

## TERMS AND CONDITIONS

To assure a mutual understanding of the responsibilities arising from any technical, professional or consulting services agreement between C3 AcquisitionCo, LLC operating as POWERX ("POWERX") and the Customer, the following terms and conditions are hereby incorporated as an integral part of the POWERX proposal and any resulting Agreement ("the Agreement").

If a customer-drafted contract is approved by POWERX and executed by both parties (the "Customer Contract") and said Customer Contract includes its own terms and conditions, only the same applicable terms or conditions will be superseded in this document. Any terms and conditions listed below, that are not specifically addressed and overridden in the Customer Contract, will remain in effect.

### STATEMENT OF WORK

The technical, professional or consulting services to be performed, and any goods to be supplied by POWERX (the "Work") are detailed in the POWERX quotation, estimate or proposal ("the Proposal").

### CUSTOMER ACCEPTANCE

Issuance of a Customer Contract or purchase order, signature on the POWERX Proposal, or prepayment of the Work, will constitute Customer's acceptance of the Proposal price and other terms, as well as acceptance of these POWERX terms and conditions, unless partially or totally superseded by Customer Contract as noted above.

### COMPENSATION FOR SERVICES

The basis for compensation will be as identified in the Proposal. A Proposal is understood to encompass the POWERX initial quotation plus any subsequent change orders, plus any additional services performed or goods provided at the Customer's request on a Time & Material basis. Any Time & Materials scope will be charged at the POWERX published hourly rates at the time of performance, unless a different fee is agreed upon by both parties in writing.

### INVOICE AND PAYMENT

POWERX reserves the right to extend credit to Customer at its sole discretion. All invoices are due and payable on the date printed on said invoice. Customer may inquire as to its credit standing with POWERX at any time. Unless provided otherwise, payments to POWERX are due within 30 days.

POWERX reserves the right to require partial or full pre-payment of the Work to be performed. In addition, POWERX may, at its discretion, and before the Work is complete, submit monthly or periodic progress billings to Customer based upon the proportion of the work completed at any given time. These billings are due as of the date printed on each invoice.

If Customer fails to fully and timely make any payment when due, POWERX may, without any liability or prior notice to Customer, assess a service fee not to exceed the Wall Street Journal prime rate, and/or suspend any part of the Work under the Agreement. Late payments are considered a breach of the Agreement and POWERX reserves the right to determine, at its sole discretion and even after payment is received, whether to resume the remaining Work and continue to do business with Customer.

If legal or collection services are necessary to obtain any delinquent Customer payment, Customer shall be liable to POWERX for the cost of said services, plus reasonable attorneys' fees and court costs.

### STANDARD OF CARE

Services performed by POWERX will be conducted with the level of care and skill ordinarily exercised by members of the POWERX profession currently practicing under similar conditions. No other warranty, express or implied, is made.

### SCHEDULE

POWERX will attempt to schedule and perform its services in a timely manner, after proper advance notice has been received from Customer as noted in the POWERX Proposal. POWERX has no control or charge of, and shall not be responsible for, performance delays due to unfinished

construction, late deliveries, late installation, late performance by utilities or others, obstructed approaches, or any other factors preventing POWERX employees from obtaining proper access to the equipment and areas necessary for the performance of the Work.

### SAFETY

It is agreed that POWERX is only responsible for the health and safety of its own employees, while Customer shall be responsible for establishing, initiating, maintaining and supervising all job site health and safety precautions and programs, as required by applicable health and safety legislation. If this responsibility is transferred from the Customer to a General Contractor or Subcontractor, Customer agrees to make it evident in the contract between the Customer and said delegate.

### LIMITATION OF LIABILITY

In no event shall POWERX be liable to Customer, Owner, Contractor, Subcontractor, or any other third party for any damage, claims, demands, suits, causes of action, losses, costs, expenses or liabilities in excess of the total fee received by POWERX for the specific Work subject to the claim, regardless of whether such liability arises out of breach of contract, guarantee or warranty, tort, product liability, indemnity, contribution, strict liability or any other legal theory.

Customer shall waive all claims against, demands, suits, causes of action, losses, costs, expenses or liabilities, and fully indemnify and hold harmless, POWERX, and any parent company and affiliates of POWERX, for any consequential, incidental, indirect, special, exemplary or punitive damages (including, but not limited to, loss of actual or anticipated profits; revenues or product; loss of business or reputation; loss by reason of shutdown or non-operation; increased expense of operation, borrowing or financing; loss of tax credits or other like incentives; loss of use or productivity; or increased cost of capital), and regardless of whether any such claim arises out of breach of contract or warranty, tort, product liability, indemnity, contribution, strict liability or any other legal theory.

### NO WARRANTIES

Except as otherwise expressly set forth herein, POWERX makes no representations and extends no warranties of any kind, either express or implied, including without limitation, warranties of merchantability, or fitness for any particular purpose, as it relates to its services or products. All representations and warranties, whether arising by operation of law or otherwise, are hereby expressly excluded.

### CERTIFICATE OF MERIT

In any action, whether it is in tort, contract, or otherwise in which the Customer, Owner, Contractor, or any of their Subcontractors, Sub-subcontractors, agents and employees, seek damages for personal injuries, property damage, lost profits or expectancies, business interruption, death, or other monetary loss by reason of alleged professional malpractice, negligence, or breach of contract by POWERX, the claimant shall, before filing suit in any competent court or arbitration forum, submit to POWERX an affidavit declaring that the affiant has consulted and reviewed the facts of the case with an independent accredited professional, engineer, or other licensed professional who provides the same services as those provided by POWERX pursuant to the Agreement, and that said reviewer:

- i. is knowledgeable of the relative issues involved in the particular action,
- ii. practices, or has practiced within the last ten years, teaches, or has taught within the last ten years, in the same area of expertise that is at issue in the action,
- iii. is qualified by experience or demonstrated competence in the subject of the case, and has determined in a written report, after a review of relevant material involved in the particular action that there is a reasonable and meritorious cause for the filing of such action, and
- iv. has concluded on the basis its experience that there is a reasonable and meritorious cause for filing such an action.

A copy of the written report, clearly identifying the claimant and the reasons for the reviewer determination that a reasonable and meritorious cause for the filing of the action exists, must be attached to the affidavit. Information, which would identify the reviewer, may be deleted from the copy attached to the affidavit. If an affidavit complying with this section is not submitted to POWERX before suit is filed, such suit shall be subject to dismissal by POWERX without prejudice, with costs and attorney's fees related to the dismissal to be paid by the claimant in favor of POWERX.

## INDEMNIFICATION

To the fullest extent permitted by law, Customer shall indemnify and hold POWERX harmless from and against all claims, damages, losses, suits, actions or expenses, including, but not limited to, attorney's fees, in connection with the project, whether they arise from physical damage or destruction of property, death or bodily injury, sickness, disease (including loss of use resulting there from), to the extent caused in whole or in part by negligent errors, acts or omissions of Customer, Owner, Contractor, Subcontractor, Sub-subcontractor or any employee, agent, or any other individual for whom any such party is responsible, and regardless of whether or not such claim, damage, suit, action, loss or expense is caused in part by POWERX

POWERX shall indemnify and hold the Customer harmless from and against any third-party loss, damage, claims, or liabilities to the extent caused by the negligence of POWERX or its employees, except as otherwise limited by the Agreement.

## FORCE MAJEURE

If an event or circumstance beyond POWERX's reasonable control occurs, including without limitation an act of God, fire, flood, hurricane, wind event, storm, weather disturbance, earthquake, pandemic, disease, epidemic, or other viral or bacterial outbreak, government-ordered shutdown, quarantine or shelter-in-place order, an act or omission of a third party, strike, war, riot, terrorism or threat of terrorism, civil unrest, or any other events or circumstances not within the reasonable control of POWERX, whether similar or dissimilar to any of the foregoing, that cause POWERX a delay or additional expense ("Force Majeure Event"), then POWERX is entitled to an equitable adjustment of its compensation and the time for performance.

If any Force Majeure Event renders POWERX's performance impossible or impracticable, POWERX has the right to terminate this Agreement consistent with any termination requirements that might exist. Upon request by Customer, POWERX will furnish periodic reports regarding the impact of the Force Majeure Event on its services.

## TERMINATION

**Termination for Cause:** This Agreement may be terminated by either party upon seven (7) days written notice in the event of a material breach by the other party unless such material breach is remedied by the breaching party before the expiration of the seven-day period. In the event of termination, Customer will pay POWERX for services rendered and expenses incurred prior to the effective date of the termination, including any unrecoverable deposits or prepaid charges.

**Termination for Convenience:** This Agreement may be terminated by either party upon thirty (30) days written notice, except in the event of a Termination for Cause previously noted. If the termination is for convenience, Customer will pay POWERX for services rendered and expenses incurred prior to the effective date of the termination, including any unrecoverable deposits or prepaid charges, plus POWERX's customary profit and overhead, in an amount not to exceed the total price of the Agreement.

## GOVERNING LAWS

The validity or construction of this Agreement, as well as the rights and duties of the parties herein under, shall be governed by the laws of the State of Arizona.

## DISPUTES

Any claim or controversy arising out of or relating to this Agreement shall be first submitted to binding arbitration administered by the American Arbitration Association (AAA) in accordance with its Commercial Arbitration Rules to be held in Phoenix, Arizona. If a dispute remains unresolved after arbitration, either party may then file a lawsuit in the state or federal courts of Maricopa County, Arizona to seek further relief.

If litigation occurs in connection with this Agreement, and POWERX prevails in such litigation, Customer shall pay all costs incurred by POWERX, including staff time, court costs, attorney's fees and other expenses.

## AMENDMENTS

The Agreement may be amended in writing from time to time providing both the Customer and POWERX agree to such modification. The modification will become an amendment to the Agreement and will supersede any other oral agreements, statements or representations.

## SEVERABILITY

In the event any provision of this Agreement is determined to be void or unenforceable, such determination shall not affect the remainder of this Agreement, which shall continue to be in force.

## ASSIGNS

Neither Customer nor POWERX may delegate, assign or transfer its duties or interest in this Agreement without the written consent of the other party, provided that such consent shall not be unreasonably withheld.

Notwithstanding the foregoing, both parties also agree that a novation, delegation, assignment or transfer of the Agreement is unnecessary if either party experiences a change of name, ownership, brand, entity type or entity identification number, as the result of a stock purchase, where the same individuals will perform the Work and the same individuals will remain in control of the assets necessary to perform the Work.