

## **ADDENDUM TO:**

### **Laramie County/Badger Daylighting**

THIS ADDENDUM is made and entered into by and between Laramie County, Wyoming, P. O. Box 608, Cheyenne, Wyoming 82003-0608, ("COUNTY") and Badger Daylighting Corp., 4910 North County Road 900 East Brownsburg, IN 46112 (hereinafter, "CONTRACTOR").

#### **I. PURPOSE**

The purpose of this Addendum is to modify the proposal to assist Laramie County with hydrovac services, attached hereto as Attachment 'A' and fully incorporated herein (hereinafter "Agreement").

#### **II. TERM**

This Addendum shall commence on the date last executed by the duly authorized representatives of the parties to this Addendum and Agreement and shall remain in full force pursuant to the terms of the Agreement and this Addendum.

#### **III. RESPONSIBILITIES OF CONTRACTOR**

A. CONTRACTOR shall provide and complete the services described in Attachment 'A', attached hereto and fully incorporated herein.

B. COUNTY shall pay CONTRACTOR in accordance with the terms and conditions of the Agreement and this Addendum. Payment will be made upon receipt of the CONTRACTOR'S invoice to the COUNTY. No payment shall be made before the last signature is affixed to this Agreement. Payments shall be in accordance with Wyo. Stat. § 16-6-602 (as amended).

#### **IV. MODIFICATIONS**

A. The Section entitled "General Notes, Conditions, & Badger Responsibilities" is hereby modified in Paragraph 7:

Terms of Payment – Net ~~30~~ 40 days from date of invoice. Late invoices are subject to services fees.

B. Paragraphs (c) & (d) of Section 6, Representations and Warranties; Limitation of Remedy, are stricken and of no force and effect.

C. Section 7, Limitation of Liability, is stricken and of no force and effect.

D. Section 12, Payment Terms, is modified as follows:

All payments are due ~~thirty (30)~~ **forty (40)** days from the date of invoice...

E. Section 13, Cancellation, is stricken and of no force and effect and is replaced by the provision entitled "Termination" set forth below.

F. Section 18, Confidential Information, is hereby modified to include an additional paragraph (d) as follows:

(d) Service Provider acknowledges that Buyer is a governmental entity and materials associated with this service agreement are likely to be considered public records under the Wyoming Public Records Act, W.S. 16-4-201 et seq., and may be disclosed in accordance with Wyoming state law. Service Provider shall not be entitled to injunctive relief for any release of materials associated with this service agreement in accordance with the Wyoming Public Records Act.

G. Section 24, Governing Law; Venue is stricken and of no force and effect and replaced with the provision entitled "Applicable Law and Venue" set forth below.

## V. ADDITIONAL PROVISIONS

1. Entire Agreement: The Agreement (6 pages) and Addendum (4 pages) represents the entire and integrated agreement and understanding between the parties in regard to the subject matter herein and supersedes all prior negotiations, statements, representations and agreements, whether written or oral.

2. Termination: This Agreement may be terminated (a) by either party at any time for failure of the other party to comply with the terms and conditions of this agreement; (b) by either party, with thirty (30) days' prior written notice to the other party; or (c) upon mutual written agreement by both parties.

3. Applicable Law and Venue: The parties mutually understand and agree this Agreement and Addendum shall be governed by and interpreted pursuant to the laws of the State of Wyoming. If any dispute arises between the parties from or concerning this Agreement and Addendum or the subject matter hereof, any suit or proceeding at law or in equity shall be brought in the District Court of the State of Wyoming, First Judicial District, sitting at Cheyenne, Wyoming or the Federal District Court, District Of Wyoming. This provision is not intended nor shall it be construed to waive COUNTY's governmental immunity as provided in this Agreement and Addendum.

4. Discrimination: All parties agree they will not discriminate against any person who performs work under the terms and conditions of this Agreement and Addendum because of race, color, gender, creed, handicapping condition, or national origin.

5. ADA Compliance: All parties agree they will not discriminate against a qualified individual with disability, pursuant to a law as set forth in the Americans With Disabilities Act, P.L. 101-336, 42 U.S.C. § 12101, *et seq.*, and/or any properly promulgated rules and regulations relating thereto.

6. Governmental/Sovereign Immunity: COUNTY does not waive its Governmental/Sovereign Immunity, as provided by any applicable law including W.S. § 1-39-101 *et seq.*, by entering into this Agreement and Addendum. Further, COUNTY fully retains all immunities and defenses provided by law with regard to any action, whether in tort, contract or any other theory of law, based on this Agreement and Addendum.

7. Indemnification: To the fullest extent permitted by law, CONTRACTOR agrees to indemnify and hold harmless COUNTY, its elected and appointed officials, employees and volunteers from any and all liability for injuries, damages, claims, penalties, actions, demands or expenses arising from or in connection with work performed by or on behalf of CONTRACTOR for COUNTY except to the extent liability is caused by the COUNTY or its employees. CONTRACTOR shall carry liability insurance sufficient to cover its obligations under this provision and provide COUNTY with proof of such insurance.

8. Conflict of Interest: COUNTY and CONTRACTOR affirm, to their knowledge, no CONTRACTOR employee has any personal beneficial interest whatsoever in the agreement described herein. No staff member of CONTRACTOR, compensated either partially or wholly with funds from this Agreement, shall engage in any conduct or activity which would constitute a conflict of interest relative to this Agreement.

9. Limitation on Payment: COUNTY's payment obligation is conditioned upon the availability of funds which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services and equipment provided by CONTRACTOR, the Agreement may be terminated by COUNTY at the end of the period for which funds are available. COUNTY shall notify CONTRACTOR at the earliest possible time of the services which will or may be affected by a shortage of funds. At the earliest possible time means at least thirty (30) days before the shortage will affect payment of claims, if COUNTY knows of the shortage at least thirty (30) days in advance. No penalty shall accrue to COUNTY in the event this provision is exercised, and COUNTY shall not be obligated or liable for any future payments due or for any damages as a result of termination under this provision. This provision shall not be interpreted or construed to permit COUNTY to terminate this Agreement in order to acquire similar services from another party.

10. Notices: All notices required and permitted under this Agreement shall be deemed to have been given, if and when deposited in the U.S. Mail, properly stamped and addressed to the party for whom intended at such parties' address listed herein, or when personally delivered personally to such party. A party may change its address for notice hereunder by giving written notice to the other party.

11. Addendum Controls: Where a conflict exists or arises between any provision or condition of this Addendum and the Agreement, the provisions and conditions set forth in this Addendum shall control.

12. Compliance with Law: The parties agree that they shall comply with all applicable laws, regulations and ordinances, whether Federal, State or Local.

*Signature Page*

LARAMIE COUNTY, WYOMING

By: \_\_\_\_\_ Date \_\_\_\_\_  
Chairman, Laramie County Commissioners

ATTEST:

By: \_\_\_\_\_ Date \_\_\_\_\_  
Laramie County Clerk

Badger Daylighting:

By: Cassee Buchanan \_\_\_\_\_ Date 3-25-22  
Authorized Signature  
Cassee Buchanan, Contract Specialist

REVIEWED AND APPROVED AS TO FORM ONLY

By: J. J. [Signature] \_\_\_\_\_ Date 3/28/22  
Laramie County Attorney's Office



# Badger Hydrovac Service Proposal

United States

Prepared By:	Robert Bruce
Email:	RBruce@badgerinc.com
Date	2022/03/02



Badger Daylighting Corp  
 3941 West 5th Street Unit D  
 Cheyenne, WY 82007  
 "An equal opportunity employer"

<b>ESTIMATE</b>	
<b>DATE:</b>	2022/03/02
<b>Reference #:</b>	QT-030222-90603
<b>PREPARED BY:</b>	Robert Bruce

Customer Information					
<b>Company:</b>	LARAMIE COUNTY PUBLIC WORKS	<b>Contact Name</b>	Jacob Vaughan		
<b>Contact Phone #</b>	(307) 633-4302	<b>E-mail:</b>	Jvaughan2@laramiecounty.com		
<b>Billing Address:</b>	13797 PRAIRIE CENTER CIRCLE	<b>Title:</b>	Gravel Road manager		
<b>Bill City/State</b>	CHEYENNE, WY 82009	<b>Account #</b>	26128		
<b>Service Address</b>	13797 PRAIRIE CENTER CIRCLE, Cheyenne, WY, 82009				
Scope of Work					
hydrovac will be charged at a by the hour basis. From port to port. This is a time and material rate sheet only. Below is an example of a day rate. * Water will be provided on site * Dumping on site					
Service Item	Item Description	Price	UOM	Qty	Amount
Badger Hydrovac With Operator		\$ 2,250.00	DAY	1	\$ 2,250.00
Consumable Materials		\$ 27.48	EA	1	\$ 27.48
Fluctuating Fuel Recovery					\$ 209.53
Total:					<b>\$ 2,487.01</b>

*This proposal contains the budgetary estimate to complete the work as described above under the heading "Scope of Work".*

*If any part of the work varies from that described in Scope of Work, or if unexpected digging conditions are encountered (eg rocks, rubble, roots, etc...), then additional charges shall apply. All work will be done on a time and material basis. All work will be done in accordance with the terms and conditions contained in Badger Daylighting Corp.'s standard terms and conditions (USA) attached hereto.*

Company: \_\_\_\_\_

PO#: \_\_\_\_\_

Name (please print): \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

*I am authorized to bind the Company*



**General Notes, Conditions, & Badger Responsibilities:**

1. Travel rates apply when traveling from the closest Badger Operation to the client's project site.
2. Badger will off load material at contracted facility. Travel to and from a designated facility is considered part of the work day and charged at the hourly rate.
3. Any additional third party services provided by Badger Daylighting outside of our typical Hydrovac activities shall be charged out at cost + .
4. With any Hydrovac project, there are possible additional charges that are application and site specific. For example, items such as water trucks, specialized equipment and attachments (remote hose, etc.), crew trucks, and other items may be required. Rather than provide an extensive listing of all possible considerations, this is best implemented on a project-by-project basis and evaluated at the field operations level. The information presented in this document represents the complete proposal.
5. This proposal is valid for 30 days from the date posted on this proposal document.
6. Any and all quotes, offers and transactions are pending Credit Approval by Badger.
7. Terms of Payment - Net 30 days from date of invoice. Late invoices are subject to service fees.
8. Zero (0) % retainage is withheld.
9. Taxes – tax will be added to quote pricing as required by State/Local governments.
10. Currently a fluctuating fuel recovery fee will be applied to all invoices at a monthly calculated rate that is adjusted based upon the average cost of diesel as published by [www.eia.gov](http://www.eia.gov).

**Client responsibilities include:**

1. Access to the Hydrovac site, including permits and permission from property owners, utilities, and government agents.
2. Surface locates, survey marks and traffic control, if needed unless agreed to in writing prior.
3. Breaking, removal, and restoration of asphalt and or concrete unless agreed to in writing prior.
4. Establish, maintain and remediate accessible water source and disposal site.
5. Specific direction and locations for Hydrovac excavation.
6. Backfill and site restoration unless agreed to in writing prior to completing work.
7. Materials to secure and cover the excavation unless agreed to in writing prior.
8. Shoring, maintenance and barricading.
9. Ownership of the soil and debris removed by the Hydrovac including any soils or material contaminated or suspect.
10. Any project delays caused by others that result in downtime of Badger Hydrovac units will be billed at the hourly rates.
11. Pay for all specialized training that is required by contractor/owner/Badger to be on the site to work.
12. Notify Badger of all billing requirements and any appropriate purchase orders, job numbers, AFE, etc. that would be necessary to release payment to Badger. This must be done prior to the first day of work.
13. Notify Badger of any of the following: Certified payrolls, OCIP requirements, prevailing wages.
14. Additional insurance requirements over what Badger already has in place.

**Client Representative**

Printed Name: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

*I am authorized to bind the Company*

**Badger Representative**

Printed Name: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_



## BADGER DAYLIGHTING CORP. STANDARD TERMS AND CONDITIONS (USA)

**1. Definitions.** "Service Provider" shall mean Badger Daylighting Corp. "Buyer" shall mean any party who contracts to purchase Services from Service Provider, as indicated on a service agreement or a statement of work. "Services" shall mean those services and any related goods ordered by Buyer from Service Provider pursuant to a service agreement accepted by Service Provider. "Credit Application" shall mean Service Provider's form of credit application, as may be amended from time to time, the review and written approval of which is a pre-requisite to Service Provider entering into any type of binding agreement with Buyer to provide Services. "USA" shall mean the United States of America.

### **2. Terms of Service Agreement Acceptance and Complete Agreement**

(a) Acceptance. Buyer's order for Services is binding only when accepted in writing by an authorized representative of Service Provider, and is accepted subject to all of Service Provider's Standard Terms and Conditions of Services, which constitute the complete agreement between the parties. Buyer's acceptance of delivery and performance of Services evidences Buyer's acceptance of all of Service Provider's Standard Terms and Conditions of Services.

(b) No Acceptance. Service Provider's performance under any Buyer service agreement or a statement of work does not constitute an acceptance of any provision of any Buyer service agreement that is different from or additional to Service Provider's Standard Terms and Conditions of Services, and any such different or additional provisions are hereby expressly rejected and are void.

### **3. Buyer's Obligations.**

(a) Services. Buyer shall: (i) cooperate with Service Provider in all matters relating to Services and provide such access to Buyer's premises, and other facilities as may reasonably be requested by Service Provider, for the purposes of performing Services; (ii) respond promptly to any Service Provider request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Service Provider to perform Services in accordance with the requirements of the service agreement; (iii) provide such Buyer materials or information as Service Provider may reasonably request and Buyer considers reasonably necessary to carry out Services in a timely manner and ensure that such Buyer materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary permits and consents and comply with all applicable laws in relation to Services before the date on which Services are to start.

(b) Shipment and Delivery. Any goods provided in relation to the Services are sold EXW Service Provider's Facility Incoterms 2010. The method and route of shipment shall be as mutually agreed in each accepted service agreement. Service Provider shall tender delivery of all such related goods to a carrier for transportation to Buyer's place of business. All costs of transportation, including, without limitation, taxes and standard insurance shall be assessed by Service Provider and borne by Buyer unless otherwise agreed to in writing by Service Provider. Service Provider shall invoice Buyer for all shipping related costs.

All risk of loss shall pass to Buyer when such related goods are made available to the carrier at Service Provider's facility, including, without limitation, all risks of loading, transportation, and shipment. Delivery and acceptance shall not be affected by a delay on the part of Buyer in accepting delivery. Shipment of such related goods held by reason of Buyer's request or inability to receive such related goods will be at the risk and expense of Buyer. Claims for shortages in shipment shall be deemed waived by Buyer unless made in writing to Seller within thirty (30) days from the date of invoice.

**4. Buyer's Acts or Omissions.** If Service Provider's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants or employees, Service Provider shall not be deemed in breach of its obligations under the service agreement or otherwise liable for any costs, charges or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay. breach of its obligations under the service agreement or otherwise liable for any costs, charges or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.

**5. Taxes and Fees.** Unless expressly stated and agreed to in writing by Service Provider, quoted prices do not include any shipping and handling charges, sales, use, excise, or similar taxes or duties. Buyer shall pay these taxes directly if the law permits or shall reimburse Service Provider if Service Provider is required to collect and pay them.

### **6. Representations and Warranties: Limitation of Remedy.**

(a) Service Provider represents and warrants to Buyer that it shall perform Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under the service agreement.

(b) Service Provider shall not be liable to a breach of the warranty set forth in Section 6(a) unless Buyer gives written notice of the defective Services, reasonably described, to Service Provider with three (3) days of the time when Buyer discovers or ought to have discovered that Services were defective.

(c) The sole and exclusive remedy of Buyer for any liability of Service Provider of any kind, including (i) warranty, express or implied, whether contained in the terms and conditions hereof or in any terms additional or supplemental hereto, (ii) contract, (iii) negligence, (iv) tort, or (v) otherwise, is limited to Service Provider's repair or re-performance of Services. The sole and exclusive remedy for goods related to Services shall be Service Provider's repair or replacement of those related goods the examination of which by Service Provider reveals material defects during the warranty period or, at Service Provider's option, a refund to Buyer of the money paid to Services Provider for such goods. The warranty period shall begin on the date of completion of Services on Service Provider's invoice and shall continue for a period of one (1) year therefrom for all Services. This limited warranty shall not extend to any Services that have been modified, disassembled, altered, changed, damaged, misused, repaired, misapplied or negligently maintained in any manner.

(d) EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET FORTH IN SECTION 6(a) ABOVE, SERVICE PROVIDER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO SERVICES, EXPRESS OR IMPLIED, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; OR (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

*Continued...*



**7. Limitation of Liability.**

(a) SERVICE PROVIDER'S LIABILITY SHALL BE LIMITED TO THE COST OF REPAIR AND RE-PERFORMANCE OF SERVICES WITHIN A REASONABLE PERIOD OF TIME FOLLOWING PROPER AND TIMELY NOTICE BY BUYER. IN NO EVENT SHALL SERVICE PROVIDER BE LIABLE TO BUYER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT; OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER ESSENTIAL PURPOSE. IN NO EVENT SHALL SERVICE PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE SERVICE AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO SERVICE PROVIDER. Buyer agrees to indemnify and hold Service Provider harmless from and against all liabilities, claims, or demands of third parties of any kind relating to Services and the use of any related goods arising after performance of Services.

(b) The limitation of liability set forth in Section 7(a) above shall not apply to (i) liability resulting from Service Provider's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Service Provider's negligent acts or omissions.

**8. Rejection or Claims.** A rejection of Services for non-conformity, or a claim of incomplete performance and/or damage by Buyer, shall not be effective unless it is made, and written notice thereof is given to Service Provider, within thirty (30) days after Services are provided to Buyer; or, with respect to any goods related to Services, within thirty (30) days after such related goods arrive at the destination specified in Service Provider's statement of work. Service Provider reserves the right to inspect the site of supposed non-conforming Services and to determine lack of conformity in its sole discretion.

**9. Performance Dates.** Service Provider shall use reasonable efforts to meet any performance dates specified in the service agreement, and any such dates shall be estimates only.

**10. Failure to Take Delivery.** If Buyer fails to take delivery of any goods related to Services, or any part thereof, such related goods not delivered shall be held at Buyer's sole risk in all respects. Service Provider, acting as Buyer's agent and at Buyer's expense, may thereafter store, insure and/or otherwise protect such related goods or may resell same for Buyer's account. The delivery date(s) quoted are based on Service Provider's best estimate of a realistic time when delivery to the carrier will be made, and are subject to confirmation at time of acceptance of any resulting Service Agreement. Service Provider reserves the right to make either early delivery or partial delivery upon prior notice to Buyer as provided in Section 23 hereof and to invoice Buyer accordingly.

**11. Title and Risk of Loss or Damage.** Title, risk of loss and/or damage shall pass to Buyer when any goods related to Services are made available to the carrier at Service Provider's facility.

**12. Payment Terms.**

All payments are due thirty (30) days from date of invoice in U.S. Dollars, unless otherwise specified by Service Provider. Buyer's failure to make payment when due will be a material breach of the service agreement and these Standard Terms and Conditions of Services. Subject to applicable law, amounts unpaid after such date may, at Service Provider's discretion, bear interest from the date of the invoice at a rate of one and one-half percent (1.5%) per month, or eighteen percent (18%) per annum. Service Provider shall be entitled to reimbursement from Buyer for all costs and fees, including reasonable attorneys' fees, incurred by Service Provider in the collection of any overdue amounts. Service Provider, at its sole option and without incurring any liability, may suspend its performance of Services until such time as any overdue payment is made or Service Provider receives assurances, adequate in Service Provider's opinion, that the payment will be promptly made. In the event of such suspension of performance of Services by Service Provider, there will be an equitable adjustment made to the remaining performance schedule and pricing to reflect the duration and cost resulting from such suspension. Buyer may only suspend performance upon Service Provider's written consent. In the event of such Buyer suspension, the performance time will be changed, taking into account the suspension, and Buyer will promptly pay Service Provider for all costs, including related overhead costs, resulting from such suspension. All terms of the Credit Application are incorporated into and are part of this Agreement.

**13. Cancellation.** Except as otherwise expressly provided in a statement of work, the service agreement shall be cancelled only by mutual written consent of the parties. Notice is hereby given that Service Provider shall not consent to cancellation if Buyer has bound itself to purchase Services. If Buyer is in default by failure to pay any previous invoice within credit terms at the expected date of performance of Services or any part thereof, has not otherwise performed or complied with any of the terms of the service agreement, in whole or in part; or becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, or if Service Provider has received any adverse credit information about Buyer, Service Provider may delay performance and/or cancel performance of Services without liability. In the event of U.S. or foreign government intervention, trade restrictions, and/or quotas, which may delay or prevent performance of Services or any part thereof, Service Provider, at Service Provider's option, may cancel the performance of Services without liability. In the event any Services shall become subject to any governmental fees or duties not presently in effect or to any increase in any existing fee or duty, including any antidumping duty or countervailing duty, Service Provider shall have the right to cancel performance of Services without liability.

**14. Default.** If Buyer breaches or is otherwise in default under the service agreement or under any other contract between the parties hereto, Service Provider at its sole option, may defer performance of Services until the default is cured, or may treat the default as a repudiation by Buyer of the service agreement in its entirety, and hold Buyer liable for such damages as Service Provider may incur, including consequential and incidental damages. For purposes hereof, Buyer's insolvency shall be a default.

**15. Waiver.** No waiver by Service Provider of any of the provisions of the service agreement is effective unless explicitly set forth in writing and signed by Service Provider. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the service agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Continued...



**16. Force Majeure.** Service Provider shall be free from any liability for delay or failure in performance of Services arising from strikes, lockouts, labor troubles of any kind, accidents, perils of the sea, fire, earthquake, civil commotion, terrorist acts, war or consequences of war, government acts, restrictions or requisitions, failure of manufacturers or suppliers to deliver, bankruptcy or insolvency of manufacturers or suppliers, suspension of shipping facilities, act or default of carrier or any other contingency of whatsoever nature beyond Service Provider's control affecting production and performance of Services, including disturbances existing on the date of the service agreement or a statement of work. In such a situation, if performance is not made during the period contracted for, Buyer shall accept performance under the service agreement when performance is made; provided, however, Buyer shall not be obligated to accept performance if performance is not made within a reasonable time after the cessation of the aforementioned impediments or causes.

**17. Intellectual Property.** All the designs, know-how, innovations, inventions and discoveries related to Services provided under this transaction shall be and remain the property of Service Provider.

**18. Confidential Information.**

(a) All non-public, confidential or proprietary information of Service Provider, including, but not limited to, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing (collectively, the "Confidential Information"), disclosed by Service Provider to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the provision of Services and the service agreement is confidential, and shall not be disclosed or copied by Buyer without the prior written consent of Service Provider. Confidential Information does not include information that is (i) in the public domain; (ii) known to Buyer at the time of the disclosure; or (iii) rightfully obtained by Buyer on a non-confidential basis from a third party.

(b) Buyer agrees to use the Confidential Information only to make use of Services, and deliverables.

(c) Service Provider shall be entitled to injunctive relief for any violation of this Section.

**19. Integration.** The service agreement, these Standard Terms and Conditions of Services, and a statement of work supersede all prior negotiations, representations, agreements, quotes and catalogues, whether written or oral, and shall not be modified, supplemented or interpreted by evidence of course of dealing, course of performance or usage of trade. To the extent the provisions hereof conflict with any prior or subsequent agreement of the parties, these Standard Terms and Conditions of Services will control. Any amendment to these Standard Terms and Conditions of Services must be in writing and signed by both parties.

**20. Assignment.** Buyer acknowledges that no service agreement or statement of work, nor the obligations represented thereby, may be assigned or delegated, in whole or in part by Buyer, without the prior written consent of Service Provider. Buyer's unauthorized attempt to assign or delegate any rights or obligations shall serve as grounds for termination of the service agreement.

**21. Severability.** Service Provider and Buyer agree that each and every paragraph, sentence, clause, term and provision of these Standard Terms and Conditions of Services is severable and that, in the event any portion hereof is adjudged to be invalid or unenforceable, the remaining portions shall remain in full force and effect to the fullest extent permitted by law.

**22. Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in these Standard Terms and Conditions of Services or the service agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties; and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

**23. Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth in the service agreement or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees prepaid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in the service agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

**24. Governing Law; Venue.** All matters involving the validity, interpretation and application of these Standard Terms and Conditions of Services will be controlled by the laws of the State of Indiana, United States of America and Buyer and Service Provider hereby irrevocably consent to the jurisdiction of the state and federal courts located in Marion County, Indiana for the resolution of any disputes arising under these Standard Terms and Conditions of Services and the service agreement.

**25. Collection, Use and Disclosure of Information.**

Notwithstanding section 18, by submitting an application for the Services, Buyer consents to and authorizes Service Provider and its service providers to use the personal information, confidential information, financial information and other details (collectively "Information") about Buyer that Buyer has provided to:

- (a) Exchange Information and reports about Buyer with credit reporting agencies, credit reporting services including Creditsafe USA Inc., and other lenders (collectively "Credit Agencies") prior to the commencement of Services for the purposes of Service Provider providing credit to Buyer, including in the form of an outstanding receivable with the Service Provider for Services to be performed pursuant to these Service Provider's Standard Terms and Conditions of Services;
- (b) Conduct, or arrange for a Credit Agency to conduct, "soft" or "hard" credit checks from time to time for up to one year after Buyer submits an application and Service Provider exchanges Information with Credit Agencies;
- (c) Conduct, or arrange for third parties to conduct, risk assessments and identity and payment verification checks from time to time;
- (d) Assess Buyer's application for the Services based on the results of the credit, risk assessment, and identity and payment verification checks;
- (e) Periodically review and verify Buyer creditworthiness, establish credit and hold limits, help Service Provider collect a debt or enforce an obligation owed to Service Provider by Buyer, and/or manage and assess risk; and
- (f) Issue a decision to grant or deny Buyer's application for credit.

Service Provider shall determine in its sole discretion whether to grant any credit to Buyer and, if so, the amount of any such credit. Service Provider has no obligation to grant any credit, and any granting of credit is without commitment to provide any future credit. Buyer shall be responsible for all credit it receives from Service Provider, whether or not such credit exceeds authorized credit limits. In the event that Service Provider grants credit to Buyer and for a reasonable period of time afterwards, Service Provider may from time to time disclose Buyer's Information to other lenders and credit reporting agencies requesting such Information. Service Provider may obtain Information and reports about Buyer from third party providers such as Creditsafe USA Inc., and other Credit Agencies. Once Buyer has applied for credit with Service Provider, Buyer may not withdraw their consent to this exchange of Information.

For more information about the Service Provider's privacy policy and our collection and use of personal information, please see: <https://www.badgerinc.com/learn-about-badger/privacy-antispam-web-policy/>.

End

