confidence by the party to whom it is furnished.

(b) Security Policies and Safeguards. John Zink shall establish and maintain administrative, technical, and physical safeguards designed to protect against the destruction, loss, unauthorized access or alteration of Licensee Data in the possession or under the control of John Zink or to which John Zink has access, which are: (i) no less rigorous than those maintained by John Zink for its own information of a similar nature; (ii) no less rigorous than generally accepted industry standards; and (iii) required by applicable laws. The security procedures and safeguards implemented and maintained by John Zink pursuant to this Section 6(b) shall include, without limitation:

- (i) User identification and access controls designed to limit access to Licensee's Data to authorized users;
- (ii) the use of appropriate procedures and technical controls regulating data entering John Zink's network from any external source;
- (iii) the use of encryption techniques when Licensee's Data is transmitted or transferred into or out of the hosted environment;
- (iv) physical security measures, including without limitation securing Licensee's Data within a secure facility where only authorized personnel and agents will have physical access to Licensee Data;
- (v) operational measures, including without limitation IT Service Management (ITSM) processes designed to ensure the correct and secure operations of information processing activities;
- (v) periodic employee training regarding the security programs referenced in this Section; and
- (vi) periodic testing of the systems and procedures outlined in this Section.

(c) Security Incident Response. In the event that John Zink becomes aware that the security of any Licensee Data has been compromised, or that such Licensee Data has been or is reasonably expected to be subject to a use or disclosure not authorized by this Agreement (an "**Information Security Incident**"), John Zink shall: (i) promptly (and in any event within 24 hours of becoming aware of such Information Security Incident), notify Licensee, in writing, of the occurrence of such Information Security Incident; (ii) investigate such Information Security Incident and conduct a reasonable analysis of the cause(s) of such Information Security Incident; (iii) provide periodic updates of any ongoing investigation to Licensee; (iv) develop and implement an appropriate plan to remediate the cause of such Information Security Incident to the extent such cause is within

John Zink's control; and (v) cooperate with Licensee's reasonable investigation or Licensee's efforts to comply with any notification or other regulatory requirements applicable to such Information Security Incident.

7. Indemnity

a. Section 6 Indemnity. Either Party ("**Indemnitor**") will defend, indemnify and hold the other Party ("**Indemnitee**") harmless from and against any loss, cost and expense to the extent arising from a breach of Section 6. Indemnitor's obligations under this indemnification are expressly conditioned on the following: (i) Indemnitee must promptly notify Indemnitor of any such claim; (ii) Indemnitee must, in writing, grant Indemnitor sole control of the defense of any such claim and of all negotiations for its settlement or compromise so long as such settlement or compromise does not result in payment of money by Indemnitee or an admission of guilt by Indemnitee (if Indemnitee chooses to represent its own interests in any such action, Indemnitee may do so at its own expense, but such representation must not prejudice Indemnitor's right to control the defense of the claim and negotiate its settlement or compromise); and (iii) Indemnitee must reasonably cooperate with Indemnitor to facilitate the settlement or defense of the claim. **THE FOREGOING SETS FORTH INDEMNITOR'S EXCLUSIVE OBLIGATION WITH RESPECT TO BREACH OF CONTRACT UNDER SECTION 6.**

b. Intellectual Property Indemnity. See Purchase Order terms and conditions for relevant indemnity on third party intellectual property.

8. Term and Termination

(a) Term. With respect to the Subscription Software, the Initial Subscription Term is set forth in Section 1. After the Initial Subscription Term, the Subscription Term shall renew for successive one-year Renewal Terms, unless either party provides written notice of non-renewal to the other party at least ninety (90) days prior to expiration of the Initial Subscription Term or then current Renewal Term, as the case may be. Except as set forth in Section 8(b), the Subscription Term cannot be terminated prior to its expiration date.

(b) Right of Termination. If either party breaches any material obligation in this Agreement or an Purchase Order (including, without limitation, any obligation to pay Subscription Fees), and fails to remedy such breach (if such breach can be remedied) within thirty (30) days of receipt of written notice of such breach, the other party may terminate this Agreement (including all Purchase Orders hereunder). Notwithstanding the foregoing, to the extent such material breach cannot be remedied through efforts of the breaching party, the other party has the right to terminate this Agreement (including all Purchase Orders hereunder) on less than thirty days' written notice.

(c) Effect of Termination. Upon termination of this Agreement by either party, Licensee's license to access and use the Subscription Software and Subscription Services shall immediately terminate as of the effective date of such termination. Termination of this Agreement will not release either party from making payments which may be owing to the other party under the terms of this Agreement through the effective date of such termination. Termination of this Agreement will be without prejudice to the terminating party's other rights and remedies pursuant to this Agreement, unless otherwise expressly stated herein.

(d) Return of Licensee Data. Upon termination or expiration of this Agreement, John Zink shall promptly make all Licensee Data available to Licensee as a native database export provided through John Zink's FTP server. In the event that Licensee requires the return of Licensee Data in an alternate format or requires any other termination assistance services, John Zink and Licensee shall mutually agree upon the scope of such termination assistance services and the fees and expenses payable for such termination assistance services.

(e) **Survival of Obligations.** All obligations relating to non-use and non-disclosure of Confidential Information, limitation of liability, and such other terms which by their nature survive termination, will survive termination or expiration of this Agreement.

9. Notices. All notices and other communications required or permitted under this Agreement must be in writing and will be deemed given when: delivered personally; sent by registered or certified mail, return receipt requested; transmitted by facsimile confirmed by first class mail; or sent by overnight courier. Notices must be sent to a party at its address shown on the signature page of the applicable Purchase Order, or to such other place as the party may subsequently designate for its receipt of notices in accordance with this Section. Licensee must promptly send copies of any notice of material breach and/or termination of the Agreement to John Zink, Attention: General Counsel or to such other place as John Zink may subsequently designate for its receipt of notices.

10. Force Majeure. Except with respect to the payment of fees hereunder, neither party will be liable to the other for any failure or delay in performance under this Agreement due to circumstances beyond its reasonable control, including, without limitation, Acts of God, war, terrorist acts, pandemics, quarantine, accident, labor disruption, acts, omissions and defaults of third parties and official, governmental and judicial action not the fault of the party failing or delaying in performance, or the threat of any of the foregoing.

11. Assignment. Licensee may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of John Zink, whether by operation of law or otherwise, including in connection with a change in control, merger, acquisition, consolidation, asset sale or other reorganization, and any attempt at such assignment or transfer will be void.

12. No Waiver. A party's failure to enforce its rights with respect to any single or continuing breach of this Agreement will not act as a waiver of the right of that party to later enforce any such rights or to enforce any other or any subsequent breach.

13. Choice of Law; Severability. See applicable purchase order terms and conditions, which apply to this agreement and are incorporated in their entirety.

14. LIMITATIONS OF LIABILITY. – SEE APPLICABLE PURCHASE ORDER TERMS AND CONDITIONS, WHICH

APPLY TO THIS AGREEMENT AND ARE INCORPORATED IN THEIR ENTIRETY.

15. Audit Rights. John Zink (including any third party auditor retained by John Zink) may audit the records and systems of Licensee to ensure compliance with the terms of this Agreement and each applicable Purchase Order. John Zink will notify Licensee in writing at least ten (10) business days prior to any such audit. Any such audit will be conducted during regular business hours and will not interfere unreasonably with Licensee's business activities. John Zink may audit Licensee no more than once in any twelve (12) month period. If an audit reveals that Licensee is using the Subscription Software or Subscription Services beyond the scope of the license granted herein (for example, in excess of the License Restriction), then, in addition to any other remedies available to John Zink, Licensee will promptly pay John Zink the underpaid Subscription Fees associated therewith based on John Zink's then-current list rates, as well as any applicable late charges.

16. Compliance with Laws. Licensee will comply with all laws, rules and regulations applicable to the use of the Subscription Software and the Subscription Services including, without limitation, by not submitting any Licensee Data that is illegal, defamatory, or that infringes any third party proprietary rights.

17. Third Party Beneficiaries. The Parties acknowledge and agree that John Zink's affiliates are third party beneficiaries of this Agreement for app purposes including enforcement. Subject to the foregoing exception, this Agreement is entered into solely between John Zink and Licensee, may be enforced only by John Zink and Licensee, and will not be deemed to create any rights in third parties, including suppliers and subcontractors of a Party, or to create any obligations of a Party to any such third party

18. Entire Agreement. This Agreement contains the entire understanding of the parties with respect to its subject matter, and supersedes and extinguishes all prior oral and written communications between the parties about its subject matter. Any purchase order or similar document, which may be issued by Licensee in connection with this Agreement, does not modify, supplement or add terms to this Agreement. John Zink may modify this Agreement at any time, in its discretion, upon notice to Licensee and Licensee's continued use of the Ewon Software, Subscription Software constitutes Licensee's agreement to such modifications.

DOMESTIC TECHNICAL ASSISTANCE AGREEMENT (VAPOR CONTROL)

Scheduled Starting Date of Services: _____ Scheduled Completion Date of Services: _____

Is work tax exempt? Yes or No - If yes, return a tax exempt certificate with this agreement other wise tax will be charged.

"COMPANY": _____

Address: _____

Billing Address: _____

Work Site Address: _____

Point of Contact: _____

Phone: _____

FAX: _____

E-mail: _____

"CONTRACTOR":

John Zink Company, LLC ("John Zink")

11920 East Apache, Tulsa, Oklahoma 74116

Point of Contact: _____

Phone: _____

FAX: _____

E-mail: _____

Service Required: _____

Equipment S.O. No.: _____

CALCULATION AND PAYMENT OF CHARGES

Calculations of rates for Labor, Travel Time, Travel Expenses, Living Expenses, Standby Time, Training, Field Materials, OEM Replacement Parts, Subcontracted Work, Rental Equipment, John Zink Owned Equipment, and Freight shipments shall be governed by Exhibit 1 "Domestic Reimbursable Hourly Rate Schedule" hereto attached. Payment of invoices shall be made net 30 days after submittal of the invoice. Documents supporting the invoices shall be furnished upon request. Payments due hereunder are not subject to any setoffs with any other contract.

WORKING HOURS

The normal working hours, consists of •"Straight Time" rates apply to the first eight (8) hours (per shift) of the workday on Monday, Tuesday, Wednesday, Thursday, or Friday. •"Overtime" rates apply for all hours in excess of Straight Time, except for Double Time situations. •"Double Time" rates apply on nationally recognized Holidays and on Saturday, Sunday after the first eight (8) hours (per shift) of the workday. •Travel time shall include both assignment travel and commuting travel.

SERVICES PROVIDED

The sole function of the Contractor's service personnel shall be to provide the technical advice and assistance expressly stated above. All services performed by the Contractor are expressly limited and conditioned upon the Company's acceptance of this Technical Assistance Agreement and the terms stated therein and any provision or differing terms proposed by Company shall be void and of no effect, unless accepted in writing by Contractor. No change to this Agreement shall be valid unless in writing, signed by the Company and Contractor. If this Agreement is incorporated into the purchase order or other agreement issued by the Company, which shall only be done with the approval of the Contractor, the terms of this Agreement shall take precedence over all conflicting terms stated in such other documents.

THE SERVICES PROVIDED BY THE CONTRACTOR HEREUNDER DO NOT SERVE TO MODIFY, WAIVE OR OTHERWISE LIMIT OR EXPAND THE TERMS OF THE CONTRACT WHICH APPLY TO THE SALE OF THE EQUIPMENT UPON WHICH SERVICES ARE TO BE PERFORMED BY THE CONTRACTOR.

In witness whereof, the parties to this Agreement have executed this Agreement effective as of the latest date stated below.

COMPANY

(Signature) _____

Company (print): _____

Name (print): _____

Title (print): _____

Date: _____

CONTRACTOR

(Signature) _____

Contractor: John Zink Company, LLC

Name (print): _____

Title (print): _____

Date: _____

TERMS AND CONDITIONS - TECHNICAL ASSISTANCE AGREEMENT

Page 2 of 3 DOMESTIC - TAA "H" VAPOR CONTROLS [Rev. 07 07 15]

1. RELATIONSHIP OF THE PARTIES. The parties hereto are independent contractors and neither the Contractor nor the Contractor's personnel are agents, servants or employees of the Company or its contractors or subcontractors. The Contractor shall notify the Company before proceeding with and upon completion of the services. At all times when Contractor's service personnel are present or performing services at the Company's work site, the Company shall provide an authorized representative to whom the Contractor's service personnel shall report and who shall be responsible for the safety of all persons and protection of all property in and adjacent to the work site. In providing the services hereunder, the Contractor assumes no right or duty to control or shut down the project or equipment or to control or direct the safety, operational, or maintenance procedures or methods utilized at the work site. Contractor assumes no responsibility for workmanship, productivity, technical qualification or training and qualification requirements of the personnel of the Company or others. Company shall provide emergency medical aid to Contractor's service personnel. Contractor shall reimburse Company for the cost of such aid.

2. WARRANTY. All services shall be performed by Contractor in a workmanlike manner, consistent with U.S. industry practices. If, within three months of performance of the services, any services prove deficient, Contractor will correct the deficiency. Contractor shall not be responsible for making of access required to re-perform the services. THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, EXCEPT AS EXPRESSLY STATED HEREIN. CONTRACTOR EXTENDS NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. The Contractor shall not be responsible for goods and services furnished by the Company or others, or the costs thereof, without the Contractor's prior written agreement. Company's remedies under warranty are specifically limited to the correction of any deficient services performed by Contractor and are exclusive of all other remedies.

3. INSURANCE. Contractor shall maintain, and at Company's request shall provide Company with certificates evidencing, the following insurance coverage: (a) Statutory Workers' Compensation and Employer's Liability Insurance, with limits of \$1,000,000.00 per occurrence; (b) Commercial General Liability Insurance, with a combined single limit for bodily injury and property damage of \$1,000,000.00 per occurrence and in the aggregate; and (c) Automobile Liability Insurance, with a combined single limit for bodily injury and property damage of \$1,000,000.00 per accident.. Company shall maintain the risk of physical loss or damage to its property and the work site, including, but not limited to, materials, equipment and supplies being shipped to, entering into, forming part of, or intended to be incorporated into the property at or near the work site.

4. INDEMNITY. CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS COMPANY, ITS PARENT, AFFILIATES, SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, AND THEIR SUCCESSORS AND ASSIGNS (COMPANY GROUP) AGAINST ALL THIRD PARTY DAMAGES, LOSSES, COSTS, CLAIMS, STRICT LIABILITY CLAIMS, LIENS, ENCUMBRANCES, LIABILITIES, AND EXPENSES (INCLUDING ATTORNEYS' FEES), BUT ONLY TO THE EXTENT OF THE NEGLIGENT ACTS OR OMISSIONS OF CONTRACTOR. COMPANY SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CONTRACTOR, ITS PARENT, AFFILIATES, SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, AND THEIR SUCCESSORS AND ASSIGNS (CONTRACTOR GROUP), AGAINST ALL THIRD PARTY DAMAGES, LOSSES, COSTS, CLAIMS, STRICT LIABILITY CLAIMS, LIENS, ENCUMBRANCES, LIABILITIES, AND EXPENSES (INCLUDING ATTORNEYS' FEES), BUT ONLY TO THE EXTENT OF THE NEGLIGENT ACTS OR OMISSIONS OF COMPANY. ALL LIABILITY, LOSSES, DAMAGES, COSTS OR EXPENSES RESULTING FROM PERSONAL INJURY, INCLUDING DEATH, LOSS OF OR PHYSICAL DAMAGE TO PROPERTY, CAUSED BY THE JOINT OR CONCURRING ACTS OF COMPANY AND CONTRACTOR, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS, SHALL BE BORNE BY COMPANY AND CONTRACTOR TO THE EXTENT EACH IS DETERMINED NEGLIGENT EITHER BY AGREEMENT OF THE PARTIES OR BY A COURT OF COMPETENT JURISDICTION. THE TERM "THIRD PARTY" SHALL MEAN ANY PERSON OR ENTITY THAT IS NOT A MEMBER OF COMPANY GROUP OR CONTRACTOR GROUP.

5. LIMITATIONS OF LIABILITY. NO PARTY SHALL BE LIABLE FOR INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES INCLUDING LOSS OF PROFITS, REVENUES OR OTHER ECONOMIC LOSSES WHETHER CLASSIFIED AS DIRECT OR CONSEQUENTIAL ARISING UNDER ANY CAUSE OR COMBINATION OF CAUSES, INCLUDING ANY THEORIES FOR CONCURRENT OR JOINT LIABILITY. IN NO EVENT SHALL CONTRACTOR'S AND/OR ITS PARENT/AFFILIATES CUMULATIVE LIABILITY EXCEED ONE MILLION DOLLARS REGARDLESS OF CAUSE OR COMBINATION OF CAUSES WHATSOEVER. ALL INSURANCE, BOND, BANK GUARANTEE OR LETTER OF CREDIT THAT MAY BE PAID BY THE INSURERS OR BANKS OF CONTRACTOR OR ITS PARENT/AFFILIATES SHALL BE CREDITED AGAINST THE LIMITATION OF LIABILITY AND REDUCE THE CUMULATIVE LIABILITY OF CONTRACTOR AND/OR ITS PARENT/AFFILIATES. COMPANY'S REMEDIES ARE LIMITED TO THOSE REMEDIES EXPRESSLY STATED IN THIS AGREEMENT; AND THOSE REMEDIES SHALL NOT FAIL THEIR ESSENTIAL PURPOSE BECAUSE COMPANY IS LIMITED TO THE EXCLUSIVE REMEDIES AS STATED. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FUNDAMENTAL BREACH OR FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

6. MISCELLANEOUS: (a) The Company's audit rights shall consist of Contractor making available for Company's examination, at Contractor's home offices, the directly relevant and pertinent time sheets. (b) This Agreement supersedes all previous agreements and understandings of the parties on this subject matter and constitutes the entire Agreement between the parties. (c) If any provision of this Agreement is held to be illegal or invalid for any reason by a court of competent jurisdiction, the remaining provisions hereof shall be unimpaired and the illegal or invalid provision shall be construed and applied so as to most closely effectuate its intent. (d) The provisions for indemnity, limitation of liability and all other provisions which by their nature are intended to survive, shall survive expiration or termination of the Agreement. (e) Payment shall be via a financial institution that is not subject to the sanction laws of the United States, the European Union, or other applicable jurisdiction.

7. APPLICABLE LAW. These terms and conditions, this order and the legal relations of the parties shall be determined in accordance with the laws of the State of Texas, irrespective of Texas choice of law provisions. The parties disclaim any applicability of the U.N. Convention of the International Sale of Goods to the order. The parties hereby consent to the exclusive jurisdiction of either the District Court of Harris County, Texas, or the United States District Court for the Southern District of Texas, Houston Division (whichever is applicable), with respect to disputes relating to the order. THE PARTIES WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM OR PROCEEDING RELATING TO THE AGREEMENT.

VAPOR CONTROL - AFTERMARKET SERVICES DOMESTIC REIMBURSABLE HOURLY
RATE SCHEDULE

For Work on Time & Material Contracts and Change Orders to Fixed Price Contracts

Standard Rates

Field Service Specialist.....	\$150.00/hr.
Field Service Regional Advisor.....	\$175.00/hr.
Engineers/Project Managers.....	\$200.00/hr.
Controls Engineer/Process Engineer.....	\$275.00/hr.

Below are Hourly Rates for Locations with a Preventative Maintenance (PM) Contract in place with John Zink. The discounted rates apply to all services at that facility.

Field Service Specialist.....	\$120.00/hr.
Field Service Regional Advisor.....	\$145.00/hr.
Engineers/Project Managers.....	\$180.00/hr.
Controls Engineer/Process Engineer.....	\$250.00/hr.

Clarifications

Standard Rates are considered Straight Time and these rates apply to the first eight (8) hours of a work shift on Monday, Tuesday, Wednesday, Thursday, or Friday. Minimum site call outs are four (4) hours.

Overtime rates apply to the first eight (8) hours of a shift on Saturday or Sunday and all hours in excess of Straight Time, except in situations where Double Time applies. Overtime rates = 1.5 x straight time rate

Double Time rates apply on nationally recognized Holidays and all hours in excess of the first eight (8) hours of a work shift on Saturday and Sunday. Double time rates = 2.0 x straight time rate

If a special request is made for a Field Service Specialist that does not normally cover their specific region then the rate for a Field Service Advisor will apply.

The minimum billing amount for call-outs is 4 hours.

The above hourly rates are in US dollars and include those taxes imposed on income, gross receipts and contributions and taxes for unemployment insurance, old age retirement benefits, pensions, annuities imposed by the United States or any state or political subdivision thereof, however measured. They do not include VAT, sales taxes, use taxes, and/or excise taxes. The above rates do not include travel and living expenses.

Other Field Charges

- A. Travel Time: Man-hours for travel are calculated on a portal to portal basis and are in addition to hours worked.
- B. Travel Expenses: John Zink vehicles will be billed at the current IRS Standard Mileage Rates plus \$0.15 per mile. Airline tickets, rental cars, parking fees, toll roads, etc. will be invoiced at cost plus 15%.
- C. Living Expenses: Meals and hotels will be invoiced at a cost plus 15%.
- D. Standby Time: Any JZ employee put on stand-by will be paid 8 hours/day. The minimum 8-hour shift can be combined with time worked during the shift. Overtime rates are paid when the work extends past the 8-hour minimum.
- E. Training: Training required to enter the facility will be billed at cost plus 15% for the training, plus the man-hours required for the training.
- F. Field Materials: Field materials purchased, such as, pipe, fittings, flanges, gaskets, pipe supports, etc. will be billed at cost plus 20%.
- G. OEM Replacement Parts: John Zink OEM parts and replacement equipment will be invoiced at normal pricing.
- H. Subcontracted Work: will be billed at vendor's invoice plus 20%.
- I. Rental Equipment: including, but not limited to cranes, forklifts, trailers, scaffold, welding machines, power tools, hand tools, breathing air, etc. will be billed at invoice plus 20%.
- J. John Zink Owned Equipment: (i.e.; trucks, tools, etc.) shall be billed at \$100.00 per day.
- K. Freight shipments: ExWorks Tulsa, OK, or corresponding fabrication facility. Freight charges will be pre-paid and added to invoice.
- L. Safety forms: Completion of Safety forms/Job safety analysis, lift plans, etc will be billed at actual time required for approval and processing
- M. Drafting and Coordinators: Any additional work required for these services will be invoiced as needed.

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