



Livingston Energy Group, LLC - Standard Terms and Conditions

1. Applicability:

a) These terms and conditions (hereinafter referred to as “**Standard Terms**”) constitute a binding legal agreement between Livingston Energy Group, LLC and all associated entities, representatives, partners, or other third parties providing products or services in conjunction with Livingston (hereinafter referred to as “**Livingston**”), and the person, company, partnership, or other legal entity (hereinafter referred to as the “**Customer**”) which utilizes Livingston’s “**Services**” or purchase “**Products**” as defined in the Proposal (including, but not limited to energy efficiency upgrades and associated technology, for example, LED lighting, electric vehicles charging station equipment, installation, software platform, activation, assistance in funding programs). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Standard Terms.

b) The accompanying quotation/confirmation of sale/invoice [executable documents in a form of “Quote,” “Proposal,” Project Offer,” “Material Order,” or a “Request for Service,”] (the “**Proposal**”), these Standard Terms, and if applicable, the Software Agreement as defined in paragraph 15 below (collectively, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Standard Terms prevail over any of Customer's general terms and conditions of purchase regardless of whether or when Customer has submitted its purchase order or such terms. Fulfillment of Customer’s order does not constitute acceptance of any of Customer’s terms and conditions and does not serve to modify or amend these Standard Terms.

c) Notwithstanding anything to the contrary contained in this Agreement, Livingston may, from time to time change the Services without the consent of Customer provided that such changes do not materially affect the nature or scope of the Services, the fees or any performance dates set forth in the Proposal.

d) The Standard Terms shall be considered binding for Livingston and Customer (“**Parties**”) upon Customer’s acceptance of the Proposal provided by Livingston.

2. Services:

A. Efficiency Upgrades:

Part of the Services and Products provided by Livingston may include energy efficiency technologies. These may include LED lighting, Energy Management Software, or other technologies.

a) Upon Livingston's sole discretion, an on-site or remote audit may be required to determine existing state of the facility along with eligibility and impacts of upgrades. Customer is responsible to comply with Livingston's request for an assessment, providing access to the facility or other necessary information about the facility that may be deemed necessary.

b) Customer agrees to cooperate and assist when needed to obtain any and all necessary licenses, permits and approvals for installation of equipment specified in the Proposal.

c) The installation of a project, upon mutual agreement from the Parties and specified in the Proposal, can be performed by Livingston, a Livingston approved subcontractor, or by Customer. When the installation is performed by Customer, Livingston will provide a recommended installation guide for all installers. It is up to the installer to follow this guideline. If the guidelines are not followed, Livingston is exempt from any damage resulting from the installation.

d) All work and materials being supplied by Livingston for any project will be specified in the Proposal. If there are issues at Customer facility that are not addressed in the Proposal, Livingston is not responsible for them, even if the issue has a direct effect on items listed on the Proposal. For example: if existing issues with wiring, ballasts, or other electrical infrastructure prevent LED lighting installed by Livingston from functioning properly, Livingston is not required to remedy the existing issue.

B. Charging Stations:

The Services Livingston provide, in part, is through the electric vehicle charging stations ("EVCS") installed by Livingston at each Customer location. This section describes the terms and conditions governing the installation, ownership, operation and maintenance of the EVCS at Customer locations.

e) . If Livingston is providing installation services to Customer, the Parties shall mutually agree on the location at which the EVCS are to be installed ("Site Location"). The Parties shall agree in the Proposal which party will be responsible for the Site Preparation including, but not limited to electrical service upgrades, installing conduit runs, running wiring, installing cell repeaters, ensuring cellular coverage, and other site work necessary to provide adequate power and connectivity to each Site Location. If there are pre-existing issues at Customer facility, they must be disclosed to Livingston, Livingston Representatives, and Livingston Partners (such as subcontractors, VARs

(value-added resellers), and consultants) that may be involved in the service. Any damages that occurred from pre-existing issues that may arise are the sole responsibility of Customer.

f) Customer shall cooperate and assist in obtaining any and all necessary federal, state, or municipal licenses, permits, and/or approvals for the installation and operation of the EVCS.

g) The installation of the EVCS can be performed by Livingston or a Livingston approved subcontractor. If the installation is not being handled by Livingston, Customer has the responsibility to notify Livingston when the installation is completed.

h) The charging stations can be owned by Livingston or Customer.

i. The relations between the Parties for EVCS located at Customer property and owned by Livingston, shall be governed by this paragraph and the Lease Agreement signed by both parties. Livingston will be solely responsible for all necessary servicing and repair of the charging station owned by Livingston. In the event of any EVCS failure, damage, or other problem requiring repair, replacement, adjustment, or maintenance, Customer shall notify Livingston, or a person designated by Livingston within twenty-four (24) hours of first becoming aware of such failure or problem. Customer will not permit anyone, other than an authorized representative or designee of Livingston to perform any service or repair work on the EVCS without Livingston's prior written approval. Livingston or its representatives shall at any reasonable time and at all times during business hours have the right to enter into and upon the Site Location for the purpose of inspecting, repairing, maintaining, or upgrading the EVCS and observing their use. Customer shall keep the Site Location clean and shall maintain the space surrounding the EVCS in a safe, neat and orderly condition. Customer shall not permit any levy, lien or other legal processes to be attached to the EVCS. Livingston owns any federal or state tax credits connected with the installation of EVCS.

ii. In the event EVCS are owned by the Customer, Livingston, as agreed in the Proposal, can provide the EV Supply Equipment, software platform, installation services and activation of the EVCS. Customer can choose one or multiple services offered by Livingston. Customer and Livingston in separate agreement can agree and set terms for operation and management of the EVCS.

i) Livingston shall have the exclusive legal right to own any and all environmental attributes associated with this charging service, including carbon offset credits potentially available from EV charging stations that utilize Livingston's software.

C. Assistance with Funding Programs:

) Livingston provides consultative services and makes recommendations regarding application to applicable State and Utility funding programs or tax incentives (hereinafter referred to as "**Funding Programs**") that it believes in good faith are best for Customer, however, the decision to execute on any recommendation must come solely

from the Customer. By signing a Proposal, Customer confirms their intent to be considered for participation in the Funding Programs at the proposed levels stated in the Proposal. If Customer is not approved for a Funding Program, the Customer is not bound to proceed with the Proposal. Customer will be committed to Proposal upon approval of Funding Program at the expected amount. Customer agreement to these Standard Terms is effective for all Customer locations and projects.

a) By signing the Proposal, customer gives Livingston the permission to act as Customer's agent for the sole purpose of application to Funding Programs encouraging Customer adoption of energy efficiency technology and/or clean tech, such as LED, EVCS et. Funding Programs vary by location of Customer Facility and one or more Funding Programs may be used for any Customer. Details of Funding Programs, including incentive levels and availability, are subject to change. Customer agrees that Livingston may fill out and sign any and all paperwork or provide any information necessary in order to complete applications for Funding Programs. Livingston may at times represent the Customer, or act on their behalf when negotiating contracts and/or applying for Funding Programs and it is the responsibility of Livingston to take care of all paperwork and negotiation associated with obtaining stated amounts on Proposal. All estimates are made based on Customer eligibility for any Funding Programs proposed.

b) Customer agrees that the contributions from Funding Programs for eligible Products and Services shall be issued to Livingston directly. In the case Customer is receiving Funding Program contributions, Livingston will require up-front payment from Customer, unless otherwise stated in Proposal or in writing from an authorized Livingston Representative.

c) Both Parties agree to abide by any state and federal laws and regulations, and by all Term and Conditions set forth by all Funding Programs used. Customer agrees to allow Livingston, contractors of Livingston and Funding Programs representative access to Location Site during normal business hours to conduct business, perform audits, inspections and regular duties required by the terms and conditions of the Funding Program.

D. Product Sales Terms:

a) **Applicability:** These Product Sales Terms apply specifically to the sale of Products that may or may not include other services as outlined in the customer's purchase order.

b) **Order Placement:** All purchase orders and modifications to purchase orders for Products are subject to acceptance or rejection by Livingston in its sole discretion.

i. **Submission of Orders:** Customers must place orders by signing a valid proposal or estimate from Livingston or by submitting a written purchase order to Livingston via email or any other agreed means. The purchase order must include detailed information such as the Product description, quantity, unit price, total

- price, delivery address, and any specific instructions related to the order. Email purchase orders must be sent to a current Livingston team member.
- ii. **Modification of Orders:** Modifications to orders must be made in writing and are subject to acceptance by Livingston. Modifications include changes in quantity, specifications, or delivery schedules.
 - iii. **Acceptance or Rejection of Orders:** Acceptance is subject to Livingston's evaluation of the order's terms, credit approval, and availability of Products. Livingston reserves the right to request additional information or documentation before acceptance. Livingston reserves the right to reject any purchase order that does not meet its terms and conditions or that it deems unacceptable for any reason.
 - iv. **Binding Nature:** The Customer is bound by Livingston's terms and conditions upon submission of an order to Livingston. This submission constitutes an offer to purchase the specified Products under the terms and conditions set forth therein. Livingston shall only be bound by the contract upon its acceptance of the Customer's order submission. Such acceptance may be communicated through an order confirmation or similar acknowledgment.
 - v. **Non-Cancelable Orders:** Accepted orders for Products are non-cancelable, non-returnable, and non-refundable.
 - vi. **Finality of Orders:** Once an order is accepted, it cannot be canceled or altered without Livingston's written consent.
 - vii. **Exceptions:** Exceptions to this policy may be made at Livingston's sole discretion and may be subject to restocking fees and other charges. Such exceptions will be considered on a case-by-case basis.

c) **Withholding Shipments:** Livingston reserves the right to withhold shipments if payment is not provided or if there is a breach of terms.

- i. **Payment Default:** Shipments may be withheld in the event of payment default or if there are any outstanding balances.
- ii. **Breach of Terms:** Livingston may also withhold shipments if the Customer fails to comply with any agreed terms and conditions, such as providing necessary documentation or meeting contractual obligations.

d) **Storage of Option:** At Livingston's sole discretion, Livingston may offer the Customer the service of storing Product at Livingston's warehouse.

- i. **Ownership of Product:** Upon readiness to ship the Customer's Product, Customer takes ownership of the Product. Livingston shall provide acknowledgment of readiness to Customer, confirming the Product is ready to ship.
- ii. **Terms of Storage:** Upon readiness of the Product, Livingston may offer to store the Product for an agreed upon price if the Customer is not ready to take delivery.
- iii. **Responsibility of Insurance:** The product owned by the Customer is the sole responsibility of the Customer to insure while in the possession of Livingston and during shipping.

e) **Product Payment:** Payment for Products must be made in full prior to the delivery unless otherwise agreed in writing. All payments must be received by Livingston before the Products are shipped to the Customer.

- i. **Alternative Payment Terms:** Any deviations from the standard payment terms must be agreed upon in writing by Livingston.
- ii. **Payment Methods:** Acceptable payment methods include bank transfers, credit cards, and checks, subject to Livingston's approval.

f) **Hold for Release Purchas Order:** Hold for Release (HFR) purchase orders may be accepted with approval from Livingston. HFR purchase orders will be held for a maximum of 180 days, at which time the product will be billed and shipped immediately to the Customer unless otherwise agreed to by Livingston.

g) **Late Payment Penalty:** Late payments will incur a penalty of 1.5% per month on undisputed amounts.

- i. **Collection Costs:** Customer will be responsible for any costs associated with the collection of overdue payments, including legal fees.

h) **Tax Responsibilities:** All prices are exclusive of taxes, duties, and other charges unless specified. Customers must provide tax exemption certificates where applicable.

- i. **Tax Exemptions:** Customers must provide valid tax exemption certificates at the time of order placement to qualify for tax exemption.
- ii. **Customs Duties:** Customers are responsible for all customs duties and import taxes applicable to their orders. This includes any additional fees or charges incurred during international shipping.

i) **Invoicing:** Invoices for Products will be issued prior to the delivery date. Full payment is required before the Products are shipped.

- i. **Invoice Timing:** Livingston will issue invoices promptly after the acceptance of the purchase order and before the delivery date to ensure timely processing of payment.
- ii. **Prepayment Condition:** Shipment of Products is contingent upon full payment being received by Livingston prior to dispatch.
- iii. **Electronic Invoicing:** Customers may opt to receive electronic invoices by providing their email addresses to Livingston.

j) **Delivery Terms:** Livingston will make every reasonable effort to meet delivery dates but is not liable for delays. Risk of loss passes to the Customer upon delivery to the carrier.

- i. **Delivery Schedules:** Estimated delivery dates are provided for convenience and are not binding. Customers should plan accordingly and allow for potential delays.
 - ii. **Force Majeure:** Livingston is not liable for delays due to causes beyond its reasonable control, including natural disasters, strikes, or transportation issues. This clause protects Livingston in unforeseen circumstances.
- k) **Shipping Costs:** All costs of shipping, transportation, insurance, warehousing, and other charges are the responsibility of the Customer.
- i. **Freight Terms:** Unless otherwise agreed, shipments are made FOB Livingston's facility, and all freight charges are payable by the Customer.
 - ii. **Insurance:** Customers are responsible for insuring the shipment. Livingston will not cover loss or damage during transit, ensuring that customers take appropriate precautions.
- l) **Special Packing Requirements:** Special packing requirements must be notified to Livingston; otherwise, standard practices will be followed.
- i. a. **Notification:** Customers must notify Livingston of any special packing requirements at the time of order.
 - ii. b. **Additional Charges:** Any additional costs for special packing will be charged to the Customer.
- m) **Damage Notification:** Customers must notify Livingston of any delivery damage within 20 days of receipt.
- i. **Inspection:** Customers should inspect shipments upon receipt and report any damages immediately. Prompt notification helps expedite resolution.
- n) **Warranty for Product Sale:**
- A. **Coverage:** Livingston provides a warranty for its own products and passes through warranties for products built at its partner facilities as specified in the Proposal, covering defects in materials and workmanship.
 - B. **Warranty Period:** The warranty period will be specified in the Proposal or associated documentation. Customers should review these documents to understand the duration and terms of coverage.
 - C. **Exclusions:** The warranty does not cover damage caused by misuse, abuse, accidents, or unauthorized modifications.
 - i. **Unauthorized Modifications:** Any modifications or repairs not authorized by Livingston will void the warranty.
 - ii. **Normal Wear and Tear:** The warranty does not cover normal wear and tear or cosmetic damage that does not affect functionality. Customers should maintain products properly to avoid such issues.

- D. **Claims Process:** Customers must notify Livingston of any warranty claims within the warranty period.
- i. **Notification:** Warranty claims must be submitted in writing to Livingston's customer service department. Providing detailed information helps expedite the review and resolution process.
 - ii. **Documentation:** Customers must provide proof of purchase and a detailed description of the defect. This documentation is necessary to validate the claim and determine appropriate action.

3. Delivery of Products and Performance of Services:

a) Shipments of any Products purchased are subject to Livingston's availability schedule. Livingston shall make every reasonable effort to meet any delivery date(s) quoted or acknowledged. However, Livingston shall not be liable for any delays, loss, or damage in transit.

b) Customer may reschedule shipment one time upon no less than thirty (30) days advance written notice to Livingston, with the rescheduled date being no later than sixty (60) days after the original shipment date.

c) If for any reason Customer fails to accept delivery of the Products on the date fixed pursuant to Livingston's notice that the Products have been delivered at the delivery location agreed in the Proposal, or if Livingston is unable to deliver the Products at the delivery location on such date because Customer has not provided appropriate instructions or authorizations: (i) risk of loss to the Products shall pass to Customer; (ii) the Products shall be deemed to have been delivered; and (iii) Livingston, at its option, may store the Products until Customer picks them up, whereupon Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

d) Livingston shall use reasonable efforts to meet any performance dates to render the Services specified in the Proposal, and any such dates shall be estimates only.

e) With respect to the Services, Customer shall (i) cooperate with Livingston in all matters relating to the Services and provide such access to Customer's Site Location, and other facilities as may reasonably be requested by Livingston, for the purposes of performing the Services; (ii) respond promptly to any request by Livingston to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Livingston to perform Services in accordance with the requirements of these Standard Terms; and (iii) provide materials or information as Livingston may reasonably request to carry out the Services in a timely manner.

4. Excusable delays: Livingston shall not be liable for delays in delivery or performance, or for failure to manufacture, deliver or perform, due to (a) a cause beyond its reasonable control, (b) an act of God, an act of Customer, act of civil or military authority, Governmental priority, strike or other labor disturbance, flood, epidemic, war, riot, delay in transportation or carriage shortage, (c) inability on account of a cause beyond the reasonable control of Livingston to obtain necessary materials, components, services or facilities, or (d) other

unforeseen events. Livingston will notify Customer promptly of any material delay excused by this paragraph and will specify the revised delivery date as soon as practicable. In the event of any such delay, there shall be no termination and the targeted date of delivery or of performance shall be extended for a period equal to the time lost by reason of the delay.

5. Title and Risk of Loss: Unless otherwise specified by Livingston, delivery shall be made and title shall pass Ex Works Schenectady, NY, freight prepaid and invoiced to Customer, except that a security interest in the Products shall remain in Livingston until full payment has been made. Upon Livingston's request, Customer shall execute any financing or continuation statement, or other document required to protect Livingston's security interest in the Product(s). Failure by Customer to pay any amount due hereunder shall constitute a default and in such event, Livingston shall, in addition to any other remedies available to it under applicable law, have all the rights of a secured party under the Uniform Commercial Code of the State of New York. Livingston may, at its option, repossess the same upon Customer's default in payment and charge Customer with any deficiency. Customer waives its right to any judicial hearing prior to or subsequent to any such repossession.

6. Customer's Acts or Omissions: If Livingston's performance of its obligations under the Standard Terms or Proposal is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants, or employees, Livingston shall not be deemed in breach of its obligations under these Standard Terms or otherwise liable for any costs, charges, or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

7. Price: Prices are stated in the Proposal, are in U.S. Dollars, and are exclusive of insurance, duties, tariffs, levies, shipping and any non-standard packaging costs. Unless otherwise specified, all quotations expire ninety (90) days after the date of the quotation. The Proposal shall be signed by Customer and include a copy of these Standard Terms. All Proposals become effective when (a) accepted in writing by Livingston's office at Schenectady, New York or (b) by acceptance of Livingston shipping the ordered Product. All accepted orders are non-cancellable and irrevocable.

8. Payment Terms and Taxes:

a) Unless otherwise specified, payment for Products must be made in full prior to the delivery. All payments must be received by Livingston before the Products are shipped to the Customer. Any deviation from the standard payment terms must be agreed upon in writing with Livingston. Acceptable payment methods include bank transfer, credit cards, and checks, subject to Livingston's approval.

b) Customer shall pay Livingston for any and all sales, use, franchise, excise, value-added, and similar taxes (hereinafter "**Taxes**") of any kind on the Product and Services provided by Livingston pursuant to these Standard Terms, other than Taxes imposed on the net or gross income of Livingston. Customer may provide Livingston with evidence satisfactory to Livingston (such as a certificate of exemption) of Customer's exemption from the relevant taxes, provided that in all case, Customer shall indemnify

Livingston from all assessments of Taxes, and interest and penalties assessed against Livingston on account of or related to the sale hereunder.

c) Livingston, in its sole discretion, may invoice Customer a late payment penalty of one and a half percent (1.5%) per month on all undisputed amounts not received by the due date on the invoice. Customer shall also pay on demand any costs incurred by Livingston (including reasonable attorneys' fees and legal expenses) in connection with the collection of any undisputed amounts due from Customer to Livingston which is not paid as agreed herein.

9. Limited Warranty:

a) Warranties on any products or services are made by the manufacturer or producer and are made directly with the Customer. Livingston does not hold the warranties on any products proposed or installed during any project with Customer. Livingston will assist Customer to the best of its ability with any warranty issues if they arise.

b) [EXCEPT FOR THE WARRANTIES SET FORTH IN SECTIONS 9(a) LIVINGSTON MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS OR SERVICES, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (d) 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. LIVINGSTON OFFERS NO WARRANTIES WHATSOEVER ON MAINTENANCE SERVICES UNLESS SPECIFICALLY STATED IN CUSTOMER CONTRACT.

10. Limitation of Liability:

IN NO EVENT SHALL LIVINGSTON BE LIABLE TO CUSTOMER OR ANY THIRD PARTY CLAIMING THROUGH CUSTOMER FOR ANY LOSSES CAUSED BY COMPUTER VIRUS, RANSOMWARE, MALWARE, FAILURE TO UPDATE OPERATING SYSTEM OR OTHER SOFTWARE, COMMUNICATION LINE FAILURE, OR DELAYS IN TRANSMISSION. IN NO EVENT SHALL LIVINGSTON BE RESPONSIBLE FOR ANY UNAUTHORIZED ACCESS, ANY LOST, DELETED, OR INACCESSIBLE DATA, (WHETHER OR NOT STORED ON OR ASSOCIATED WITH THE EQUIPMENT), INCLUDING, WITHOUT LIMITATION, ANY LOSS OR INJURY TO EARNINGS, PROFITS OR REVENUES OR GOODWILL OR COSTS OF COVER, IN EACH CASE, ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE EQUIPMENT, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES EVEN IF SUCH DAMAGES WERE FORESEEABLE OR LIVINGSTON IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITH RESPECT TO ANY DISCREET COMPONENT WHICH IS NOT MANUFACTURED BY LIVINGSTON, THE WARRANTY OF THE MANUFACTURER THEREOF SHALL APPLY AND BE EXCLUSIVE. THE MAXIMUM LIABILITY OF LIVINGSTON FOR CLAIMS

ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT OR THE EQUIPMENT, OF ANY KIND AND BASED ON ANY THEORY OF LIABILITY SHALL BE LIMITED, IN THE AGGREGATE, TO THE AMOUNTS PAID TO LIVINGSTON FOR THE TWELVE MONTH PERIOD PRECEDING THE CLAIM, EXCEPT FOR ANY CLAIMS FOR PERSONAL INJURY OR DEATH (FOR WHICH NO LIMIT APPLIES). LIVINGSTON DISCLAIMS ANY WARRANTY, LIABILITY OR DUTY TO PROVIDE NOTICE TO CUSTOMER AND/OR CUSTOMER'S EMPLOYEES OF CUSTOMER'S DUTY TO COMPLY WITH ANY BIOMETRIC PRIVACY LAWS OR SIMILAR BIOMETRIC STORAGE AND/OR REPORTING LAWS, RULES, REGULATIONS OR STATUTES. CUSTOMER IS SOLELY RESPONSIBLE FOR COMPLIANCE WITH ANY AND ALL BIOMETRIC PRIVACY LAWS AND ANY LAWS, RULES, REGULATIONS OR STATUTES GOVERNING USE OF EQUIPMENT, INCLUDING BUT NOT LIMITED TO ANY BIOMETRIC STORAGE AND/OR REPORTING LAWS, RULES, REGULATIONS OR STATUTES.

11. Termination:

a) Either Party may terminate the agreement upon a pricing change of five percent (5%) or more. The Customer has seven (7) days to inform Livingston by writing that it wishes to terminate the agreement from the day customer is informed of the change. In no event may Customer terminate the Agreement after the order of the products.

b) In addition to any remedies that may be provided under these Standard Terms, Livingston may terminate this Agreement with immediate effect upon written notice to Customer, if Customer: (a) fails to pay any amount when due under these Standard Terms and such failure continues for seven (7) days after Customer's receipt of written notice of nonpayment; (b) has not otherwise performed or complied with any of these Standard Terms, in whole or in part; or (c) 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.

c) If Customer terminates their subscription before the end of the initial term, as agreed upon by both parties in a separate agreement, Customer may be responsible for the balance of their subscription payment.

12. Waiver: No waiver by Livingston of any of the provisions of these Standard Terms is effective unless explicitly set forth in writing and signed by Livingston. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from these Standard Terms 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.

13. Indemnification: Customer agrees to indemnify, defend and hold harmless Livingston and its affiliates, suppliers, and agents against all claims and expenses (including reasonable attorneys' fees) arising out of the use of the services, the products or the breach of

these Standard Terms or the Agreement by Customer or any other user of the services at the Site Location.

14. Technical Data and Intellectual Property: Livingston Intellectual Property (“Intellectual Property”) includes, without limitation, proposals, drawings, specifications, operating instructions, and other engineering and technical documents, including the information contained in the foregoing, and Product design (relating to the function and/or appearance), software, firmware, Product names, and logos; whether or not subject of patents, registered trademarks, and/or registered copyrights. Intellectual Property information shall all be considered and used only for the installation, operation and maintenance of the equipment. Except to the extent specifically and separately quoted by Livingston and paid for by Customer, Customer shall obtain no rights in or to the Intellectual Property of Livingston, even if Product incorporating such Intellectual Property is developed by Livingston for sale to Customer.

15. Confidential Information: The Customer shall treat any commercial or financial information it receives from Livingston as strictly confidential and will not share this information with any third party nor use it for any other purpose than the execution of the Agreement. Customer recognizes that Livingston has legitimate business interests in protecting the Confidential Information, and as a consequence, Customer expressly agrees to the restrictions contained in these Standard Terms because they further Livingston’s legitimate business interests. The provisions of this clause shall survive the expiration or other termination of these Standard Terms.

16. Software: If the Product includes Livingston software (“**Software**”) or if Livingston Software is included in the purchase order, the terms and conditions of the license to use the Software shall be governed by Livingston’s standard license terms (“**Software Agreement**”), which, together with these Standard Terms and the purchase order, will comprise the entire agreement of the parties.

17. Survival: The provisions related to the Intellectual Property rights of Livingston, limitations of liability, limited warranty, Governing Law and those other provisions which by their nature or terms are intended to survive the termination of these Standard Terms will remain in full force and effect as between the Parties hereto regardless of the termination of this Agreement.

18. Assignment: Customer shall not assign any of its rights or delegate any of its obligations under these Standard Terms without the prior written consent of Livingston. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations under these Standard Terms.

19. Relationship of the Parties: The relationship between the Parties is that of independent contractors. Nothing contained in these Standard Terms shall be construed as creating any agency, partnership, joint venture or other forms of joint enterprise, employment or fiduciary relationship between the Parties.

20. Governing Law: All rights and obligations of Livingston and Customer shall be governed for all purposes by the internal laws of the State of New York, without reference to any choice of law rules, which would otherwise dictate the application of the laws of any other

jurisdiction. Any disputes that may arise regarding these Standard Terms shall be venue in Albany County, NY. The Parties expressly disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods.

21. Severability: If any term or provision of these Standard Terms is deemed to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other term or provision of these Standard Terms.