

**The Project** This Agreement (hereinafter called "Agreement") is made by and between the person or entity named under "Client Information" (hereinafter called "Client") and Twist Technology, LLC (hereinafter called "Twist") for the benefit of each. The agreement is for Twist to formulate a technical design, unless otherwise called out in the contract documents, to construct a technical system based upon said design, and to provide the materials, labor, programming as, and only to the extent as, called out in the latest accepted version of the Agreement referring to these Terms and Conditions. Said Agreement must have been accepted both by the Client and Twist. Any labor, materials, hardware, software or design or other activity pertaining hereto is referred to in the aggregate as the "Project."

**Mutual Obligations and Cooperation** Twist agrees to sell to Client and the Client agrees to purchase from Twist the Project under the terms and conditions stated herein. The parties hereto agree to faithfully execute their respective obligations hereunder.

In the execution of this Agreement, the Client and Twist commit at all times to cooperate fully with each other, and to proceed on the basis of trust and good faith, and to permit each party to realize the benefits afforded each under this agreement.

**Twist Project Manager and Client's**

**Representative** For the benefit of the Project, Twist shall appoint a representative to be Project Manager on behalf of Twist. This representative shall be reasonably available to the Client during regular business hours excluding holidays and shall have the necessary expertise and experience required to supervise the work and to authorize changes on behalf of Twist. Twist's Project Manager shall communicate regularly with Client and shall be vested with the authority to act on behalf of Twist.

Likewise, Client agrees to appoint one person only, to act as the "Client Representative" and to be the sole person authorized to make changes on behalf

of the Client. Unless otherwise stated in writing, that person shall be the person signing this agreement on behalf of the Client. This person shall be responsible for providing client-supplied information and approvals in a timely manner. The Client Representative shall provide Twist with prompt notice if (s)he observes any failure on the part of Twist to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work.

Client shall provide reasonable assistance to Twist in obtaining any and all such governmental approvals as Twist may require for expediting and executing the Project.

**Duty to Cooperate** The Client shall, throughout the performance of the Work, cooperate with Twist and perform its responsibilities, obligations and services in a timely manner.

Twist shall use best commercially feasible efforts to be responsive to the Client to not delay the Project.

The Client shall provide timely reviews and (where required) approvals of submittals, interim design submissions and Construction Documents.

**Design Services and Client Approvals** Twist shall submit to the Client such construction documents as are required to build the systems in the Project. These documents shall describe systems compliant with applicable code requirements and shall lay forth system interconnection plans. If requested by either party, the Owner & Twist shall conduct a design review meeting(s) to discuss, review and approve the construction documents. Upon receiving approval, Twist shall proceed with construction in accordance with the approved construction documents.

Client's review, comment and/or approval of interim design submissions and the Construction Documents are for the purpose of establishing Twist's compliance with the Client's requirements and for authorizing Twist to proceed and to signify that payments tied to any approvals are due.

**Governmental Compliance** Twist shall obtain and pay for Permits and Licenses applicable to Twist's portion of the Project unless otherwise called out in the Agreement. Twist shall ensure that the work conforms to applicable requirements and stipulations of these permits.

**Twist's Construction Practices** Twist shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of these Terms & Conditions, and shall maintain or cause to be maintained all licenses required of Twist or its employees in connection with the Work unless otherwise called out in the Agreement. Twist shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction for Twist systems.

**Other Trades** Twist is not responsible for the work of other trades working in support of Twist or otherwise engaged on the same construction site. Any damage to Twist's work by the Owner or by third parties known or unknown, shall not be repaired without additional charge by Twist.

**Warranty** Twist warrants to Client that the labor and workmanship furnished by Twist shall be of good quality and that materials furnished by Twist as a part of the construction, shall be new unless otherwise specified or agreed by the Client or specified by the documents. Twist's sole Warranty obligation shall be to repair or replace (at Twist's option) any defects in Twist-furnished materials only, for a period of one year or to correct any defects in labor, workmanship, or programming for a period of 1 year after the Client's first beneficial use of the system(s). No warranty claims will be processed until the client has paid all invoices and any change orders due for the systems in full. Specifically excluded from this warranty are any existing or owner-furnished equipment which Twist integrates as part of the Project. Such equipment is under no warranty from Twist WHATSOEVER. Further, this warranty specifically excludes defects caused by abuse, damage, alterations, or failure to

maintain the Project by persons other than those employed by Twist. Nothing in this warranty is intended to limit any manufacturer's warranty which might provide Client with greater warranty rights than set forth in this Section. Twist will provide Client with all manufacturers' warranties upon Substantial Completion.

NO OTHER WARRANTIES ARE EXPRESSED OR IMPLIED INCLUDING ANY WARRANTIES OF MERCHANTABILITY.

**Correction of Defective Work** Twist's sole obligation under the Warranty shall be to correct any work by Twist that is not in conformance with the Agreement or to repair or replace (at Twist's option) any defective materials. Twist's obligation and duties shall survive completion of this work including, but not limited to, Twist's obligation to correct, repair, and/or replace latent defects in materials furnished by Twist for a period of one year only.

**CONSEQUENTIAL DAMAGES** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NEITHER TWIST NOR CLIENT SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

**Client's Separate Contractors** The Client may at any time contract or approve concurrent contracts for performance of other work on, nearby, or within the same area as Twist, however, such work shall be coordinated by the Client so as to minimize interference with access to the site by Twist. Should interference occur Twist may assess additional fees.

**Insurance** Twist maintains, from insurance companies authorized to do business in the State of Alabama, standard Workman's Compensation and Liability Insurance policies and will furnish

certificates issued by these companies upon request. The costs of any insurance coverage which the Client requires in excess of the limits already maintained by Twist shall be paid by the Client. Twist will cause the Client to be listed as an additional named insured on its policies and will provide Client with certificates of insurance naming Client as an additional named insured upon request.

**Risk of Loss** Twist shall bear all risk of loss or damage to goods or materials purchased but not yet delivered to the Project site, including goods or materials in transit, in storage or in the possession of third parties designated by Twist. Client shall bear all risk of loss or damage to goods and materials delivered, stored or installed at the Project site. Each party agrees to maintain such policies of insurance as may be necessary to cover all costs of repair or replacement associated with the foregoing allocation of risk.

**Time** Both Twist and the Client acknowledges that time is of the essence in completion of the Project.

**Payments** The Terms of Payment in the Proposal attached are accepted for all sums due to Twist under this agreement. The Client acknowledges that all invoices are due upon receipt without offset and agrees to make all payments not later than within 10 days after the date of invoice. Failure to make payments according to the Terms of Payment shall be just cause for the cessation of work by Twist and no penalties shall accrue to Twist for delays caused by such cessation for the Client's failure to pay in a timely manner.

**Change Orders** Should changes or additions to the Project be required, Client and Twist shall negotiate in good faith and as expeditiously as possible such appropriate adjustments as may be required in price, delivery or scope of the Project. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order document reflecting the terms of the agreement reached.

**Minor Changes** Twist may make minor changes in the selection of materials and or methods which do not result in an increase in price and/or completion time(s) and which do not materially or adversely affect the Project.

**Dispute Avoidance and Resolution** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes and disagreements. If disputes or disagreements do arise, Twist and Client each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Project.

### **Resolution**

**Governing Law** The Agreement and all Contract Documents shall be governed by the laws of the State of Alabama excepting for the Arbitration section immediately below.

**Arbitration** The parties to this Agreement specifically waive any rights to bring suit or demand a trial by jury in any venue and agree to settle any disputes related to this Agreement in accordance with the Wyoming Arbitration Act.

**Severability** If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable legal requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts which shall remain in full force and effect as if the unenforceable provision or part were deleted.

**Force Majeure** Neither party to this agreement shall be liable for failure to perform the party's obligations if such failure is as a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion,

revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity, telephone or internet service. No party is entitled to terminate this Agreement under such circumstances.

**Notice** Whenever notice needs to be provided to the other party, notice will be deemed to have been validly given: (i) if delivered in person to the individual intended to receive such notice; (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement; or (iii) if transmitted by facsimile or email, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient, provided, however, that the intended recipient is present to receive the facsimile and the transmittal is immediately followed by a hard copy delivered in accordance with (i) or (ii) above.

**Exhibits** The fully executed Twist System Proposal document referencing this Terms and Conditions document is specifically made a part hereof, and incorporated herein by this reference. Agreement to the Twist Proposal constitutes agreement to these terms.