



1. **Acceptance:** Notwithstanding anything to the contrary contained in any other related document, the Customer accepts that this offer and any resulting contract shall be based solely on the terms and conditions contained herein (“Agreement”) and no additional or different terms and conditions shall apply except as may be explicitly agreed in writing by the Parties. The Parties acknowledge that these terms and conditions may be for use with Kinectrics Inc. and all subsidiary companies and that the applicable contracting entity will be defined in the purchase order. The Parties agree that only the Kinectrics entity specified in a purchase order will have liability in relation to this Agreement. This offer may be revoked by Kinectrics if the Customer’s credit rating is not in good standing. In the absence of written acceptance of these terms and conditions by the Customer, either acceptance of, or payment for, the products or services will constitute the Customer’s acceptance. The invalidity or unenforceability of any provisions of these terms and conditions shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.
2. **Services:** Kinectrics shall deliver to the Customer only those documents, reports, software, data or things (the “Services” or the “Deliverables”) as specified in the scope of work and within the specified schedule. Additional Services may be agreed to in writing between the Parties. If Kinectrics cannot deliver the Services within the schedule, then Kinectrics shall inform the Customer of the expected completion date of the Services. Services which are experimental or research in nature may be subject to review by the Parties for a mutual decision on continuing the Services in the event anticipated results are not being achieved. Unless otherwise specified in writing by the Customer, draft and final reports will be sent to the Customer as an attached file to an electronic mail message.
3. **Customer Deliverables/Obligations:** The Customer shall provide Kinectrics with any information, materials, equipment, utility services, assistance, access to facilities and other necessities as may be required by Kinectrics to deliver the Services. Timely receipt by Kinectrics of the Customer’s Deliverables shall be considered of essence to this Agreement. The Customer shall expeditiously review and/or inspect the Services and, unless otherwise agreed in writing between the Parties, the Customer will provide Kinectrics with a single round of consolidated comments on any Kinectrics’ Deliverable. Following the completion of the Services, Kinectrics shall advise the Customer of any waste or surplus materials remaining or created pursuant to the Services. The Customer shall arrange, at its expense, for the disposition of such materials within two (2) months of such advice. Customer attendance at Kinectrics’ work site, for any purpose, shall be entirely at the Customer’s own risk. In the event the Customer provides any specifications or designs for products, Customer will indemnify Kinectrics for all claims, costs and expenses (including attorney’s fees and disbursements) from any patent, trademark or copyright infringement claim resulting from compliance with these specifications and designs. Kinectrics will not be responsible for the accuracy or suitability of Customer supplied specifications and designs or the performance of any products built in conformance with the specifications or designs.
4. **Charges for Suspension/Delay/Cancellation (“Stoppage”) by Customer:** In the event the Customer suspends, delays and/or cancels any Services, then applicable standby, dead time, demobilization, remobilization, non-cancellable commitments and/or facility charges will be invoiced to the Customer as additional to the contract price (“Additional Expenses”). In the event such unplanned Customer initiated Stoppage extends for a period in excess of twenty (20) working days, then the Customer shall also be invoiced for all work performed up to the date of such Stoppage, on a time/material basis or as a prorated fixed price whether or not any milestone remains incomplete due to such Stoppage (“Work Performed”). Invoices for Additional Expenses and Work Performed shall become due and payable by the Customer upon receipt.
5. **Payment:** Customer shall pay Kinectrics the invoiced amount within 30 days of the invoice date. Interest on overdue accounts shall be charged at the greater of (i) one and one half percent (1.5%) per month for a yearly effective rate of eighteen percent (18%) and (ii) the maximum amount permitted by applicable law, until paid. Payments by cheque from outside of Canada must be sent via courier at Customer’s expense.
6. **Taxes:** Where applicable, Customer will pay all taxes, fees, duties, charges, or assessments of any nature whatsoever imposed by any governmental authority on or measured by the Services or any amount payable pursuant to this invoice. Customer will provide Kinectrics with all withholding tax certificates and filing documentation required by the Canadian government on a timely basis and at no additional charge to Kinectrics, in the event any withholding tax is deducted from any payments to Kinectrics for work done by Kinectrics employees outside of Canada or applicable jurisdiction. Customer will provide Kinectrics any applicable tax exemption certificates prior to the provision of any Services.
7. **Warranty:** Kinectrics warrants that the Services, excluding any as may be performed under the direction or supervision of Customer, performed pursuant to this Agreement will be performed in a professional manner consistent with the standards of quality and care typical within the industry at the time of performance for similar work. Such warranty will be effective for a period of one (1) year from the date of performance of the Service. Any such Services performed by Kinectrics which do not conform with Kinectrics above-stated warranty obligation will be re-performed by Kinectrics at Kinectrics’ expense; or if re-performance is impracticable or impossible, Kinectrics will refund to Customer the price paid to Kinectrics for the non-conforming Services. **THE WARRANTIES AND REMEDIES SET FORTH HEREIN ARE EXCLUSIVE, AND NO OTHER WARRANTY OR REMEDY OF ANY KIND, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS, OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF PERFORMANCE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, SHALL APPLY.** In no event shall Kinectrics be responsible for decontamination of equipment; or any work done by others; or for any loss, damage, cost, or expense arising out of or resulting from such work done by others; provided, that in the event Kinectrics has engaged Subcontractors in the performance of its obligations, Kinectrics will have the same responsibilities to Customer for such Services as it has with respect to its own Services. The foregoing Warranty shall be voided if, during the Warranty period: (i) performance of recommended maintenance is contracted by the Customer to a party other than Kinectrics or Kinectrics’ designated subcontractor; or (ii) the Customer elects not to carry out recommended maintenance or (iii) improper use or storage of any Deliverable; or (iv) the Deliverable becomes contaminated.
8. **Limitation of Liability:** Kinectrics total aggregate liability for damages arising from any cause or action whatsoever, including liability for any claim of infringement of intellectual property rights, shall not exceed the total consideration paid to Kinectrics pursuant to this Agreement. **IN NO EVENT SHALL KINECTRICS AT ANY TIME BE LIABLE TO THE CUSTOMER FOR ANY PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHICH MAY BE SUSTAINED BY THEM, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE, PROFIT, BUSINESS REPUTATION OR OPPORTUNITY WHETHER SUCH LIABILITY ARISES OUT OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, WARRANTY OR OTHER LEGAL THEORY WHETHER AT**

LAW, IN EQUITY OR OTHERWISE. Kinectrics liability, whether based upon contract, tort (including negligence), strict liability or otherwise, for any claims, loss or damage arising out of, connected with, or resulting from the performance or breach of this Agreement by Kinectrics shall be limited to specifically identified written claims submitted by the Customer to Kinectrics prior to the expiration of the Warranty period. The Customer recognizes that the Customer's material or equipment under test may be damaged due to the nature or requirements of such test (such as the application of high tension or voltage to material or equipment being tested) and agrees that in no event shall Kinectrics be liable for any damages which may be caused to Customer's material or equipment under test including, but not limited to, any accessories. The provisions of this Article shall apply notwithstanding any other provision of this Agreement or any other agreement.

- 9. Nuclear Liability Insurance and Indemnification:** In any contract where the end user is a United States Utility Owner/Licensee which utilizes the Services to any extent in its facility, Customer agrees to obtain and provide to Kinectrics, any governmental indemnification of, or protections for, unusually hazardous risks, such as under the Price-Anderson Act, Public Law 85-804, FAR 52.250-1, FAR 52.246-23, and FAR 52.246-24. If the nuclear liability protection system provided by the applicable Act is repealed, modified, or expires, Customer will, without cost to Kinectrics, maintain in effect, to the extent customarily maintained by nuclear plant owners, liability protection through government indemnity, limitation of liability or liability insurance in order to indemnify and protect Kinectrics and its subcontractors from liability for unusually hazardous risks.
- 10. Delay in Performance:** Kinectrics shall not be liable for any expense, loss or damage resulting from delay or prevention of performance caused by fires, floods, Acts of God, public health risks, quarantine, epidemic, pandemic, strikes, labor disputes, labor shortages, inability to secure materials or equipment, fuel or other energy shortages, riots, thefts, accidents, transportation delays, acts or failure to act of Customer, acts or failure to act of governmental authorities, Customer's delay in obtaining licenses, major equipment breakdown, or any other cause whatsoever, whether similar or dissimilar to those enumerated above, which are beyond the reasonable control of Kinectrics. In the event of any delay arising by reason of any of the foregoing, the schedule and compensation shall be equitably adjusted as may be required.
- 11. Proprietary Information:** Information disclosed pursuant to this Agreement is disclosed in confidence, and the recipient shall not publish or otherwise disclose it to others, or use it for purposes unconnected with the delivery of the Services, without the written approval of the disclosing Party. Customer understands that special techniques in the arts and sciences, developed or accumulated by Kinectrics, will be employed to benefit Customer under this Agreement, and agrees that such special techniques are proprietary and shall not be disclosed to any third party during or subsequent to the term of this Agreement nor shall the Customer use it for purposes unconnected with the delivery of the Services without Kinectrics prior written consent; provided, however, that nothing herein shall limit Customer's right to disclose any data provided by Kinectrics hereunder which (a) was furnished by Kinectrics prior to this Agreement without restrictions; (b) becomes knowledge available within the public domain; (c) is received by Customer from a third party without restriction and without breach of this Agreement; or (d) is required to be disclosed in order to comply with applicable laws or government regulations. In the event that recipient or any of its representatives become legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any confidential or proprietary information, recipient shall provide the disclosing Party with prompt prior written notice of such requirement so that the disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with these confidentiality provisions. In the event that such protective order or other remedy is not obtained, or that the disclosing Party waives compliance with these confidentiality provisions, recipient agrees to furnish only that portion of the confidential or proprietary information which recipient is advised by written opinion of its counsel is legally required, and to cooperate in efforts by the disclosing Party to obtain assurances that confidential treatment will be accorded the confidential or proprietary information.
- 12. Intellectual Property:** Kinectrics shall own all right, title and interest in and to all intellectual property, including without limitation all inventions, patents, patent applications, copyrights, and trade secrets, in any report, data, software or thing created or reduced to practice by Kinectrics during the course of performing the Services. Except as is necessary to the Customer's use of the Deliverables, the Customer shall not reproduce, make or distribute copies, either in whole or in part, of any report, document, video, software or thing created by Kinectrics during the course of performing the Services, without the specific written permission of Kinectrics.
- 13. Publicity:** Kinectrics shall have the right to make general references to the Services in promotional materials, but shall not include detailed results of the Services without the written consent of the Customer.
- 14. Applicable Laws, Assignment and Dispute Resolution:** This Agreement shall be governed by, and be construed in accordance with, the laws of the Province of Ontario and Canada and the Parties consent to the exclusive jurisdiction of the courts of the Province of Ontario except as follows: (1) For all Services performed within the United States of America, this Agreement shall be governed by, and be construed in accordance with, the laws of the State of Illinois and the Parties consent to the exclusive jurisdiction of the courts of the State of Illinois; (2) For all Services performed in the United Kingdom this Agreement will be governed by the laws of England & Wales, (3) For all Services performed within a European Union country, this Agreement will be governed by the laws of such applicable country; and (4) For all Services performed within India, this Agreement will be governed by and construed in accordance with the laws of India and the courts of Telangana, India shall have exclusive jurisdiction in case of any dispute arising out of or in connection with this Agreement. Customer may not assign or transfer this Agreement or any interest herein without the prior written consent of Kinectrics. The Parties shall use all reasonable efforts to amicably settle all disputes arising in relation to this Agreement and its interpretation. Neither Party will resort to the courts until a good faith effort to resolve such dispute has been made by the Parties' executive levels. The Parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.
- 15. Waiver of Jury Trial:** Where the applicable law is the State of Illinois or any other United States jurisdiction, each Party hereto hereby waives its rights to a jury trial of any claim or cause of action based upon or arising out of this Agreement, or the subject matter hereof or thereof. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including, without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims. This Article has been fully understood and accepted by each of the Parties hereto and these provisions will not be subject to any exceptions. Each Party hereto hereby further warrants and represents that such Party has reviewed this waiver with its legal counsel, and that such Party knowingly and voluntarily waives its jury trial rights.